

**MEDINA CITY COUNCIL MEETING MINUTES OF JANUARY 6, 2009**

The City Council of Medina, Minnesota met in regular session on January 6, 2009 at 7:00 p.m. in the City Hall Chambers. Mayor Crosby presided.

**I. ROLL CALL**

Members present: Crosby, Siitari, Smith, Weir, and Johnson.

Members absent: None.

Also present: City Attorney Ron Batty, City Engineer Tom Kellogg, Planning Director Tim Benetti, Public Works Superintendent Steve Scherer, City Administrator Chad Adams and Recording Secretary Carla Wirth.

**II. PLEDGE OF ALLEGIANCE**

**III. CEREMONIAL MATTERS**

**A. Oath of Office for Mayor Tom Crosby**

Adams administered the oath of office to Tom Crosby for the office of Mayor.

**B. Oath of Office for Councilmember Elizabeth Weir**

Adams administered the oath of office to Elizabeth Weir for the office of Councilmember.

**C. Oath of Office for Councilmember Mike Siitari**

Adams administered the oath of office to Mike Siitari for the office of Councilmember.

**D. Resolution Recognizing Councilmember Joe Cavanaugh for Years of Service to City**

Crosby read in full Resolution Recognizing Councilmember Joe Cavanaugh for his four years of service to Medina. *Moved by Johnson, seconded by Weir, to approve Resolution Recognizing Councilmember Joe Cavanaugh for Years of Service to the City. **Motion passed unanimously.***

**IV. ADDITIONS TO THE AGENDA**

The agenda was accepted as presented.

**V. APPROVAL OF MINUTES**

**A. Approval of the December 8, 2008 Special Council Truth in Taxation Meeting Minutes**

*Moved by Smith, seconded by Weir, to approve the December 8, 2008 Special Council Truth in Taxation meeting minutes as presented. **Motion passed unanimously.***

**B. Approval of the December 16, 2008 Special Council Meeting Minutes**

Crosby questioned the first bullet point to “retain the building permits for windows for existing openings...” He stated he wouldn’t think about obtaining a building permit to replace windows.

Smith stated the City should not charge a permit fee unless there is an inspection and replacing existing windows should not require a permit.

Benetti stated Loren Kohnen and Todd Geske, Metro West Inspection Service, have indicated that anytime a fee is taken for a permit, they do an inspection.

Weir stated she had new windows installed and paid a \$50 fee but she is not aware that an inspection was made. She asked whether requiring a permit would protect the quality of work for the homeowner. Benetti stated that is correct and whether doing their own work or hiring a contractor, the purpose is to make sure the windows were properly installed, insulated, sealed and caulked, to assure the window operates properly. Weir stated she would like to know if her windows were inspected.

Adams stated the meeting minutes are worded correctly and staff will check into the Council's questions related to building permits and inspections.

Smith stated the Council did not agree to retain building permits for replacement of existing windows. Adams noted the minutes reflected that discussion, but not that decision.

Crosby asked what is the status of the fee schedule. Adams stated it has been published.

Crosby stated the fee schedule may have to be modified and republished. He noted the minutes from tonight will reflect the Council's discussion that the conclusion was questioned, and staff was asked to look at the supporting reasons to require a building permit for existing window replacement and for septic repair fees.

*Moved by Weir, seconded by Johnson, to approve the December 16, 2008 Special City Council meeting minutes. **Motion passed unanimously.***

### **C. Approval of the December 16, 2008 Regular Council Meeting Minutes**

It was noted on Page 1, Line 48, it should state: "...there was a representative of the owner of the golf course..." Page 3, Line 46: "it would be State listed contract vendors..." Page 5, Lines 30 and 31: "...should be appointed. Any donations should be..." Page 7, Line 10: "...talks about City taxes for the average..." Line 11: "...stated that the reason we are high is because the average house value is \$700,000." Page 10, Line 1: "Johnson asked what that meant..." Line 13: "...this decrease with reductions in both fixed..." Page 11, Line 37: "the proposed levy increased by about 50%." Line 46: "...is saying a \$150,000 reduction in building permit revenue at 40%," Page 13, Line 44: "square foot parcel and that it refers to buildable area. Page 18, Lines 11 and 12: "Johnson is concerned that if Uptown Hamel has become almost entirely paved, and that makes it would be less attractive to him and make him less inclined to go there. Line 45: "...wants here and then work backwards." Page 19, Line 31: "Weir stated that she wouldn't call that storage, but Highway 55 Rental is outside storage. Page 21, Line 29: "...getting a lot of spam email." Line 40, "...number of Constitutional restrictions..." Page 22, Line 9, "...she feels the church on Willow..." Line 11: "...but surrounding residents look..."

*Moved by Smith, seconded by Weir, to approve the December 16, 2008 Regular City Council meeting minutes as amended. **Motion passed unanimously.***

## VI. CONSENT AGENDA

- A. Approve Continuing Education Program for Police Investigator David Hall
- B. Authorize Release of Letter of Credit for Craig Swanson
- C. Close City Hall on Thursday, January 22<sup>nd</sup> from 8 a.m. to Noon for Staff Training
- D. Schedule Board of Appeals and Equalization Meeting for Wednesday, April 8, 2009 at 6:30 p.m. in City Hall
- E. Set/Reschedule 2009 City Council Meetings
- F. Approve Liability Coverage Waiver Form

Smith asked to remove Items A and C from the Consent Agenda.

*Moved by Smith, seconded by Johnson, to approve the Consent Agenda Items B, D, E and F. **Motion passed unanimously.***

- A. Approve Continuing Education Program for Police Investigator David Hall
- C. Close City Hall on Thursday, January 22<sup>nd</sup> from 8 a.m. to Noon for Staff Training

Smith explained that in light of pending budget reductions, she would like staff to look at the possibility of delaying any kind of extra education. She stated she knows continuing education is worthwhile, and contained in the police contract, but believed it should be postponed until the Council knows where the budget will end up, which may be April or May of 2009.

Weir stated the Personnel Policy indicates the Council supports education. Smith stated these are not normal times and finances are critical.

Weir and Johnson indicated they would like to know how much these two items will cost the City before taking action.

Adams explained that the staff team building session continuation was already delayed by a month and the cost will be \$500 because it's an additional two hours. The cost for police continuing education is \$1,000 per year per employee and contained in the union contract and Personnel Policy.

Smith stated the City should not act as if it is "business as usual" and if it can be delayed, that should be done. Adams advised that staff is already delaying some programs and expenditures at City Hall. Smith stated the City needs to be prudent and this is not something that's critical to the operation to the City.

Adams advised that there are other things that could be delayed, are less critical, and should be looked at first.

*Moved by Smith, seconded by Weir, to approve Continuing Education Program for Police Investigator David Hall and to Close City Hall on Thursday, January 22<sup>nd</sup> from 8 a.m. to Noon for Staff Training. **Motion passed unanimously.***

## VII. PRESENTATION

- A. Elm Creek TMDL Presentation – Randy Lehr, Three Rivers Park District

Randy Lehr, Three Rivers Park District, thanked the Council for the opportunity to address water quality issues in Elm Creek. He reviewed his work with Three Rivers Park District and the Elm Creek Total Maximum Daily Load (TMDL). Lehr described the history of the TMDL regulations, noting it started with the water quality deterioration of Lake Erie that occurred in the 1950s and manifested in the 1960s with large fish kills. Lake Erie was looked at in more detail and it was found low dissolved oxygen levels were the problem. To improve water quality and reduce nutrient levels, they began a TMDL project in an attempt to reduce phosphorus levels. In 1972, the Clean Water Act was adopted that required the MPCA to set water quality standards, assess water quality conditions, and to identify and restore impaired waters. Lehr explained how "impairment" is determined by the MPCA based on a determination of beneficial uses and water quality condition to facilitate those uses. Forty percent of the water bodies assessed in Minnesota do not meet the standards established for water quality. He displayed a slide identifying creeks and lakes in the Elm Creek Watershed and likely impairments, noting there are a wide range of water quality problems.

Lehr explained TMDL is the measure of pollutant that can be received by or discharged into a water body without impairing beneficial uses. He explained the TMDL determination is also a process to measure the pounds of phosphorus coming from each of the sources (point and nonpoint) to determine the current conditions and then assess the policy and technology that can be used to obtain the desired condition of water quality. The results from the TMDL process will identify the Wasteload Allocations, Load Allocations, and determine a regulatory number and wasteload reduction goal. This process is involved with stakeholder input from councils and the scientific community to determine if a reduction is needed and then who is responsible for wasteload reduction.

Lehr explained that in the Elm Creek Watershed, they are proposing a watershed-wide TMDL to address the impairment to the entire Watershed District at the same time. This is being done because the water bodies are interconnected and to allow cost sharing in the most economical way possible. He described how they propose to break this work into phases to assess dissolved oxygen impairment in Elm Creek, then working upstream to other water bodies to take the entire system into account.

Lehr stated in the end, the data will be synthesized into a comprehensive watershed TMDL and an impairment plan for the entire Elm Creek Watershed District. He noted projects like raingardens, buffer strips, manure management, runoff management and education and outreach will be included in the implementation plan.

Lehr advised the anticipated total project cost is \$443,000. Phase I is anticipated to cost \$85,000 and will be covered by the Elm Creek Watershed Commission, the MPCA, and Three Rivers Park District. It is felt the cities have paid their share through their watershed district fees. Phases II through V will be funded through ongoing contributions from the Elm Creek Watershed Commission, the MPCA, and Three Rivers Park District contributions.

Crosby stated the MPCA is the governing authority in the State of Minnesota for the Clean Waters Act. He asked how many municipalities are in the Elm Creek Watershed District. Lehr answered there are nine stakeholder groups comprised of Hennepin County, MnDOT, and municipalities.

Crosby asked who judges whether the Elm Creek Watershed District is doing a good job. He also asked what happens if one of the stakeholders is not doing its job because it has no money, time, or personnel. Lehr explained that once a water body is listed by the State of Minnesota, it has to be recognized by the U.S. Environmental Protection Agency (EPA) and from that time, there is a 15-year window during which the TMDL has to be developed. If not done, the MPCA has to answer to the EPA. As to what will happen, it is thought there may be a “blanket approach” by the EPA to regulate impaired water bodies. The concern with that approach is loss of individual input.

Lehr explained the “or else” component is that when we do a TMDL, the wasteload and load allocation become components of the Storm Water Pollution Prevention Plan (SWPPP), which becomes a regulatory component in the way the City is governed. The stakeholder is legally bound by the SWPPP and if not meeting that number, the MPCA has the ability to regulate. Lehr explained the 15-year window relates to development of the TMDL and then you can judge whether Elm Creek is doing a good job. The MPCA works to assure the TMDL is being correctly developed. Lehr stated once the TMDL is completed and approved by MPCA, the “clock” starts ticking to assure the nine stakeholders are meeting wasteload allocations.

Crosby stated it seems to be a Herculean load to administer this all over the State. Lehr concurred and explained that to make it easier, Minnesota is doing a watershed-wide approach. Historically, all TMDLs have been considered on a waterbody-by-waterbody approach. The State recognized that is not realistic and is now transitioning with this first attempt at a watershed-wide TMDL approach.

Crosby noted this is an unfunded mandate as it relates to Lake Independence where Medina has to meet certain requirements but has no funding. He stated Medina started a Storm Water Utility to address that issue and has taken an aggressive approach to deal with it.

Lehr explained that it is the MPCA’s intent to fund the TMDL development aspect but there will be more potential responsibility for the stakeholders with the implementation process. He advised there will be State grant programs to address nonsource point pollution. In addition, the intent of the Clean Water Constitutional amendment is to use one-third of the funds to address water quality and improvement projects, which are likely to be administered through grant programs to meet water quality objectives.

Crosby noted the resolution to be considered would authorize Elm Creek to begin development of a comprehensive TMDL and implementation. He noted that Medina must be a small portion of the Elm Creek Watershed District. Adams estimated that Medina is less than 10% considering what it pays for membership dues.

Weir stated Medina has been aggressive with TMDL responsibilities on Lake Independence. If Medina continues down that path, she asked whether the output of Medina’s loading would be measured regardless of whether the other stakeholders do or do not comply.

Lehr stated that generally the answer is “yes” because there is a maximum of pollutant that can be discharged from a property or municipality and there is a cap so they can measure to determine the reduction of phosphorus loading. That is added up to

determine the cumulative discharge and whether it is above or below the regulatory number. With this method, Medina could meet its requirements whether or not another community does.

Crosby stated his other concern is if the stakeholders do not all pull together, it does not do the job.

Johnson stated another concern is that those who are proactive can bear a disproportionate amount of the cost. He noted this will have budget implication and tax impacts. Johnson stated this Council is extremely sensitive in this environment, whether the "pain" for water quality is equally borne by those more responsible for impacting this watershed. He noted there are no policies or procedures to motivate equality of sharing and he questions the procedure to wait for 15 years until the MPCA steps in.

Smith asked how compliance is enforced if two of the stakeholders do nothing. Lehr explained the 15-year window is to develop the TMDL. He is not saying the MPCA would do nothing for 15 years should a stakeholder group impede the process. Lehr explained that failing to take action would be after the TMDL takes place and after that number is identified and assigned to specific stakeholders.

Adams stated with Lake Independence, the TMDL was completed several years ago, and is now annually reported on in the City's SWPPP. If this is not reported each year, the MPCA has the discretion to impose a fine or additional enforcement.

Crosby stated Medina is willing to do its part and it is incumbent on the Three Rivers Park District, to assure all are doing their part. He noted it is more of an implementation issue than a funding issue.

1. **Resolution Authorizing the Elm Creek Watershed Management Commission to Develop a Total Maximum Daily Load (TMDL) for Elm Creek and Related Water Bodies**

*Moved by Weir, seconded by Smith, to adopt Resolution Authorizing the Elm Creek Watershed Management Commission to Develop a Total Maximum Daily Load (TMDL) for Elm Creek and Related Water Bodies. **Motion passed unanimously.***

**VIII. COMMENTS**

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

Water Access Charge/Sewer Access Charge

Jim Willis stated for the past several months they have been working with Benetti to open a new restaurant in the Uptown Hamel area. He stated they were startled about Medina's Water Access Charge/Sewer Access Charge (WAC/SAC) fees of over \$9,000 per unit charged for new businesses to open. He advised that neighboring cities like Plymouth charge WAC/SAC fees of \$1,525 per unit. Jim Willis explained the difficulty in putting together a budget for a project like this when WAC/SAC fees equal 25% of the costs for the addition and remodel. He stated they will need help from Medina to get this project done.

Dave Willis provided the Council with a one-page letter showing the costs for the existing property, cost for additional property for parking, the building addition, and additional costs. The difficulty is trying to get financing and a loan package put together. He

stated they own other businesses and are excited to do something in Uptown Hamel. Dave Willis stated they are not asking for Medina to take care of everything, but would like to talk about whether there can be some relief so they can put together a finance package and jumpstart the Uptown Hamel area.

Crosby asked where this project is in the process. Benetti advised the application was submitted several weeks ago and deemed incomplete by staff.

Crosby stated his belief is that the cost of WAC/SAC is an economic issue, not a Planning Commission issue, so any accommodation of WAC/SAC charges would be at the Council level.

Crosby suggested the Council request an explanation on how the WAC/SAC amounts are calculated, why there is a large difference with Plymouth's charges, and a menu of how accommodations can be granted (paid over time, waived as part of the TIF zone, etc.)

Smith stated she would like an explanation if Medina's fees are seven times higher than Plymouth and to know the charges for surrounding communities.

Adams explained that Medina's charges are high because of low density and new infrastructure such as the water treatment plant obligations. He noted if the Council gives credits and accommodations, then taxpayers may have to pick up debt services if the utilities are unable to make debt payments. He explained that other cities have more discretion to have lower connection fees than is available in Medina.

Johnson stated this may be a "chicken or the egg" situation: Medina can't get development because the fees are too high; and, Medina can't lower fees because there is not enough development.

Smith pointed out that the current WAC/SAC charges did not stop the Credit Union and other developments. Crosby stated the difference is the number of units being charged.

Dave Willis stated if the City can't give some consideration with the WAC/SAC fees, there is no way they can get financing for this project.

Crosby stated the staff will get the background information before this application is heard by the Council.

Benetti stated if the application is completed, it will be on the Planning Commission's February agenda and heard by the Council at their first meeting in March.

Dave Willis explained they had hoped to get the WAC/SAC issue resolved before spending \$60,000 on drawings for the Planning Commission.

Adams stated if a decision is made, then a policy should be in place so all applicants know prior to spending money to prepare plans.

Smith noted this is in a Tax Increment District and asked if that is a consideration.

Johnson stated he will want to understand the methodology for allocation of units. Benetti explained that methodology is from the Met Council and he would provide that information.

Adams stated staff will attempt to report back on the allocation formula, risks, and options at the January 20, 2009 meeting.

#### Sanitation Service

Russell Berman, 2595 Keller Road, stated he would like to start a dialog on sanitation rules and offering of a single trash collection in Medina, particularly on the private collection side. He stated he would like discussions of the concept of having at least two haulers available to residents. Berman stated he does not think he is being well served by the current provider or in the most effective method but he does understand the rationale behind having fewer trucks on City streets.

Crosby explained that refuse hauling was put out for bids and the current contract is for five years. Before this bid, Medina was divided into three regions with three suppliers exclusive in their region.

Batty explained that some cities allow multiple haulers but many others, like Medina, have an exclusive hauler.

Smith stated she believes that organized collection is the way to go and it would be interesting to find out why Berman is not satisfied with the current hauler. She advised that Medina got a very good rate on garbage collection and recycling and does not need more garbage trucks on City roads, which are notorious for being overweight. Smith suggested Berman may have a particular issue and suggest he talk with Adams.

Berman suggested that when there is no competition, the level of services rises to exclusivity and if there is competition, better pricing is offered. He stated he has no choice on the provider and believed he was getting bad service and being overcharged. He believed the Council should be more concerned. Berman stated he understands the City not wanting more trucks on its roads but the current hauler has a "stranglehold" on the area and is not providing quality service.

The Council indicated the competitive bid resulted in a 25% reduction and questioned how Berman could feel he is being over charged.

Berman stated he believes he is being overcharged after talking to others who provide service who indicated if they compete, they would be charging 15% less than Randy's for a comparable sized container and will pickup at garage side. The current hauler requires curbside pick.

Crosby advised that Randy's will provide service to the house for an additional charge.

Smith stated she thinks it is unfortunate that haulers give a lower price or free service for 6 months to get business and she would be interested in getting the price from the hauler Berman talked to. In Medina, the current hauler has at least four more years on the contract. Smith stated that in her research with Anoka County, working with 21 cities, she knows that a city can get a better price with a contract than available individually to

customers. She again suggested that Berman talk with Adams about his concern so staff can contact the hauler.

Johnson advised the City went through a rigorous process, as a public entity, abided by public bidding rules, invited all to bid, defined the scope, and received bids from three qualified bidders. Randy's offered more service at a 20-25% reduction from the existing contractor. He stated that it is possible a losing bidder could say if they had a segment of the business, they could offer a better price. But, he would ask where they were during the open bidding process. Johnson stated that the City cannot, at this point, randomly overturn the contract.

Berman stated his point is that the Council made a decision to obligate citizens, who are then obligated to pay the hauler.

Crosby stated that Berman was not living in his house when the bid was let and suggested that staff communicate to Randy's the concerns expressed about service, cost, and non-curbside service, and report back to the Council and Berman. Crosby noted there are 15 residents who do not feel they need to contract with anyone for refuse removal so it is not an easy issue.

Berman stated he is being asked to privately pay and should have choices.

Smith noted this involves a public health issue and, under Statute, the City is allowed to contract for refuse service while following certain rules.

**B. Park Commission**

Park Commissioner Ben Benson reported they just finished the Trail Study, which is on the Council's agenda tonight. He stated they have started review of the Park and Recreation Facility Ordinance, Section 515, which has not been reviewed since the 1990s. The Commission also discussed the creation of a Task Force for the field house, on which he and Beth Neilsen have volunteered to participate. Adams stated the Task Force issue will be on the Council's January 20, 2009, agenda.

**C. Planning Commission**

Benetti advised there has not been an intervening Planning Commission meeting. They will meet next Tuesday to discuss CUP standards for institutions and that recommendation would be before the Council in February.

**IX. OLD BUSINESS**

**A. Tri-City Sanitary Sewer Agreement with Independence and Greenfield**

Adams used a map to identify the location of the existing sanitary sewer infrastructure and explained the Tri-Cities (Medina, Independence and Greenfield) have an Agreement to share maintenance costs. Over the last few years, they have been working with Independence and Greenfield to modify the Agreement to give and require Independence additional connections within one year after the ordinance is approved by Independence. Medina approved the agreement in 2007 to provide additional sanitary sewer capacity to Independence. Greenfield, who had approved the agreement only months prior and signed the draft version, then decided to not approve the updated agreement and requested an additional 10-unit connection. Greenfield was not willing

to meet the same inspection standards, cost sharing to update the Agreement, nor had they received Met Council approval as was required of Independence.

Adams advised that Independence has exhausted all of their work and are asking Medina to consider a two-year requirement for the orange area. The red area is more critical and would be connected within one year. He explained this is in the Lake Independence TMDL Implementation Plan and identified as a 2008 and 2009 task to address failing septic systems. Adams explained the bottom line is that if Independence and Medina come to a consensus, Greenfield needs to either sign the Agreement or language revised so it can be agreed with. All three cities are responsible to maintain the system so all three need to agree to the connections.

Weir stated it may be simpler to go with a Bi-City Agreement since Greenfield remains in turmoil. Adams stated that option was discussed with Independence. Crosby suggested staff contact Greenfield once more before looking at a Bi-City Agreement.

Batty stated the Tri-City Agreement has been in place for many years and they may have to go with a bilateral agreement but that should be analyzed before a decision is made.

Crosby stated Medina could tell Greenfield this is a reasonable agreement and if they don't agree, then consider an alternative. Adams noted that Independence still needs Met Council approval on density issues.

Johnson stated this goes to the earlier discussion about TMDLs and what communities are willing to do or not do. He noted in this case, it may involve failed sewer connections.

Norm Wenck, Independence Councilmember, thanked the Council for considering this request. He explained their request for 50 connections, of which 49 are spoken for. He presented a map and explained Lindgren Lane, the area identified in red, has 28 septic tanks. Independence Road has 17 large lots (5+ acres) and there are 4 more lots on the west side of Independence Road. He stated they are all right with connecting the 28 units within 12 months. However, they are asking for a five-year extension from when the system is ready to connect for the 17 large lots, or until the septic system fails. He advised that one-half of the lots want to connect right away. Wenck displayed and described a pie chart identifying the load allocation for Lake Independence. Independence's share is 6 pounds of phosphorus, or one-half a percent of the load, and it will cost \$500,000. He stated Independence is committed and needs to have them hook up before their system fails. It was noted the Agreement requires inspections every three years.

Smith asked if any substandard systems were found during inspection. Wenck stated none of the 17 were found to be substandard. If found to be substandard, they are required to connect faster than 12 months.

Wenck stated their request is to have leniency for the 17 lots on the east side of Independence Road for up to five years and that the 4 properties on the west side of Independence Road be included.

Weir asked if more leniency can be given. Crosby stated reluctance to consider five years because this issue has been around for a long time and a fair amount of prior warning has already been given.

Weir noted we are in hard economic times and asked about allowing leniency of three years to connect. Crosby stated his view is that something needs to be done fast to get the 28 Lindgren Lane units connected. He noted that Medina is now requiring inspection of the tanks and baffles. Crosby stated he would be willing to extend the time period to three years for Independence Road lots if the septic baffles and field are inspected.

Wenck stated he thought the inspection was made from the inspection port and it can be determined from the port whether the system is failing. He noted that if the tank is pumped, it is also required to be inspected. Crosby stated the field also has to be inspected. Smith stated that manholes to see into the system were probably not installed. Crosby stated he would be interested in a better inspection requirement.

Johnson stated the suggestion is to allow a three-year extension for the 17 units and 4 units on Independence Road conditioned on inspection of the field and that connection be made within one year for the 28 units on Lindgren Lane. Crosby noted it is three years from the time the system is completed, which may not be for one year. Wenck stated they have to do an engineering feasibility study and hold a public hearing plus reach agreement with Greenfield.

Crosby asked whether Independence would be amenable to finding a way to go around Greenfield. Wenck advised that he spoke with the Greenfield Mayor and thinks she is willing to sign the agreement. Wenck stated Independence would like Greenfield to get the ten units being requested so the inspection requirements can be included.

The Council discussed having staff approach Greenfield, to approve an additional ten units, and allow them two months to sign the contract or else Medina and Independence will move forward without Greenfield.

**Council consensus was reached to allow a three-year extension to connect for the 17 lots on the east side of Independence Road and 4 lots on the west side of Independence Road and a one-year connection for the 28 units on Lindgren Lane. Baffles and field inspections would be required along with Greenfield meeting all other requirements imposed on Independence.**

Mayor Crosby recessed the meeting at 8:55 pm. The meeting was reconvened at 9:00 p.m.

**B. Ordinance Amending Section 720, Regarding Individual Sewage Treatment Standards and Adding New Section 721, Regarding the Individual Sewage Treatment Assessment and Maintenance Program**

Batty stated the Council discussed, at its December 16, 2008 meeting, a strategy to bypass most of ordinance but leave in place the enforcement action. This amendment does not change Section 720, which will be dealt with a year from now after the County has its ordinance in place. The inspection section was removed and a new Section 721 created to allow the City to move forward with inspections the Spring of this year.

*Moved by Smith, seconded by Weir, to adopt Ordinance Amending Section 720, Regarding Individual Sewage Treatment Standards and Adding New Section 721, Regarding the Individual Sewage Treatment Assessment and Maintenance Program. Motion passed unanimously.*

**1. Resolution Authorizing Ordinance Publication by Title and Summary**

*Moved by Johnson, seconded by Weir, to approve Resolution Authorizing Ordinance Publication by Title and Summary. Motion passed unanimously.*

**X. NEW BUSINESS**

**A. Preliminary Plat with Variances (Lot Size and Front Setback) to Rearrange Lot Line Between Two Existing Lots – 985 and 995 Medina Road, Michael and Wallace Anderson**

Benetti stated the applicant is requesting preliminary plat approval to move two lot lines between two lots. The applicant is also requesting approval of a variance to allow the existing home on Lot 1 to remain at 45 feet. Benetti displayed an aerial view of the site and described the location of the lot lines. He presented a diagram of the lot, current location of the lot line, and proposed lot line location. Benetti stated there are two existing houses, a sport court, and a 10 by 10 foot tool shed that will be removed or relocated. The driveway will remain the same and the shed to the east of the sport court will remain.

Crosby asked if there is a way to make the smaller lot more compliant. Benetti stated that issue was raised by the Planning Commission but it was thought if more land is added to one side, it results in more nonconformity to the other side.

Weir asked if a variance is needed for the suitable soils aspect. Benetti stated it is not needed for the smaller parcel.

Crosby asked if this is an acceptable solution. Benetti answered in the affirmative because it improves conformity on one lot and does not lessen conformity on the other.

Benetti stated there are large wetlands throughout the properties but because of the new Wetland Ordinance, this application would not trigger the buffer requirements. The accessory structures are very close to potential wetland areas but would remain. Both homes have older septic systems, which would not abide by current setbacks. He advised that alternate septic site plans have been submitted and noted the location of an alternative site being established.

Weir asked why they don't need variances for inadequate suitable soils. Batty explained the lot was created long before 1999 when two contiguous acres was an acceptable lot.

Smith asked if the suitable soils increases on the small lot. Benetti answered in the affirmative, noting it is currently at .98 acres of suitable and will increase about one-half an acre.

Benetti stated the setback requirement is currently 50 feet and the existing house is set back 41 feet. The corner of the house does not meet setback standards but since Medina Road right-of-way is being obtained, staff saw "no foul" by allowing a setback variance.

Benetti presented criteria to consider the front yard setback variance, which was reviewed carefully by the Planning Commission who had no concerns. He then presented criteria for the lot size variances, which were also carefully reviewed by the Planning Commission who raised no concerns. Benetti advised that after conducting a public hearing on December 9, 2008, the Planning Commission has recommended approval for the preliminary plat, front yard variance, and lot size variances. Benetti noted this benefits the City by getting Medina Road right-of-way in exchange for the variance request and replatting.

Weir asked about condition 3, regarding the shed to be moved, and asked to add “setback requirements including 20 feet from all wetlands.”

Mr. Anderson, applicant, explained it is a tack house from when they had horses, has been there 50 years, and can be removed.

Smith asked if the tack house is moved, whether it will be placed in a location 20 feet from a wetland. Anderson stated the building is not being used and it is time to remove it.

Anderson stated the 995 parcel was broken off in the 1950s and he bought it 20 years ago. The sport court and septic were not located on his property but it was not an issue since his father owned the land. Anderson explained this application is a way to change the boundaries so the sports court, septic system, and shed are located on his property. He stated they are unable to get contiguous soils because the area has a lot of wetlands and steep pitched hills.

*Moved by Smith, seconded by Johnson, to direct staff to draft a resolution to approve Preliminary Plat with Variances (Lot Size) and a resolution to approve Front Setback Variances to rearrange lot line between two existing lots – 985 and 995 Medina Road for Michael and Wallace Anderson. **Motion passed unanimously.***

#### **B. 2009 Appointments and Designations**

The Council reviewed Exhibit A detailing the 2009 appointments. Adams clarified the additions to the Lake Minnetonka Communications Commission.

*Moved by Weir, seconded by Johnson, to approve Resolution for 2009 Appointments and Designations. **Motion passed unanimously.***

#### **C. City Trail Plan**

Park Commissioner Benson commented on the amount of time that was put into this project and stated he is proud to have his name on it.

Weir asked whether Page 14, Topic 20, should indicate County Road 115 (not County Road 116). **The Council agreed with this correction.**

Weir asked if anyone had walked the trail on Morningside to Orono, thinking it was wetland. Benson stated it was discussed that section would require creative work and it will be looked at when development occurs. Smith stated that trail area has been used for years by kids going to school.

Scherer described the trail route and concern with having to cross the roadway.

Weir suggested that Homestead Trail link with the existing Baker Trail that runs adjacent to Homestead for part of its length. Benson stated the track team runs on the road so it was thought a wider shoulder was an improvement, but it is not understood why they don't use the paved trail instead. He noted that changes to that roadway would include the County and advised of a meeting he attended when truck traffic was discussed and the need for a trail mentioned.

Weir asked if text should be included that the trail in the park would be considered since it is not far from the Homestead Trail.

**The Council agreed to the following addition on Page 22, 46. Homestead Trail, Opportunities & Contingencies: “Consider linking existing Baker Park trail to the immediate West of Homestead Trail, as opportunity arises or development occurs. This trail would be coordinated through Hennepin County.”**

Weir asked how close this Trail Plan is to the Comprehensive Plan. Adams advised it is very close. Benson stated this is a study and will be done again in four to five years so the process can be continued.

*Moved by Smith, seconded by Weir, to approve the Trail Plan, as recommended by the Medina Park Commission, with minor amendments. **Motion passed unanimously.***

## **XI. CITY ADMINISTRATOR REPORT**

### **A. Request to Amend Sections 301, 330, and 828 of the Medina City Code Relating to Public Nuisance and Outside Storage**

Adams noted his memo and response to Mr. Johnson's request and asked the Council if they have questions on the report or direction to staff.

Benetti displayed pictures of several sites showing many vehicles parked on the property. He advised that on one site, most of the cars were unlicensed and somewhat inoperable. However, they have now been registered and are compliant.

Smith asked why it would be allowed if the car is licensed but remains inoperable. Weir stated it meets the ordinance requirement. Smith questioned how useful the vehicle is if it is not operable. She noted there is a car parked on Hamel Road that has plants growing from it.

Crosby asked when does it become a public nuisance? Batty stated it is considered a public nuisance when it unreasonably bothers a number of residents. Crosby noted the City had spent a lot of time regulating outside storage in commercial areas and he believes this also involves outdoor storage.

Johnson agreed there are several junkyards within Medina but also many parked farm implements, and he felt this issue should be addressed holistically. Crosby suggested it be dealt with on a nuisance enforcement basis instead of as storage.

Weir stated a property owner does not have the right to reduce the property value of an adjacent or neighboring property or to diminish their pleasure of living in that community. She noted the Council has to think about what is good for the whole community.

Crosby stated the Council discussed the ordinance at the request of a resident and determined that the ordinance, for the purposes the resident requested, need not be changed. He stated the Council is concerned about unsightly activities on private lots and instructed staff to consider the use of nuisance regulation to regulate such activities. Crosby stated the City needs to be uniform in enforcement and not regulate on a spot basis. **The Council agreed.**

Smith stated staff is inspecting the City by sections. Adams stated that is correct and staff is also reviewing CUPS, residential, and commercial areas.

**B. City Roadways: Statutory User Rights**

Adams noted road locations that are statutory user roads that Medina has been maintaining. He explained staff is seeking direction to vacate these roadways, at some point in the future, possibly in 2010. Due to financial considerations to create legal descriptions and hold public hearings, staff does not recommend vacating any at this time.

Scherer explained the difference between statutory user roads and the Johnson driveway is that statutory use roads are City roads. He recommended the City keep Chippewa Road between Mohawk and Arrowhead since there is a road easement.

Johnson asked about services on Chestnut. Scherer stated Chestnut is a public road down to a certain point, before the crest of the hill, where the plow can turn around.

Weir asked if the two Apache Road sections would eventually be turned back. Scherer stated Medina plows and maintains Apache Road to the end of the driveway. If developed, the City would probably require Apache Road to be upgraded.

**Adams stated staff will work on the Pioneer vacation as part of the 2010 budget planning.**

**C. Schedule Annual Goal Setting Session**

The Council discussed available dates for the annual goal setting session. *Moved by Smith, seconded by Weir, to direct staff to schedule the annual goal session for Thursday, January 29, 2009, from 5:00 p.m. to 10:00 p.m. Motion passed unanimously.*

**D. Council e-Mail Addresses**

Adams explained the options available to Councilmembers to use e-mail. The Council discussed using the City's e-mail site to receive and compose e-mail. Crosby suggested the next City newsletter make it apparent how residents can get on the informational e-mail list and notify of the Councilmember's e-mail address.

**E. 2007 Annual Report**

Adams distributed the 2007 Annual Report and stated it will be for archival purposes. At the goal setting Workshop, the Council will discuss the formatting, style, and what they

would like to use for the 2008 Annual Report. He asked the Council to notify staff of the format and errors, if any.

## **XII. MAYOR & CITY COUNCIL REPORTS**

The Council requested staff draft a resolution of appreciation for Intern Kim Ann for her enthusiasm and work with the Parks Commission, for action at the next Council meeting.

Crosby welcomed newly elected Councilmember Siitari.

Weir referenced a recent newspaper article related to the removal of trees and filling wetlands to comply with new green acre regulations, in order to continue to pay lower taxes. Crosby stated they are increasing the active farming area by cutting down trees.

Weir stated Medina is interested in conserving natural resources and asked if Staff should write a letter stating Medina's concerns. Adams suggested it be addressed when the Council drafts goals for legislative action.

Johnson asked if the City's tree ordinance would apply. Benetti explained the property owner has the right to clear noxious plants, which may be anything under eight inches. He noted the Right to Farm Act may be at issue. Batty advised that the Right to Farm Act prohibits the creation of nuisances in an agricultural context (i.e., you cannot move to the country and then complain about the farmer's activities).

The Council discussed conditions that could occur by someone clearing mature trees to obtain green acres and the application of Medina's Tree Preservation Ordinance. Crosby stated Medina has 3500 acres of green acres.

**Adams stated staff will review the green acres provisions and Tree Preservation Ordinance and report back.**

## **XIII. APPROVAL TO PAY THE BILLS**

*Moved by Smith, seconded by Johnson, to approve the bills, EFT 000368-000378 for \$28,813.98 and order check numbers 033423-033478 for \$157,986.54 and payroll checks EFT 501747-501775 for \$46,617.07. **Motion passed unanimously.***

## **XIV. ADJOURN**

*Moved by Smith, seconded by Weir, to adjourn the meeting at 9:55 p.m. **Motion passed unanimously.***

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T.M. Crosby, Jr., Mayor

Attest:

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Chad M. Adams, City Administrator-Clerk