WAYZATA CITY COUNCIL
MEETING MINUTES
July 7, 2015

AGENDA ITEM 1. Call to Order and Roll Call.

Mayor Willcox called the meeting to order at 7 p.m. Council Members present: Anderson, McCarthy, Mullin and Tyacke. Also present: City Manager Nelson, City Planner Gadow, City Engineer Kelly, and City Attorney Schelzel.

Mr. Wilcox announced the Council met in Workshop prior to tonight's meeting to discuss renewal of the Long Lake Police Contract, various issues with the Highway 12 frontage road, and a concept for development along the Highway 12 frontage road corridor.

AGENDA ITEM 2. Approve Agenda.

Mr. Gadow requested Item 6c, New Business, Consider Resolution No. 27-2015 250, Bushaway Subdivision and Variances, be removed from the agenda pursuant to the request of the applicant, and postponed to the July 21, 2015, Council meeting.

Mr. Tyacke made a motion, seconded by Mrs. Anderson, to approve the agenda, as amended. The motion carried 5/0.

AGENDA ITEM 3. Public Forum – 15 Minutes (3 minutes per person).

a. Bushaway Project

Polly Pabst, 217 Bushaway Road, expressed concern that the safety rail on retaining wall Z has been eliminated from the plan, resulting in what she believes to be a compromise to public safety. She requested the City look into this matter.

Ms. Nelson stated she is not aware of this issue, but will follow up on it.

b. Wise House Update

KC Chermak, Pillar Homes, 575 Far Hill Road Way, provided an update on the Wise House relocation project and a map showing the route the house will take for relocation and the trees that will be removed to accommodate this move. He is hoping this move will happen in early August.

AGENDA ITEM 4. New Agenda Items.

None.

AGENDA ITEM 5. Consent Agenda.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the consent agenda:

a. Approval of City Council Workshop Minutes of June 16, 2015 and City Council Regular Meeting Minutes of June 2, 2015 and June 16, 2015
b. Approval of Check Register
c. Municipal licenses which received administrative approval (informational only)
d. Approval of Resolution No. 28-2015 Authorizing Interfund Loan for Advance of Certain Costs in Connection with TIF District No. 5
e. Approval of Resolution No. 26-2015 Denying Shoreland CUP, Impervious Surface Variance, and Tennis Court Variances at 532 Ferndale Road West

The Council stated a letter was received from Mr. Gustafson requesting adjustments to the June 2, 2015 City Council Regular meeting minutes. Ms. Nelson reported staff had reviewed the meeting video and made the appropriate corrections to the minutes, and found them to be consistent with Mr. Gustafson's requested adjustments. The Resolution for the June 2 approvals of the East Block would be revised to reflect the intent of the Council expressed in the approved minutes.

The motion carried 5/0.

AGENDA ITEM 6. New Business.

a. Consider Approval of Amended and Restated Development Agreement with Wayzata Bay Redevelopment Company, LLC

Ms. Nelson reported on staff's work with Presbyterian Homes regarding changes to the existing Development Agreement and preparation of an Amended and Restated Agreement. This proposed new agreement has been approved by the HRA.

Stacie Kvilvang, Ehlers & Associates, 3060 Centre Point Drive, the City's consultant on the project, presented the terms of the Amended and Restated Development Agreement that was provided in the meeting packet.

By request of the Council, in reference to Construction and Work Force Parking, Ms. Nelson stated that under the Amended and Restated Agreement, an infraction refers to the work force not following through on their contract with regard to construction parking and/or parking in areas in which they should not be. The Developer will be fined $500 per day for the first five days and $1,000 per day thereafter.

Ms. Kvilvang acknowledged Ms. Nelson, Mr. Mehrkens from Presbyterian Homes, and Mr. Lindgren from Dorsey and Whitney, for their quality work and direction during the negotiations.

The Council asked about the Right of First Offer in the Amended and Restated Agreement. Ms. Kvilvang clarified if the City decides to sell and has an offer, it is required to give the developer 60 days before approving a purchase agreement. The developer can then try to negotiate.

The Council inquired about $250,000 from the City for pedestrian improvements around the buffer and if it was tied to a specific use. Ms. Nelson replied if the Council elects to construct a pedestrian improvement along Circle A, it would become an expense of the City's capital fund.

The Council asked when the City will cross over the $21 million value to be eligible for 100% TIF. Ms. Kvilvang reported she anticipates that to be on January 2, 2017, which will be payable in 2018. Ms. Kvilvang clarified that the City's legal and financial advisor expenses are an administrative expense and will be covered by TIF.

The Council referred to Section 4.12 of the Agreement, page 141 in the meeting packet, and stated it references an FOFR Agreement that is not included in the defined terms and agreement. The Council inquired if there is a side agreement for a FOFR. Steve Bubul, Kennedy & Graven, attorney for Wayzata Bay Redevelopment Company, LLC, stated there is a FOFR side agreement that would be entered into if the Right of First Offer was exercised, but it was not included in the amended agreement because it is so unlikely to be used.

The Council referred to the section of the Agreement at page 96 of the Council packet and asked for clarification on reducing the amount to $1 million for public improvements. Ms. Nelson stated $1 million reflects what is left to be completed at this point in the project. It does not cover what is left on Wayzata Boulevard and Superior because that is part of the assessment agreement with Presbyterian Homes.

Mr. Mullin expressed concern about enforcing parking fines with the contractors and suggested having permits on their vehicles stating it is a work vehicle. Mrs. Anderson felt this would become too burdensome to enforce. Mr. Willcox suggested a small decal on the work vehicle that could not be removed. Mr. Tyacke pointed out the agreement states it is up to the master developer to provide a plan acceptable to the City and this plan could be added to the development agreement. Ms. Nelson said staff would explore these suggestions.

Mrs. McCarthy made a motion, seconded by Mr. Tyacke, to approve the Amended and Restated Development Agreement with Wayzata Bay Redevelopment Company, LLC. The motion carried 5/0.

b. Consider First Reading of an Ordinance Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Conditions; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions

Ms. Nelson reported the City staff and Mediacom have reached an agreement on a mutually acceptable proposed new Cable Television Ordinance.

Brian Grogan, Moss & Barnett, the City's legal counsel for the Franchise Ordinance, stated this Ordinance requires a four-fifths vote under the City's charter to pass. He presented background information on the existing franchise, the process used to assess the needs of the City, and the negotiation process for renewal. The key terms of the new franchise include: 1) Ten year term with option for an additional five year term; 2) Five percent franchise fee; 3) $10,000 security fund; 4) Free service to public buildings and schools; 5) Strong customer standards; 6) Two PEG channels; and 7) $1.20 PEG fee.

Ms. Nelson stated the City received about $68,000 in 2014 from the five percent franchise fee and the PEG fee. She also noted there is a declining number of cable subscribers, which reflects declining revenue under the existing franchise agreement.

The Council asked for clarification on why there are fewer PEG channels offered yet the PEG fee has doubled. Mr. Grogan replied a good portion of the revenues had previously been spent on improvement of the local channel. The increase in the fee is to drive all the capital cost of the PEG to that fee in order to allow the five percent franchise fee to go into the general revenue fund.

Mr. Tyacke referred to page 1 of the proposed Ordinance that contained findings, and requested to see the data that supports those findings. Mr. Grogan stated this data was gathered during the needs assessment process and would be made available to the Council.

The Council expressed concerns relating to the lack of customer service, lack of timeliness in responses, and continued increase costs and that they would like to see language in the Ordinance to hold Mediacom accountable for lack of service to its customers.

Bill Jensen, Vice President of Mediacom, addressed the Council. He reported this Ordinance has tougher customer service standards than other communities and hopes the perception of this new Ordinance is an upgrade.

Mr. Grogan stated in the Ordinance, potential liquidated damages will hold Mediacom accountable. He reported Ms. Nelson fought hard to have this in the Ordinance and had stated it would not be adopted by the Council unless this provision was included. By request of the Council, Mr. Grogan outlined some of the provisions for the customers of Mediacom as detailed in Section 5 of the Ordinance.

The Council inquired about discounted pricing for low-income seniors. Mr. Grogan stated it was discussed extensively, but the FCC establishes the rate regulation rules and recently issued rules that take away any rate regulation from all jurisdictions nationwide.

Mrs. Anderson recommended staff publish the service provisions for customers. She also recommended staff and Council begin discussion on future options as there are declining numbers of subscribers and thus declining revenue to the City.

Ms. Nelson agreed it is a good idea to let the public know of the service provisions in the Ordinance and provide them a way to get their issues resolved.

Mrs. McCarthy suggested having a form on the City's website that could be filled out in order to keep record of the complaints.

All members of the Council shared personal anecdotes of difficulty with Mediacom and its lack of customer service.

Mr. Tyacke made a motion, seconded by Mrs. Anderson, to approve the First Reading of an Ordinance Granting a Franchise to Mediacom Minnesota LLC to Construct, Operate and Maintain a Cable System in the City; Setting Condition; Providing for Regulation and Use of the System; and Prescribing Penalties for the Violation of its Provisions.

The Council asked if there was a way to compile the complaints. Ms. Nelson reported there is language in the Ordinance that requires Mediacom to provide the City with reports on complaints. Mr. Grogan stated the customer service issues raised are not contractual issues, but are perhaps enforcement issues.

Mr. Mullin offered a friendly amendment requesting that staff draft a communication about revised customer service standards and seek Mediacom's assistance to help communicate that, and to create a web-based form that customers can submit. He noted this would provide the City with a list of complaints that can be compared with the report of complaints that Mediacom is required to provide.

Mr. Tyacke suggested every six months, a customer bill of rights be included with the bill the customers receive with an outlined process to follow if they have problems.

Mr. Grogan replied most of what the Council has suggested can take place without any change to the Ordinance. If conditions are added to the Ordinance, it will have to be negotiated with Mediacom.

Mrs. McCarthy suggested the communication be sent out with the utility bill. She also asked if the City would be willing to explore conducting another survey in six months and at one year to see if Mediacom's customer service is improving.

Mr. Willcox stated the agreement has all the elements in it to improve customer service, but the City has to follow through with enforcement.

Mr. Mullin withdrew his friendly amendment.

Mr. Tyacke suggested if first reading of the Ordinance is approved tonight, that staff summarize in a memo what has been discussed for review prior to the second reading.

The motion carried 5/0.

~~c. Consider Resolution No. 27-2015 250 Bushaway Subdivision and Variances~~

This item was moved to the July 21, 2015, Council meeting.

d. Consider Approval of Updated Strategic Plan

Ms. Nelson reported on the updated Strategic Plan, items that were completed, and items that were added based upon the year's planning.

The Council suggested adding a new line item of Traffic and Circulation under Growth.

Mrs. Anderson suggested adding the Bushaway Project to the Strategic Plan.

Mr. Willcox suggested a way to better train employees at the Muni and to consider making a survey available to the clientele about the service there. Mrs. McCarthy suggested instead of a written survey, people be asked a few questions on their way out.

AGENDA ITEM 7. City Manager's Report and Discussion Items.

a. Upcoming Dates

It was noted that Thursday, July 9, 2015 is the Member Appreciation Evening at the Chamber with the Police vs. Fire Softball game at 6:00 p.m.

b. Announcements

Mrs. Anderson announced the trolley is running on Wednesdays for the concerts in July.

AGENDA ITEM 7. Public Forum Continued (if necessary).

There were no comments.

AGENDA ITEM 8. Adjournment.

Mrs. Anderson made a motion, seconded by Mr. Tyacke to adjourn. There being no further business, Mr. Willcox adjourned the meeting at 9:43p.m.

Respectfully submitted,

Becky Malone 07-21-2015

Becky Malone
Deputy City Clerk

Drafted by Shannon Schmidt
TimeSaver Off Site Secretarial, Inc.