

**MEDINA CITY COUNCIL MEETING MINUTES OF OCTOBER 21, 2008**

The City Council of Medina, Minnesota met in regular session on October 21, 2008 at 7:03 p.m. in the City Hall Chambers. Mayor Crosby presided.

**I. ROLL CALL**

**Members present:** Crosby, Cavanaugh, Smith, Weir, and Johnson.

**Members absent:**

**Also present:** City Attorney Ron Batty, Planning Director Tim Benetti, Public Works Superintendent Steve Scherer, Finance Director Jeanne Day, Assistant to City Administrator Jodi Gallup, and Recording Secretary Carla Wirth.

**II. PLEDGE OF ALLEGIANCE**

**III. ADDITIONS TO THE AGENDA**

Weir requested the addition of Item VIII.E, Lake Sarah TMDL.

*Moved by Smith, seconded by Weir, to approve the agenda with the addition of Item VIII.E, Lake Sarah TMDL. **Motion passed unanimously.***

**IV. APPROVAL OF MINUTES**

**A. Approval of the October 7, 2008 Special City Council Meeting Minutes**

*Moved by Smith, seconded by Weir, to approve the October 7, 2008 special City Council meeting minutes as presented. **Motion passed unanimously.***

**B. Approval of the October 7, 2008 Regular City Council Meeting Minutes**

The following changes were requested: Page 4, Line 10, should state: "he does not know if smaller WECS systems can be designed..." Pages 5-10, change "internment" to "interment." Page 7, Line 35, "...because she lived close by..." Page 9, Line 41 "she is not living in Medina..." Line 47 "...City will do and can act accordingly." Page 10, Lines 1 and 30, change "performa" to "proforma" Line 34, strike words "16 year" Page 11, Line 49, "...facilitate a merger with..." Page 12, Line 14 strike words "with the involvement of three cities" Page 13, Line 1, "is how to replace dedicated retiring volunteers who have served for years..." Line 8, "...have to find an officer to respond to fires." Page 14, Line 35, "...maintaining the Long Lake and Corcoran contract." Page 15, Line 14, strike words "and if not viable," Page 20, Line 19, "...awarded to the Lake Independence Watershed..." Line 35, "The City is also working..."

*Moved by Smith, seconded by Johnson, to approve the October 7, 2008 regular City Council meeting minutes as amended. **Motion passed unanimously.***

**V. CONSENT AGENDA**

**A. Accept Donation from Thomas M. Crosby, Jr. and Allocate to General Fund**

**B. Approve Independent Contractor Agreement for Brush Grinding Services**

**C. Approve Independent Contractor Agreement for Snow Plowing Services**

- D. Approve Independent Contractor Agreement for Sanitary Sewer Cleaning and Televising
- E. Approve Identity Theft Prevention Program Policy
- F. Authorize Walnut Park and Lakeshore Clean Water Legacy Grant Projects
- G. Authorize Final Pay Request to Bergerson Caswell Inc. for Well No. 7 Project
- H. ~~Resolution Granting Final Plat Approval for High Pointe Ridge 2<sup>nd</sup> Addition Located East of Parkview Drive and Generally South of Hamel Road~~
- I. ~~Resolution Certifying Delinquent Water, Sewer, and Storm Water Utility Charges for Services to the Hennepin County Auditor for Collection in 2009~~

Crosby requested Items H and I be removed for further discussion.

*Moved by Smith, seconded by Weir, to approve Consent Agenda Items A through G, removing Items H and I. **Motion passed unanimously.***

- H. Resolution Granting Final Plat Approval for High Pointe Ridge 2<sup>nd</sup> Addition Located East of Parkview Drive and Generally South of Hamel Road

Crosby requested additional clarification to Condition #2, second sentence, to state: "Any hardship, difficulty or inconvenience in utilizing or developing these lots now or in the future will have been created by the Owners;"

*Moved by Weir, seconded by Smith, to approve Resolution Granting Final Plat Approval for High Pointe Ridge 2<sup>nd</sup> Addition Located East of Parkview Drive and Generally South of Hamel Road, as amended. **Motion passed unanimously.***

- I. Resolution Certifying Delinquent Water, Sewer, and Storm Water Utility Charges for Services to the Hennepin County Auditor for Collection in 2009

Crosby stated this is a relatively long list of certifications and he had asked Day about the notification process to residents before it is certified to the County. Day advised that several notices are sent plus a follow up letter. She noted that 257 customers will be assessed and of that 123 are for storm water charges and 134 are for sewer and water charges. Crosby noted if the amount is paid by end of November, it will not be certified.

*Moved by Weir, seconded by Smith, to approve Resolution Certifying Delinquent Water, Sewer, and Storm Water Utility Charges for Services to the Hennepin County Auditor for Collection in 2009. **Motion passed unanimously.***

## VI. COMMENTS

### A. Comments from Citizens on Items not on the Agenda

Darrell Johnson, Medina Morningside, distributed background information for the Council's review and stated his opinion that the City Code is being misapplied in terms of enforcement regarding unused vehicles on private property. He stated the Code facilitates anonymous entities with the ability to harass residents by registering complaints. Darrell Johnson stated he would like this Code enforcement applied to commercial applications so residential property is excluded. He explained he purchased a Honda Civic for his son so that his father, who was knowledgeable with mechanics, could transfer that skill to his son. However, an anonymous complaint was registered so he decided to dispose of the partially renovated car. Darrell Johnson suggested there is

nothing wrong with owning a car for learning purposes, to learn a trade from your grandparents, and he now regrets his decision to get rid of the car, a permanent and nonrecoverable decision.

Crosby asked Darrell Johnson if his concern about anonymous complaints is that the Nuisance Ordinance is being misapplied.

Darrell Johnson stated that is correct with the caveat that on a number of occasions he felt the enforcement communications from Medina were unwarranted, untrue, and to the point of harassment. He stated he received a warning ticket on his son's car saying it was unlicensed so he went to the Wayzata DMV to obtain a printout that the license was current to May of 2009. That information was then submitted, within 7 days, to the Medina Police Department. Darrell Johnson suggested that the anonymous complainer's right to submit a complaint should not supersede his right to privacy.

With regard to the issue of anonymous complaints, Crosby explained the City has to deal with it the same as with identifiable complaints. Batty stated that is correct and there are data practices on what can be revealed so the City is constrained, to some degree, by the Statute.

Crosby stated the Council needs to put aside the issue of how the complaint comes to the City but the real issue is whether the complaint is being properly handled by the City.

Darrell Johnson stated he wants the ordinance amended to prevent the attack of one person by another person by proxy of the City.

Smith stated the City needs to deal with the complaint if there are Code violations. Batty stated staff has to be careful to not be dragged into neighborhood disputes but if there is a violation of the ordinance, the City must act. Johnson agreed that if there is a potential violation then the next step needs to be taken, and that may be perceived as harassment.

Crosby stated the Council will accept the background information submitted by Darrell Johnson and it will be provided to staff for their comment.

Darrell Johnson stated the letter is background information and the request has nothing to do with the complaint process but that is the mechanism being used. He clarified that his request is to amend the City Code to specifically its limit scope to commercial, not private, properties.

Smith noted that it is not uncommon to receive complaints from areas of Medina that contain smaller sized lots with unlicensed vehicles. She explained that staff is reviewing the City for Code violations, area by area, so complaints do not need to be made by neighbors.

## **B. Park Commission**

Park Commissioner Brian Kingsley presented the Park report, advising that at the October 15, 2008, meeting the main issue discussed was the request to use Hamel Legion Park for training German Shepherds four days a week for 4.5 hours each day. The Commission recommends that group not be given access to Hamel Legion Park

under their present request because of the high number of hours and the space it would take.

The Council discussed that the Park Commission is an advisory body, making recommendations to the City Council, and asked staff to place that request on the next meeting agenda.

### **C. Planning Commission**

Planning Commissioner Robin Reid reported on the Planning Commission's discussion of the Three Rivers Park District CUP application to allow an expansion of their shower building at Baker Park Campground. No comments were received during the public hearing. She stated the applicant's representative advised of how the addition would tie into the storm water system and the Commission recommends approval with conditions. The Commission also considered proposed amendments to Chapter 8 of the City Code related to commercial zoning regulations. At the public hearing, valuable and useful information was received from the audience. The Commission discussed the issue of hard surface coverage allowed in other cities and agreed with staff's recommendation. The Commission also discussed requiring a CUP for all buildings over 10,000 sq. ft. It was discussed that applying for a CUP adds costs, time, and risk to the applicant in case the CUP is not approved or conditions added that increase project costs that may make the project financial infeasible. Other topics of discussion included impact of smaller lot requirements, percentage of warehouse space, setbacks, screening, and building height. The Commission agreed the height limit should allow for 3-story buildings. Another discussion point was the weight limit for vehicles stored outdoors. The Commission thinks that some of the ordinance restrictions, when you look at them in total, are too restrictive.

It was noted the ordinance amendment issues will be considered by the Council at the next meeting.

## **VII. OLD BUSINESS**

### **A. Hennepin County Public Works Facility – 1600 Prairie Drive – Amendment to Planned Unit Development General Plan for the Construction of a Wind Turbine Tower and Civil Defense Siren Tower**

Benetti presented the request of Hennepin County for an amendment to their Planned Unit Development General Plan to construct a wind turbine tower and civil defense siren on their site. He displayed the site plan and described Option 1 and Option 2 sites. Benetti explained that the Option 1 site was initially the preferred site for the wind turbine but staff received comments and concerns from southerly neighbors, so it was asked whether Option 2 could be considered. The County indicated that would be acceptable. However, County officials recently discovered that a turbine at the Option 2 site could cause interference with the Sheriff's communication tower so they are requesting to go back to the Option 1 site. Benetti displayed an aerial site view that identified the locations of Options 1 and 2 and explained the request is to allow construction of a single wind turbine. He displayed a picture of sight visibility, pointing out the location of the turbine and building. Benetti concluded presentation of the staff report, advising staff recommends approval of Option 1, limiting the turbine to not exceed 2.1 megawatt, and subject to the conditions identified in the staff report.

Benetti stated the Council directed the Mayor and Adams to meet with Hennepin County and there have been a number of discussions about the economical analysis and potential for a water tower site at this area.

Crosby stated he and Adams met with Hennepin County. The initial concern was that if the wind turbine was a public relations project, if it did not have a solid underlying economic justification that would make a difference in his analysis. Hennepin County indicated they had not yet negotiated their power sales agreements with the utilities and were reluctant to come to the public meetings with that information. Crosby stated based on the information provided, he is comfortable the wind turbine is a sound investment for Hennepin County and those who pay taxes to Hennepin County. He stated that issue was satisfied, the wind turbine is not a public relations venture. One of the reasons is the easy ability to get into the major transmission lines at this location.

Crosby stated for those who have been following the Council meetings, a subcommittee was established, under a previous administration, to consider a new public works facility and one of the elements would be a water tower. Medina has found five potential sites for a public works facility and two of those sites are west of the proposed turbine site. Crosby stated the question is if you erect a 120 to 140 foot water tower west of this site, would it adversely affect the economics of the wind turbine. This question was posed to Hennepin County and a meeting was held last Friday. Crosby stated before he makes a final decision, he would be more comfortable knowing whether a water tower in the westerly area would interfere with the turbine's economics. Another crucial question is whether permitting the wind turbine would interrupt Medina's plans for utilities.

As a point of reference, Batty stated this matter has been discussed by the Council twice, on September 2 and tonight. Weir noted it was also before the Planning Commission twice.

Crosby asked County representatives to make brief presentation.

Marthand Nookala, Hennepin County Assistant Administrator, stated they came two years ago and studies began after that. He advised that Hennepin County pays about \$700,000 for electricity at the Medina public works. They want to find renewable energy and are pursuing a wind turbine. Mr. Nookala explained that technology has changed so they can produce more energy than needed and this location allows them to give the additional energy to other citizens. Mr. Nookala stated their goal is to make sure they save energy for the County and provide renewable energy. He stated the Option 1 site is preferable because the Option 2 site results in interference with the communication tower, which is also important for residents.

Crosby stated there is also a government grant that provides money on favorable terms to Hennepin County. Smith stated a Council decision is needed to take advantage of the grant funds.

Johnson noted there is also the State mandate passed by the Legislature to move towards 20 percent renewable energy by 2020. He stated this project is a great step in the right direction to lead by example.

Crosby opened the meeting for public comment at 7:52 p.m.

Jeanne Corwin, stated their farm borders this Hennepin County facility, which is on property previously owned by her family. She stated Hennepin County did take part of their property through eminent domain. Ms. Corwin stated there are no buildings on their property now but they did consider uses of the property. It is residentially zoned and she cannot understand how they could have someone build a home right under a wind tower. Ms. Corwin stated she has just become aware of the water tower. She stated she is not sure what value the turbine really adds to Medina itself but agrees we need to be energy wise and look for new ways to do things. However, she is not sure this will be a wonderful addition to Medina. Ms. Corwin stated she knows that the value of her property and its use will definitely be diminished, as well as the Laurent property. She stated she lived in the Crystal Bay area of Orono for about 50 years so she is not new to the area and this property is not new to her family. She is now living in Minneapolis. Ms. Corwin stated Tom Borman is her nephew and when her father died she and her sister inherited the property. Ms. Corwin stated she is not happy with what is happening.

Ken Bechler, 4182 Arrowhead Drive, asked why Hennepin County needs more Medina space. He noted Medina is a community of 6,000 to 7,000 people and Hennepin County has a combined population of 1.5 million people so he wondered why Medina had to "bear the brunt" of Hennepin County's stuff. He stated Medina already has the Hennepin County maintenance facility, roads and trucks, and now a wind turbine. Mr. Bechler suggested that Hennepin County will end up needing 6 or 7 wind turbines in the future. He stated his concern that the proposed wind turbine is 407 feet tall, which will be the largest structure for 25 miles and if traveling east on Highways 55 and 19, will be all you see. He suggested the wind turbine will be distracting so there will be accidents and deaths. Mr. Bechler asked why the wind turbine cannot go at the airport, Mall of America, or on one of Hennepin County's other properties. He asked what is the height of the communications tower.

Benetti stated the existing Sheriff's tower is approximately 420 feet high and the total height for the larger 2.1 MW turbine is 407 feet. Weir noted the height of the wind turbine hub is 262 feet, which is what the eye perceives.

Smith stated she toured the Great River Energy Building, which has a wind turbine, and there are other turbines around.

Crosby stated Bechler is asking if Hennepin County is having a wind turbine, why does it have to be in Medina. Bechler stated that is correct and suggested that Medina gets nothing. Smith noted that when Hennepin County built its public works facility, they paved Hamel Road, which saved the City a lot of money.

Cavanaugh asked Mr. Bechler whether the sight line from his house is affected. Bechler stated it is directly affected. Benetti estimated Mr. Bechler's property is 3,625 feet from the Option 1 site.

Crosby stated Mr. Bechler is asking why Hennepin County doesn't put the turbine in Buffalo Ridge where the other turbines are located.

Carl Michaud, Hennepin County Director of Environmental Services, explained they selected this area because they wanted optimal wind speeds needed for a turbine and wind maps provided by the State show the western portion of Hennepin County and the

Medina area has wind speed that makes economical sense. They put wind-measuring equipment on the Sheriff's tower and hired a wind consultant to confirm whether the wind speeds were adequate. It was determined this was a good site for a wind turbine. He noted the transmission line is fairly close so it makes sense to connect into it because the turbine will produce more energy than their facility needs so it can be put into transmission grid.

Cavanaugh asked if that entails an upgrade and higher frequencies or any risk to residents since more energy would be pushed through transmission lines. Mr. Michaud stated a study will look at the transmission line to determine whether there are any negative effects but he did not think that would be the case because it already is a high-energy line.

Johnson asked about the possibility of a wind farm in this location. Mr. Michaud stated there is not enough land for a wind farm in this location and, at most, there would be two turbines given the wetlands, proximity of buildings, and distance needed.

Crosby stated the audience may think the City is an advocate for the County but he does not view that to be the case. He stated he sees four issues: noise, visual effect and effect in a rural community, floodgate theory (will more turbines follow), and interference with City plans. He pointed out that this application comes to the Council with a unanimous vote of Planning Commission against the wind turbine.

Planning Commissioner Reid noted that some information has been submitted about the nearby transmission line that the Planning Commission did not know of.

Crosby stated the Council is aware that the Planning Commission's unanimous recommendation is against approval. However, the request has been submitted so it needs to be addressed. He stated he has been troubled with what the City will get, but believes that is balanced by the question of what is the right thing to do. Crosby noted that depending on who you talk to, if there is much wind, rustling corn will make more noise than a wind turbine so he believes noise is not a governing factor. Crosby stated the visual aspect is the big issue to him. With regard to the "floodgate" theory, he noted the City is in the process of putting rules in place to deal with wind turbines on residential property, even though they are not yet economically feasible. Crosby stated this PUD is on commercial property, near a railroad, and the economics makes sense. He noted that the question of interference with City plans remains open.

Corwin expressed concern with the constant "whoop, whoop" noise from the turbine that she believed could "throw you over the edge" because of the repetition, which can be very destructive. Smith cautioned that there are statistics to contradict that issue. She noted that the level of decibels is the concern and many have stood close to a similar wind turbine and didn't find there to be much noise.

Weir stated she also stood under the working turbine and could not hear any sound when underneath it. When downwind from the turbine, you could hear it at 300 feet and at 600 feet she only heard the ambient noise of the day and nothing from the wind turbine. Weir noted the fence is 600 feet distance from the wind turbine so she would question whether you would hear any noise at the distance of the houses.

Crosby noted this is difficult for the Corwins because their land was condemned from them but it is a commercial property and there are other uses that could operate on this property that would put off more noise than what a wind turbine would emit. He stated he does not take the issue of noise lightly, but finds it is not a controlling issue.

Johnson stated the ambient noise factor is less noticeable than traffic noises, especially at this distance. He stated he finds this to be a “great deal of to do about nothing” because if you’ve been within 700 to 1000 feet of a turbine, you will not hear it.

Benetti advised that generally the wind studies show a northwest quadrant is the prevailing direction of wind in this area. Weir noted there are variations of wind directions depending on the time of year. Benetti explained that the wind turbine will turn to maximize the wind’s potential, as will the blade to assure a constant rate. He displayed a diagram depicting annual wind patterns.

Crosby stated but for the issue of relationship with the water tower, all of the information available has been provided. He stated it is at a point where the Council will have to make a decision. He suggested that ten years from now there will probably be a lot of wind turbines in this area.

Smith noted Medina has identified five potential water tower sites and asked if Hennepin County knows about the potential interference or if additional research was needed. Crosby clarified there are actually five potential public works building sites and it was hoped to have a water tower at the same location.

Mr. Nookala explained that a site due west or east is not a problem and they would like to work with Medina to assure they get the water tower and Hennepin County gets the wind turbine.

Johnson stated that separation is then not an issue if the predominant wind is north to south and the water tower sites are to the west.

Cavanaugh asked if Hennepin County would provide a site for the water tower. Crosby stated that would not work.

Smith stated she supports the wind turbine because it makes sense, she believes our society must change, and this is an appropriate commercial location already owned by Hennepin County. However, she does not want to do something that results in the City’s water tower resulting in the wind turbine not being economically feasible. She stated she would like Hennepin County to work with staff on potential water tower sites, which will also have certain needs. Then Hennepin County and staff can come back and tell the Council whether or not the two projects are going to work together.

Johnson stated whether Hennepin County will build a wind tower, given its location, is a business decision. He stated his support for collaboration with Hennepin County to provide the location of the potential public works facility/water tower sites so it can be determined whether there is a wind shadow problem. Johnson stated he thinks Medina can find a water tower site that will not impact the wind turbine and suggested this application be considered for approval subject to resolving the wind shadow issue, if needed.

Smith agreed Medina can find a public works/water tower site but noted that it may be more costly to construct, require the City to purchase the property, or other added costs.

The Council discussed whether this consideration should be tabled for two weeks so additional data can be provided.

Cavanaugh asked whether Hennepin County is doing studies to assure there is no impact from the transmission. Mr. Michaud stated they are doing an evaluation of the interconnection to assure there is no impact on the line, but that has nothing to do with public health.

Johnson noted there are massive studies to refute the allegation that high power lines cause health problems.

*Moved by Weir to table consideration of an Amendment to the Planned Unit Development General Plan for Hennepin County Public Works Facility, 1600 Prairie Drive, for the Construction of a Wind Turbine Tower and Civil Defense Siren Tower to the next meeting and direct staff to work with Hennepin County on the public works/water tower sites.*

Batty noted the deadline is November 7, 2008. Crosby asked Hennepin County if they would extend the timeline. Benetti suggested an extension to November 25, 2008.

Crosby suggested staff draft resolutions, one for approval and another for denial.

The Council discussed the timing for the consideration and need for an extension.

*Cavanaugh seconded the motion.*

***Motion passed unanimously.***

Mark Luetmer, new resident to Medina, stated his opinion there is no doubt that a 407-foot wind turbine would have a negative visual impairment to the Medina skyline, be an infringement to property owners like Jeanne Corwin, and diminish residential values in largely residential areas. He stated this is an important decision and urged the Council to take serious note of these consequences and ask what is the cost benefit to put up a turbine, if they should be confined to wind farms, or be smaller turbines.

Cavanaugh left the meeting at 8:29 p.m.

## **VIII. NEW BUSINESS**

### **A. Resolution Vacating Drainage and Utility Easement on Lot 1, Block 1 and Lot 2, Block 1, High Pointe Ridge – Public Hearing**

Benetti presented the request to vacate drainage and utility easements in the High Pointe Ridge. The replat was approved on the Consent Agenda, which created new easements, and this action will remove the old easement. He displayed a map to identify the old and new easement lines and advised that staff recommends approval subject to filing of the new plat that grants the replacement easements.

Mayor Crosby opened the public hearing at 8:30 p.m.

*There being no input, moved by Johnson, seconded by Smith, to close the public hearing at 8:30 p.m. **Motion passed unanimously.***

*Moved by Weir, seconded by Smith, to approve the Resolution Vacating Drainage and Utility Easement on Lot 1, Block 1 and Lot 2, Block 1, High Pointe Ridge, as requested. **Motion passed unanimously.***

**B. Driveway Waiver Request for 2325 Pioneer Trail – Public Hearing**

Crosby stated since his brother and brother-in-law are involved, he will recuse himself from the discussion and action on this matter. Crosby stepped down and Acting Mayor Smith presided.

Benetti presented the request of Eugenia Ratte for a driveway waiver to reduce the driveway setback to zero for approximately 247 feet of a 1,440-foot driveway in order to limit impacts on the adjacent wetland. He presented the staff report, indicating the applicant intended to split the original 40-acre parcel into two 20-acre parcels, which does not entail the official subdivision process. The applicant has obtained a 60-foot wide ingress/egress easement from the Robert Laurent property. The driveway ordinance requires driveways to be set back at least 10 feet from the side yard property line. Benetti stated the existing conditions provide access to the property from Pioneer Trail and the applicant seeks to improve portions of the existing driveway and to extend the driveway north to serve two properties. The driveway does not meet current setbacks. Benetti displayed the survey site plan, identifying the location of Pioneer Trail, existing property, Laurent property, proposed Parcels A and B, and location of the lot split. He described how the driveway will serve these parcels, noting the location of the zero lot line area. Benetti presented the driveway standards and notification standards. He advised of the letters from David and Kitty Crosby, owners to the south, indicating they have maintained the driveway as long as they've lived there, 42 years, and request assurance from the City they will be able to continue to use the driveway. Benetti explained that since the City has maintained the driveway for at least six years, "it shall be deemed dedicated to the public to the width of the actual use, and shall remain, until vacated, a public highway."

Smith asked what "maintained" means and if the City had plowed this driveway. Scherer answered in the affirmative.

Benetti stated staff confirmed that the City had maintained the driveway for more than 25 years but not for the past two years. However, it is not clear whether the City intended it to become a public roadway. He advised the City policy on roadways indicates "recent rural subdivisions (Leawood Farms, Willow Hill Preserve, Tuckborough Ridge) have utilized private roadways to serve lots when there is no broader connection." He noted that the driveway in question is not identified in the City's Transportation Plan as a future roadway. Benetti explained the options are: 1.) Declare the intention for the driveway to be a public roadway; 2.) Grant the requested driveway setback waiver, with the intention of considering a vacation of any statutory user rights, which may exist over the driveway; or, 3.) Deny the requested driveway setback waiver, with the intention of considering a vacation of any statutory user rights which may exist over the driveway. Staff recommends option #2.

Acting Mayor Smith stated she is disturbed that Medina maintained the driveway. Weir explained there was an elderly man living in the area. Smith asked staff to research whether the City is maintaining other driveways such as this. Scherer stated this was done many years ago and could have come about by a person who was contracted by the City to plow. Smith stated she does not want the City maintaining driveways, noting times have changed and Medina cannot afford to do this.

Johnson stated that in the two years he has been on the Council, this issue has come up several times. Benetti stated the applicant purchased a 60-foot easement strip across Mr. Laurent's property.

Smith asked if David and Kitty Crosby have also purchased an easement. David Crosby stated they are trying to obtain an easement. He stated the biggest difference is that they have no current need for the access but are trying to plan for the future.

Scherer noted the City is only liable for the portion being maintained. Batty stated that is correct.

Batty clarified that the application before the Council tonight is for a driveway waiver, which is a straightforward request for a zero setback in the wetland area. The complicating factor is the argument that because of City action, a public road has been established. He stated it has been confirmed the City maintained the driveway so the issue is whether there was municipal intent to establish something. Batty noted the Statute says if it has been "kept in repair and worked for six continuous years it will be deemed to be a public road." However, that would only be the 10 to 12 foot wide portion that had been maintained. He stated he is not sure whether municipal intent is present in this case. If the Council thinks the public road has been established and does not want it, they could do a quick claim vacation. Batty advised the Council cannot resolve the vacation issue tonight since it requires a public hearing and notice but is relevant to the application being considered because if a public road has been established, the applicant would not need a waiver over the portion maintained by the City because it would be an established roadway.

Benetti stated the Ratte driveway needs to be 20 feet wide. Smith noted a 20-foot wide driveway does not comply with LID standards.

Weir asked about the impact to the Crosby's property if the easement is granted, noting they may not have access to their property.

Johnson noted that as of today, this has been maintained by the City for over six years, so it is a public road and an easement has been sold.

Doug Hoskins, Coldwell Banker Realtor and representative of Bob and Eugenia Ratte, explained that they thought there was public access but were not sure so they purchased a 60-foot easement for \$50,000 through the Laurent property to assure access. The Rattes are trying to put in a driveway for two lots. However, each time he talks to the City, he is told a different width is needed to assure adequate width for fire trucks to pass. Mr. Hoskins noted this "driveway" is almost a City road except for the wetland area. The Rattes are asking for a waiver through the wetland area and will fill in and mitigate, if required.

Weir stated her interest to introduce LID standards for driveways. She asked if the driveway construction can be delayed until the City's ordinance is written to include LID standards. Hoskins stated the driveway is already under construction and they wanted it paved before the bituminous plants closed this year.

Batty noted the only question is the area of the wetland where setback cannot be met.

Smith asked if there is any way that the Council can lessen the width of the driveway, noting it serves only two houses but being required to be two lanes wide.

Johnson noted the Fire Marshal is dictating road widths.

Scherer stated staff researched that issue, noting if the driveway serves three lots, it needs to be 24 feet wide. Benetti stated he does not know, technically, if it is a street, driveway, or both. The Fire Marshal wanted 20 feet in width to assure safe maneuvering between two vehicles.

Hoskins stated they moved dirt this morning and it will be constructed to a 7-ton road design. They were hoping to make it less than 20 feet, maybe 16 to 18 feet, with an area where trucks can pass.

Batty noted if the houses are sprinkled, the driveway widths can be less, as a tradeoff. Hoskins stated in this instance it would have been less expensive to sprinkle both homes than build this roadway.

Acting Mayor Smith opened the public hearing at 8:58 p.m.

The meeting was recessed at 8:58 p.m. and reconvened at 9:04 p.m. so the recording tape could be changed

David Crosby stated they have read the staff report and have no objection to the waiver of the setback requirement on the 250-foot piece through the wetlands. He stated they have been and are still trying to gain access to the northeast corner of their property. David Crosby stated they are not intending to develop at this point but would like the Council to not abandon the road at this time. He stated he has no objection to the road construction starting immediately and if they are able to make a private arrangement, have no objection to the discontinuation of that public road.

*Moved by Weir, seconded by Johnson, to close the public hearing at 9:06 p.m. **Motion carried with Crosby abstaining.***

*Moved by Weir, seconded by Johnson, to direct Staff to prepare a resolution for approval of the driveway waiver. **Motion carried with Crosby abstaining.***

Smith noted Batty has indicated the Council is not able to do anything about vacating the City roadway tonight because public notice is needed. Batty stated the action to consider vacation would be to direct staff to call for public hearing on November 18, 2008.

Weir suggested the vacation not be addressed until the Crosbys have obtained an easement. Batty stated the public hearing can be held but the vacation not considered until that is determined.

Smith stated she believes the City never intended to make it a City road and questions whether the "Good Samaritan" activity makes it a City road. Batty stated he shares the skepticism about it being a City road. He noted the literal "six years kept in repair" language seems to have been complied with but he thinks there also needs to be some kind of municipal intent, noting this driveway is not included on any of the City's transportation maps. Yet some have raised the issue and made the Council aware so one way to resolve it is a quick claim vacation.

Smith stated she would like to know if there are other driveways that staff may have "helped" maintain that could be the basis of future claims. Batty stated the Council is asking whether this is an isolated situation or there are others.

Johnson noted if this is an issue, it could impact the title of the property. Batty concurred and explained that staff can be directed to call for a public hearing to vacate this driveway on November 18, 2008, for published and mailed notice, and to prepare a resolution that can be adopted after the public hearing, if desired.

David Crosby stated he is hopeful they will have an arrangement with Laurent prior to that date and they have already stated no objection to abandonment if they can obtain an easement from Laurent.

Kitty Crosby suggested the matter be tabled until they have obtained an easement. She noted it has been verified the City maintained and plowed this driveway but she believed it would be very difficult to prove intent.

*Moved by Weir, seconded by Johnson, to table consideration to January, 2009. **Motion carried with Crosby abstaining.***

Crosby resumed Chairing the meeting.

#### **Discuss BMP Standards**

Smith asked about using BMPs for this driveway. Benetti stated this driveway will serve two properties so the standards are dictated by the Fire Marshal. Should the driveway also serve the Crosby property, it would require the driveway standard of 24 feet.

Benetti stated the standards can be addressed in the future but for now, the Rattes have agreed to the 24-foot standard and already have a permit. He noted that in the mean time, there will probably not be additional driveways and the Council will be addressing the driveway standards during early spring.

Crosby asked whether the City cares if the driveway is paved. Benetti stated that is not a requirement. Hoskins stated a 7-ton road is required. Benetti stated it is the interpretation of the Fire Marshal to have a 7-ton standard to provide a suitable base for the fire truck. That would not be required if it was access to one house.

Smith asked if the problem is with the rules or the Fire Marshal. Benetti stated the Council adopted the more strict 1306 Fire Standards and the Fire Marshal is relying on those standards.

Hoskins stated they will eventually build two houses. Benetti stated the Fire Marshal is concerned about the situation should two fire trucks pass on that driveway. Crosby stated if they build a driveway now to serve only one lot and then when the second building permit is pulled they can bring the driveway up to standards. Benetti stated that is correct. Hoskins stated they are trying to create a safe setting. Crosby stated the Council is indicating it is not requiring a 7-ton standard of that width.

Smith stated she is disturbed about this issue and thinks the Council needs to look at the interpretation being used. Benetti advised that Adams has indicated he would like staff to meet with the Fire Marshal to discuss these issues.

Batty stated it is likely the Council does not have the authority to over rule the Fire Marshal.

Crosby asked staff to contact Orono to learn what they require for a two-house driveway.

**C. Conditional Use Permit to Allow for Restroom/Shower Facilities Expansion at Baker Park Campground - Three Rivers Park District**

Benetti presented the application from the Three Rivers Park District to amend their Conditional Use Permit (CUP) for Baker Park Campground to allow for the construction of a 560 square foot addition to the #2 bathroom facility within the campground. He displayed the site plan to identify the loop road, additions to both sides of the building, existing layout and elevations, and proposed exterior elevations. Benetti showed the Council the exterior materials board they are proposing and color scheme to be used. He reviewed the general improvements that will be made, noted it falls into the 20% developable area, they will be using LID/BMP, and grading and drainage plans include basins. Benetti presented staff's recommendation for approval, explaining the amendment made to Condition #3.

Scherer expressed concern with inflow infiltration (I/I) and asked if there are outside showers or floor drains.

Jason Zemke, representing Three Rivers Park District, stated they plan to have a drinking fountain in front of the building and, to contain water spill runoff, they would install a floor drain with a jug filler. Scherer pointed out that rain water could also drain into that floor drain.

Weir suggested that water fountain drain be pumped to the rain garden and not the sewer.

*Moved by Smith, seconded by Weir, to direct staff to prepare a resolution for approval with the four conditions recommended by the Planning Commission plus an additional condition addressing the water fountain floor drain to the satisfaction of the Public Works Superintendent, for consideration at the November 5, 2008 regular meeting. **Motion passed unanimously.***

**D. Medina Logo Design Contest**

Gallup presented the three logo designs, noting they were all submitted by the same resident who is a graphic artist and interested in working with the City to refine the selected logo. If moved forward, it may involve a contract with compensation for her. She referenced the vote tally for each design from staff and attendees of the Medina celebration, noting the horse design received the most resident votes with the suggestion of a smaller horse and different colors. It was noted that several other cities use cattails in their design.

The Council discussed whether the horse logo will have longevity, that the horse logo may be “too busy” with too many colors, and that Medina is lucky to have a very talented graphic artist with which to work.

Johnson suggested the horse logo be refined to be more simple with a smaller horse and striking the words “Room to Roam.” He agreed that four colors may be too many in a logo.

Crosby stated that up to this point it was a contest so a fee is not expected. He asked if several Councilmembers should work with the graphic artist on a fee basis to make refinements.

***Smith and Johnson volunteered to work with the graphic artist to create a new logo.*** Smith noted a new logo would probably be phased in. Johnson pointed out there are additional issues to consider, such as how a new logo will be applied to signs, letterhead, water towers, etc.

#### **E. Lake Sarah TMDL**

Weir reported she attended the Lake Sarah TMDL meeting on Monday and was surprised that Board expected recommendations on a plan of action to reduce phosphorus loading into Lake Sarah. She pointed out that Medina’s phosphate loading is from agriculture, which they cannot legislate over. She advised of the topics discussed and that Randy Lehr, Three Rivers Park District representative, can attend a special meeting of the Council to make a presentation to guide Medina in how to do phosphorus reduction on farmlands that drain into Lake Sarah.

Smith stated most Medina residents have someone else farm their land and they can instruct the farmer on how to do it. She stated an educational process should be considered.

Weir stated she arranged provisionally for Mr. Lehr to come on November 6, at 6 p.m., and suggested the farmers and landowners be asked to attend. In that hour long session, the Council can create recommendations on how to approach this issue. The TMDL Board wants to organize a TMDL and needs Medina’s input on how they will approach that problem.

Crosby stated it is not practical for the owners to attend and suggested the Council adopt the standards, get a list of green acres property owners, and send them the materials.

Weir pointed out that more TMDLs are coming next year and asked whether a subcommittee should be created to make recommendations to the Council.

Smith asked why an expert consultant is not doing this work. Crosby noted there is funding available.

Scherer noted that only a small portion of Medina is in that watershed and asked what the other cities are doing. Weir reported on the activity by other cities. Scherer stated Medina has been aggressive with other TMDLs. Weir stated once it is known what will be done, they will apply for grants.

Crosby stated it is appropriate for Medina to be well organized but he is concerned that the other cities are not as organized and may not contribute.

Weir stated the Lake Sarah TMDL Committee would like to hold their next meeting at the Medina City Hall on December 3, 2008. **The Council indicated no objection.**

The Council discussed that while it will be good to have the information, the Council will not be ready to make a decision on November 3, 2008.

*Moved by Weir, seconded by Smith, to direct staff to schedule a meeting with Randy Lehr to discuss TMDL on November 5, 2008 at 6 p.m. **Motion passed unanimously.***

Weir asked whether the Council wanted to establish a subcommittee to be involved with TMDL issues. Crosby stated his preference to hire a consultant to do that work.

Smith noted there will be at least one new Councilmember in 2009 and suggested they be invited to attend the TMDL meeting. She also suggested another Councilmember be appointed to one of the watershed districts because it is a hardship for Weir to represent Medina at all three.

## **IX. CITY ADMINISTRATOR REPORT**

### **A. Road Repair Cost Analysis**

Weir asked staff to provide a cost analysis comparing the City's work versus a third party contractor for the Willow Road paving, length of pavement, cost of pavement, and estimated longevity. Scherer stated he has not yet received the final bill, but estimated it may cost \$15,000 for the project, which included some grade matching and erosion repair. He stated this pavement may last eight years, depending on the effect of reduced truck traffic.

Weir stated because of the economic downturn, small amount of growth and large road CIP, she is wondering if this type of road repair can be applied to other roads in need of repair until growth in Medina is sufficient to repair roads properly.

Crosby stated he is also interested in a cost analysis to hire a third party contractor to do overlay projects.

Smith stated she is uncomfortable with current road CIP since it is known that some actions will be delayed. She stated she would like to redo the CIP and thoughtfully look at projects so it more accurately indicates what is being planned. Day advised that the Council will review the CIP at the November 18, 2008 meeting. Smith suggested it also be discussed at the special meeting that is held before the regular meeting.

**Staff was directed to schedule this discussion for a future meeting.**

**X. MAYOR & CITY COUNCIL REPORTS**

Johnson stated the market report indicated some names that bear further scrutiny. Day advised that the Fannie Mae and Freddie Mac are Triple A securities. Johnson suggested staff obtain a current market statement. Day reported on the status of the City's investments.

Smith distributed a City of Bloomington newsletter regarding the path of a Council decision and suggested it may be useful to include in a Medina newsletter.

Smith described the Great River Energy building, which she had recently toured and suggested it would be beneficial for the Planning Commission, Council, and staff to tour.

**XI. APPROVAL TO PAY THE BILLS**

*Moved by Johnson, seconded by Weir, to approve the bills, EFT 000327-000334 for \$29,196.38 and order check numbers 033090-033149 for \$176,614.62 and payroll checks EFT 501594-501622 for \$43,223.04. **Motion passed unanimously.***

**XII. ADJOURN**

*Moved by Weir, seconded by Smith, to adjourn the meeting at 10:21 p.m. **Motion passed unanimously.***

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T.M. Crosby, Jr., Mayor

Attest:

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Jodi M. Gallup, Assistant to City Administrator-Deputy Clerk