

MEDINA CITY COUNCIL MEETING MINUTES OF SEPTEMBER 20, 2005

The City Council of Medina, Minnesota met in regular session on September 20, 2005 at 7:05 p.m. in the Hamel Community Building, 3200 Mill Drive. Mayor Workman presided.

I. ROLL CALL

Members present: Brinkman, Cavanaugh, Smith, Weir, and Workman.

Members absent: None

Also present: City Attorney Ron Batty, City Engineer Tom Kellogg, Police Chief Ed Belland, City Planner Rose Lorsung, City Planner Consultant Sarah Schield, City Administrator Chad Adams and Recording Secretary Chris Moksnes.

II. PLEDGE OF ALLEGIANCE

III. ADDITIONS TO THE AGENDA

IV. APPROVAL OF MINUTES

A. Approval of the September 6, 2005 Regular Council Meeting

It was noted on page 5, the 2nd paragraph, it should state: "Weir asked to make sure that it is understood that the improvements..."

It was noted on page 5, the 5th paragraph, last sentence, it should state: "Medina used the Minneapolis formula, calculated at 110% of poverty due to a proposed increase."

It was noted on page 8, the 8th paragraph, it should state: "...community building events and...."

It was noted on page 9, the 1st paragraph, it should state: "...bio-diesel..."

It was noted on page 10, the 5th paragraph, it should state: "...were sent to all residents..."

It was noted on page 10, the 6th paragraph, it should state: "...ground floors gradable at grade level."

*Moved by Weir, seconded by Smith, to approve the September 6, 2005 regular Council meeting minutes as amended. **Motion passed unanimously.***

V. CONSENT AGENDA

A. Ordinance Amending Sections 400.01, 400.11 and 400.13 Regarding Driveways

B. Approve Raffle Permit to Mayer-Watertown Dandy Lions for November 20, 2005 at Medina Entertainment Center

C. ~~Ordinance Amending Sections from the Subdivision Regulations Section 820 and District Provisions Section 826 Related to Suitable Soils~~

D. Resolution Authorizing Publication by Title and Summary for Ordinance Related to Suitable Soils

Brinkman asked to remove items C and D from the consent agenda.

Moved by Weir, seconded by Smith, to approve the consent agenda as amended.

Motion passed unanimously.

- C. Ordinance Amending Sections from the Subdivision Regulations Section 820 and District Provisions Section 826 Related to Suitable Soils**
- D. Resolution Authorizing Publication by Title and Summary for Ordinance Related to Suitable Soils**

Brinkman suggested this amendment is an effort to catch up with bookwork. He stated the City should slow down and consider what suitable soils are needed. He also said he would like to know what impact that will have on the core area of Medina in what it will allow for subdivisions. He stated he wasn't sure that as a Council, they understood the difference between a 6% slope and a 12% slope. He concluded he would like to make a decision based on facts and he is still unclear on the issue.

Adams explained nothing different than what has been reviewed for several years is being changed. He further explained staff has been reviewing all applications under this plan. The City Planner had discovered an error in the Ordinance, and it needed to be clarified.

Brinkman stated that before something is legalized, he would like to be sure it is clarified. The restrictions in place have helped keep the core of Medina rural.

Lorsung explained that the old Section 720 of the Ordinance included the soils list, and it was about 25 pages long. As time and technology changed, so did Section 720. In 1999, Section 720 was repealed in its entirety, including the soils list. Rule 7080 was adopted, which is state statute rules. However review of the subdivisions with soils continued per the document now in the Comprehensive Plan.

Brinkman stated he believes that when something in general is adopted from the State of Minnesota, the idea that Medina is 29% water is missed. He is not sure the City has qualified personnel to determine the soils. The builders and developers have not been required to prove up the different soils.

Lorsung said the Hennepin County soils overlay is considered, and noted that one of the defining characteristics of the soils is their slope. If an applicant in the past had a complaint with the soils overlay, he would be requested to provide more soil information. Most of the time, the soil was matched with the Hennepin County soils overlay. It is left to the city to define suitable soils. That definition changes, and it has in the history of the suitable soils requirement.

Brinkman said he is aware of times where the soils overlay did not match up. He said he would like to have a "what if" scenario.

Lorsung answered that the Ordinance takes that into account. She said she introduced a clause into the ordinance regarding the procedure if the applicant wants to come in and dispute the Hennepin County overlay.

Smith said that since there is an interest in the City to maintain a rural nature, residents would like to make it less easy to subdivide. She suggested looking at the ramifications of taking out anything with a 6% and above slope in the Comp Plan process. She said she has heard that people are interested in making the rules more stringent.

Weir asked if it would be appropriate to approve this as is, and consider revising at a later date.

Lorsung said that leaving it as it is would be keeping erroneous information in the Ordinance, and would take away years of approved plats in our Comp Plan.

Moved by Cavanaugh, seconded by Weir, to approve the Ordinance amending Sections from the Subdivision Regulations Section 820 and District Provisions Section 826 Related to Suitable Soils.

Discussion:

Smith said she would like to see this issue brought back for further discussion at the Comp Plan consideration.

Workman stated the best way to handle it is to approve it, and if something should be changed, it should be changed with the Comp Plan.

Motion passed (Brinkman nay).

*Moved by Weir, seconded by Smith, to approve the resolution Authorizing Publication by Title and Summary for Ordinance Related to Suitable Soils. **Motion passed (Brinkman nay).***

VI. COMMENTS

A. Comments from Citizens on Items not on the Agenda

There were none.

B. Park Commission

Lorsung stated there is a new application on Willow for a five-lot subdivision that is being reviewed at the Park Commission for park dedication requirements.

C. Planning Commission

Lorsung stated the next Planning Commission meeting will include an applicant that purchased the Maple Plain Dairy Queen site and would like to redevelop into a retail building. She said there could be other preliminary plat requests on the agenda also.

Smith asked about the variance for the horse building east of City Hall on County Road 24. She said she preferred that it be torn down. She questioned why it is being allowed to continue as it is through a potential variance process.

Lorsung explained the structure has been red tagged and immediately after that, the owner submitted a variance. Upon review, the variance request was found to have little merit. Upon further information, the applicant postponed the public hearing, and the new deadline is December 1. If it is not reviewed at the public hearing, the City will take further action.

VII. OLD BUSINESS

A. Ryan Companies (Target) – Medina Clydesdale Marketplace

1. Resolution Granting Approval to Final Plat

Adams distributed a revised resolution. He pointed out the changes made in the revised resolution, including modifications of the plat.

Batty said if the easement from Valvoline is not obtained, the original agreement (plat) is allowed to be followed. It stated the Clydesdale trail would stay on the property and make a turn to the east rather than cut through the Valvoline site.

Smith asked how many parking spaces would be lost with that design. Schield answered seven.

Lorsung said there is a new representative who is taking the lead on this project and it is moving forward. Valvoline has requested additional signatures on the property and requested additional footprints to the building. She stated there is further analysis that needs to be done about an outlot that could be deeded to Valvoline.

Smith asked if this is approved with this alternate, would it reduce the negotiating power of Ryan with Valvoline. Adams answered Ryan is not going to be involved. Ryan is cooperating, but it will be a city-driven project. The city is asking for easement at that location.

Batty said Ryan prefers this alignment. He reiterated that if the deal with Valvoline doesn't go through, the original agreement will be in effect.

Brinkman said it sounds like Valvoline will agree with it and is a matter of time. Lorsung stated the review by Valvoline Corporate has not been completed.

Batty pointed out another change on the bottom of Page 2 of the Resolution. Further conditions have been added. He said if Council approves the plat, it also is agreeing that the Mayor and the Clerk are authorized to sign the plat with those conditions.

Kellogg pointed out the changes needed on the plat before approval. He noted the City has asked the applicant to provide a minimum of ten feet behind the curb for roadway right-of-way. The City needs an easement of a pipe that carries water across the plat diagonally. He also explained that development occurred since the parcel came into being. It was decided that ponding is not needed on the site. The City will need an additional easement to cover the storm sewer that will carry flow from the property to the pond.

Weir asked if a building can go over the lot that would have the pipe over it. Kellogg answered a building cannot be built there, however a parking lot can be.

Moved by Cavanaugh, seconded by Weir, to approve the resolution granting approval to the final plat.

Batty said these items need to be completed before this is delivered. The ball is in the County's court to get this reviewed. It will not be signed until these things are accomplished.

Motion passed unanimously.

2. Resolution Granting PUD Final Plan

Adams provided an updated version of the Final Plan resolution. He said items 7 and 14 have changes. Item 15 also has changes and is straightforward. He pointed out that item 36 is in reference to the roof line and allows discretion by Staff. Item 39 is a technical change.

Schild said the tree preservation plan was discussed. She said in April before preliminary approval, Staff had recommended that street trees be included in the plan. She said it is her recollection that the street trees should be eliminated. The minutes of that meeting do not reflect that discussion. The decision must be made at this meeting. Staff recommends that the street trees be included for mitigation. The development will have a hard time trying to caliper the number of inches required without the street trees. Some alternatives have been suggested. Staff is willing to look at using the dollar amount for landscaping but the Ordinance recommends having trees for trees. If there are additional caliper inches that need to be mitigated, perhaps they could work with the developer. The only other way staff feels trees can be mitigated is by removing parking lots which isn't feasible with this project.

Smith stated she is not in favor of using street trees for mitigation. She said trees do need to be planted to separate the neighbors.

Workman said at this point, it cannot work with the tree replacement.

Schild said that in terms of increasing the caliper inches along Clydesdale, she thinks it would negate what is attempting to be accomplished.

Smith asked if there is an option to use some of that money to plant trees on public land.

Cavanaugh suggested giving Staff discretion to plant as many trees as possible, and to make up the difference in caliper with landscaping. Schild responded that Staff would be happy to work the Developer.

Workman said Staff should work with the Developer and if requirements aren't being met, the issue should be brought back to the Council.

Cavanaugh said there was some concern about the naming of the area "Medina Clydesdale Marketplace."

Weir stated the name was taken from the horse history of the City.

Lorsung said the name does fall in line with the other names in the City.

*Moved by Weir, seconded by Cavanaugh, to approve the resolution granting PUD final plan, as requested. **Motion passed unanimously.***

3. Approval of Development Agreement

Adams advised there is one substantive change in the development agreement. The developer is now more comfortable with the City competitively bidding at least the public improvements that are generally outside of their site plan/plat area for the project. He noted that previously the developer was going to construct all of the public improvements in exchange for a \$2 million tax increment note. Now, the City will hold the contract for public improvements, at least for the area generally outside of the plat/site plan. The developer will be required to deposit funds into an account the City can draw from exclusively, before the contract is awarded, to ensure that the City can pay the contractor's pay requests as well as engineering fees. The \$2 million pay-as-you-go TIF note will remain unchanged. Adams recommended the Council approve the development agreement contingent on final plan approval, PUD final plan approval, and final non-substantive staff revisions.

*Moved by Weir, seconded by Cavanaugh, to approve the development agreement, contingent on final plan approval, PUD final plan approval, and final non-substantive staff revisions. **Motion passed unanimously.***

VIII. NEW BUSINESS

A. Resolution Awarding the Sale of \$1,040,000 General Obligation Tax Increment Bonds, Series 2005C; Fixing Their Form and Specifications; Directing Their Execution and Delivery; and Providing for Their Payment

Dave Callister, Financial Advisor from Ehlers and Associates, provided the results of the bond sale. He said favorable interest rates were received. He gave a brief background of the bond purpose. The term is 15 years. The market received four bids, and a low bid of 3.7013% true interest cost was received. He said the City received a Aa3 Bond Rating. The interest rate range was 3.70 to 4.07. He said he estimated last month \$13,585 for a discount. This allows the underwriter's profit. The discount wasn't used in full, so it helped reduce some of the cost. The true interest cost estimated was 30 basis points higher. He noted the wiring date will be October 13. He said it was indicated that \$950,000 would be used for the Construction Fund. Since the discount was lower, the bond issue could be lowered, or more could be put into the Construction Fund. It was decided to put \$10,000 into the Construction Fund.

*Moved by Smith, seconded by Cavanaugh, to approve Resolution Awarding the Sale of \$1,040,000 General Obligation Tax Increment Bonds, Series 2005C; Fixing Their Form and Specifications; Directing Their Execution and Delivery; and Providing for Their Payment. **Motion passed unanimously.***

B. Preliminary Plat to High Pointe Ridge (Across from Baker Park Reserve on Parkview Drive)

Lorsung reviewed the report for the City Council, noting that High Pointe Ridge is a three-lot subdivision across from Baker Park Reserve on Parkview Drive. The Planning Commission reviewed this application at their meeting on September 13, 2005. Lorsung stated the applicant cooperated with the City to hold off on review of the application until the suitable soils ordinance revisions were completed. Therefore, staff has decided to

place the item on this agenda rather than on the October 4, 2005 agenda. Staff is seeking authorization to prepare the resolution for the preliminary plat.

Jim Lane, 2605 Hamel Road, stated he lives in one of the two oldest buildings in the area and has lived there since 1971. He said he had two points, with the first being a procedural point. He asked who is standing to prosecute this application; who is the real party of interest with a legal right to prosecute this application. He said when this application was initiated, it was prepared by Petrucci, and it was approved that Petrucci granted a license to Leuer, and that was the status of ownership. He said he learned that transaction had closed. The same day, he said he learned a third party listed Lots 1 and 2 on the Multiple Listing System (MLS). Upon inquiry to the real estate broker, he was told that a Mr. Bruck is also the owner of Lot 3.

Batty said the fee owner of the property has standing to prosecute. He said he was not aware of this information being presented.

Lorsung said that Leuer is and always was the applicant. He was the subdivider at the beginning of the application. She said she was unaware of the properties as exchanging hands and it is not real property at this time; it is only one lot.

Batty stated he would prefer to review the facts. Staff hasn't had time to review this issue. He stated the City insists the fee owner be an applicant.

Lane requested the City discover the fee owner of the property. If there is a request on the part of the applicant to take action on this tonight, keep in mind that the question of the fee owner is unclear. He said his second point was substantive and said he would list specific reasoning to deny the application. He said there is a conflict with the general and the specific plans of the City. The Code provides physical characteristics of the site. He stated this site is unsuitable for the type of property development proposed. It is not suitable for three large homes on narrow lots. He said in his opinion, one lot would be consistent.

Mike Leuer stated he is the applicant and the lead person. He is working with Petrucci who has been supporting this. There have not been lots sold but he is assuming they will have lots to sell. This should be a given for marketing purposes, and he said he listed one lot as sold and two for sale only for marketing purposes. Without approval they would not do that and it is only for marketing. It is standard in the industry and is harmless.

Workman asked if he has looked at alternatives for the site to be less intense.

Leuer said they started out with five lots and went down to three. He put a conservation easement on the property. The shoreland district regulations are of concern. He said he was asked about the agreement on the horse trail and he would be amenable to that if everyone else around the lake agrees.

Smith explained there is a subdivision in her neighborhood, and the developer protected the horse trail without agreement from all neighbors. He agreed to protect the areas of concern, and to a setback for wetlands. She said she believes that looking at what Leuer has done, it is admiral he invoked the conservation easement. She said she did not appreciate hearing that he would protect the horse trail only if everyone else agreed.

She also said she did not want to see a driveway going through a wetland. She expressed disappointment in Staff agreeing to the driveway location. She said she does not believe this application meets the quality of intent or the qualitative text in the Ordinance.

Leuer stated he does not consider his lots narrow. He said a large house could be tastefully built on this size lot.

Cavanaugh said he is somewhat restricted to the layout of the lots. He asked if Leuer would be willing to work with the neighbors on the layout to find a solution that would be more amicable to the rest of the neighborhood.

Lorsung said the previous property owner submitted an exemption for this wetland which the Staff approved. She clarified staff has not approved the driveway location over the wetland. The County has approved this, though the City has not. She said the five-acre soils requirement does affect the shape of the lot design. The minimum lot width is 110 feet. The design of the lots did not fall in favor with the qualitative analysis. All three lots do meet the subdivision requirements.

Smith asked if there would be berms. She also stated the setback and the width is in violation of the Comp Plan intent for this district.

Cavanaugh pointed out that the applicant does fit into the criteria that were established by ordinance.

Workman said he understands Leuer worked with Staff to follow the Ordinance. The applicant and the Staff are aware of the concerns. He asked them to continue to negotiate with Staff to come to an agreement. This item will be tabled until a later date.

Batty commented when the City approves a Comp Plan, it is required to review all the official controls, which was done. The Council then deemed the subdivision to be in compliance with the Comp Plan.

Brinkman said part of the Comp Plan states it will protect and enhance the rural character of the area. He said he would like to see a picture of the view of those living there. He said there must be a way to make the development nestle into the environment.

Charles Nolan, 2935 Willowood Farm Road, stated he lives directly east from the property. He opposes the application because he does not believe it is consistent with Medina's Comp Plan. The lots are long and skinny, and in normal subdivisions, the size of these lots is consistent with one lot in subdivisions. He said the lack of tree coverage, the lack of vegetation and the hilltop location are also contributing to the problem. He displayed pictures of the view and homes around the lake. He displayed a picture of the proposed scenario with homes superimposed in the proposed site. Nolan reviewed the sections of the Subdivision Ordinance, and Comp Plan that he believed this project would violate. He requested the Council deny this application. He suggested the middle house be set back and the perception of density be different. He also suggested an alternative is to plant some trees to help screen some of the houses. He said in the event the Council does act tonight, the neighbors had put together a list of conditions. He said he would like to see this come back as a two-lot subdivision.

Gary Petrucci stated he bought this property in 1993. He said it was on the market for a year. He explained that on Lot 3, the house will be further over to the west. The houses would not be in a row. He said he put a conservation easement adjacent to the horse lane forever. He said this will be the least developed property in Medina because of this. The City has to follow the rules and the rules are in place for a reason.

Glenn Jeffrey, 2605 Willow Drive, agreed with Smith that it is not just about soil samples and numbers. He said he represents homeowners from around the lake. He said that developing the three lots on the top of the ridge will look like a suburban subdivision. That will not be consistent with what the Council stands for.

Wally Marx, 2700 Parkview Drive, stated this is only 17 acres of buildable land with three houses. He asked the Council to consider this.

Debra Dalbec, 3085 Hamel Road, stated she bought their property according to the Comp Plan. She pointed out the Met Council has this property in an Urban Reserve Property which is one unit per 40 acres. The City has it as permanent rural, which is one unit per ten acres. She said she would like to see them be more creative.

Leuer stated he has completed wetland delineation, septic tests and has been very diligent. He requested the Council approve this application.

Workman said the Staff followed the rule books as they are written. The Planning Commission reviewed it and it met all the requirements the City had. He said he could ask for a vote, or allow more time for research. He said if it is tabled, he would ask the Developer to work with Staff and find ways to mitigate neighbors' concerns. He said he would rather compromise.

Moved by Smith, seconded by Weir, to continue discussion until October 18, 2005 to allow the attorney to review the documents, and to allow Staff, the Developer and the residents to work together to come up with recommendations.

Discussion:

Lorsung requested the Council members and Attorney give more direction of what types of recommendations Staff can put on this property. Staff would need a separate application for variances. She also suggested the Staff begin discussions at their Staff meeting the following day.

Brinkman asked if something could be done to help the houses blend in more with color and height.

Workman said he would like to see that Leuer understands the neighbors' position and the Council will do their best to take care of the citizens of the city. He said he is asking the Staff and the Developer to be creative.

Motion passed unanimously.

Moved by Smith to direct Staff to prepare a moratorium on rural residential areas that have not had a preliminary plat approved until the Ordinance comes into compliance with the goal of the Comp Plan and the qualitative text of the Comp Plan.

Workman suggested "rural residential" be clarified.

Adams suggested Staff prepare more detail on instituting a moratorium and update the Council at the next meeting, which is the first meeting in October. The High Pointe Ridge Preliminary Plat will be at the second meeting in October.

IX. CITY ADMINISTRATOR REPORT

A. Woodlake Sanitary Landfill

Adams reported that Jim Dillman and Lenny Leuer met with MPCA officials to receive answers from previous Council discussion. He explained that staff is seeking direction to hire Bonestroo as a consultant to review MPCA plans, reports, testing, etc., on the Woodlake Sanitary Landfill. Staff is also seeking direction on whether there is interest to begin testing private wells within a radius of the landfill, at the City's expense. Staff advises Council to consider policy discussion on this testing, and what the City intends to do if testing demonstrates unfavorable results.

Smith said the City should not be testing private wells.

Adams said Staff will come back with a broader scope of direction, but recommended hiring Bonestroo now to review the MPCA construction plans for the landfill upgrades.

Workman suggesting having Bonestroo also look at the results of the existing testing.

Leuer said the MPCA was initially against private well sampling. After he discussed some of the issues that came up, they decided to take the discussions into consideration. He said that discussion ensued regarding the location of the landfill. He explained the geology of the site.

Weir asked if the Minnesota Department of Health handles the testing, how Medina would be sure their citizens are cared for.

Workman stated he would like to turn the issue over to Staff to have them work with the MPCA and Bonestroo and create parameters to help accomplish the goals. He said he did not want the City to take all the responsibility for it. The state should take some responsibility, as they are the owners.

*Moved by Smith, seconded by Weir, to direct staff to have Bonestroo review the construction plans within the next several weeks. **Motion passed unanimously.***

B. Appointment of Full-Time Administrative Assistant

Adams recommended the appointment of Janet Olson to the position of Administrative Assistant effective September 20, 2005 at a starting wage of \$18.50 per hour plus benefits in accordance with city policy.

*Moved by Weir, seconded by Smith, to approve the appointment of Janet Olson to the position of Administrative Assistant, as requested. **Motion passed unanimously.***

Adams stated Medina Preservation Day is September 24 from 4:00 to 8:00 p.m. There will be fireworks. The City will have a booth and he invited Council members to attend the celebration and be near the booth.

Adams noted the tour of Wild Meadows is scheduled for Thursday, September 22 at 6:00 p.m. Two Council members expressed interest and availability in attending.

X. MAYOR & CITY COUNCIL REPORTS

XI. APPROVAL TO PAY THE BILLS

*Moved by Smith, seconded by Cavanaugh, to approve the bills, order check numbers 028403-028461 for \$420,442.83, and payroll check numbers 019475-019495 for \$28478.56. **Motion passed unanimously.***

XII. ADJOURN

*Moved by Cavanaugh, seconded by Weir, to adjourn the meeting at 10:30 p.m. **Motion passed unanimously.***

Bruce D. Workman, Mayor

Attest:

Chad M. Adams, City Administrator-Clerk