

**WAYZATA CITY COUNCIL
MEETING MINUTES
July 21, 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, Director of Planning and Building Gadow, Director of Public Service Dudinsky, and City Attorney Schelzel.

AGENDA ITEM 2. Approve Agenda.

Mr. Willcox stated some New Business items have been reordered on the agenda.

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

Mayor Willcox announced the Council met in Workshop prior to tonight's meeting to discuss ongoing issues with parking.

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

a. LMCD Update

Dan Baasen, Lake Minnetonka Conservation District (LMCD) Chair, 912 East Shady Lane, Wayzata, reported on the 2016 LMCD budget, qualified Yacht Club and Sailing School, 2016 boater safety education courses, LMCD strategic planning, July 4th public safety update, and the Wayzata Bay lakefront.

The Council asked about a fundraiser LMCD held last year to hire another deputy. Mr. Baasen stated a full-time deputy was hired to be on the lake during the summer months.

Greg Nybeck, LMCD Executive Director, reported additional funding partners will be reflected in the 2016 budget. Mr. Baasen reported there will be further discussion on what to do about public safety concerns on July 4th.

With regard to an ambulance trying to access the lake via a private marina over the 4th of July holiday, Mr. Baasen explained the ambulance was asked to leave by the private marina representative because it was obstructing traffic at the marina, and this highlighted the need to review emergency access points to the lake.

Mr. Willcox thanked Mr. Baasen for representing the City of Wayzata.

b. Bushaway Project Update

Trudy Richter, representative for Shafer Contracting Company, reported on the status of the Bushaway Road project. She stated they are working on a design for the round-about to add a right turn lane from southbound 101 at Breezy Point Road. It is the County's intention to have a hard surface on the entire Bushaway corridor by Thanksgiving with the area south of Breezy Point Road completely paved by October. The railroad bridge design is still being finalized.

The Council asked about an eliminated safety rail on retaining wall Z that was discussed at the last Council meeting. Ms. Nelson reported she received an email that stated the issue has been communicated to the County and the resident, and a decision will be made when they get to that part of the project. Ms. Nelson stated she would forward this email to the Council and Ms. Richter.

The Council asked why the Railroad was not responding. Ms. Richter explained that because of the design, they are making every effort to assure it is a safe area for construction. Mrs. Anderson stated it is taking a while because the Railroad has a special crew that only does this type of work, and coordinating them along with the County's schedule is difficult.

AGENDA ITEM 4. New Agenda Items.

1 None.

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3 **AGENDA ITEM 5. Consent Agenda.**

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

- 5 a. Approval of City Council Workshop Meeting Minutes of July 7, 2015 and City Council
6 Regular Meeting Minutes of July 7, 2015
7 b. Approval of Check Register
8 c. Consider 240 Minnetonka Development Agreement
9 d. Municipal licenses which received administrative approval (informational only)
10 e. Police Activity Report
11 f. Building Activity Report

12 The motion carried 5/0.

13
14 **AGENDA ITEM 6. New Business.**

15 **a. Consider Resolution No. 27-2015 Denying Application for Concurrent Preliminary**
16 **and Final Plat Subdivision and Related Variances at 250 Bushaway Rd**

17 Mr. Gadow reported the applicants, Zev and Kristi Oman, have submitted a request for
18 Subdivision and Variances at 250 Bushaway Road which consists of three parts: 1) Concurrent
19 preliminary and final plat subdivision into three lots; 2) Variances to allow use of existing private
20 driveway to serve Lot 3; and 3) Variance to allow for two lots that are non-conforming with the
21 two-acre minimum in the Bushaway Conservation District.

22 Mr. Gadow reported the Planning Commission recommends denial of the entire
23 application. If the application is approved by the City Council, staff recommends a condition that
24 the future owners of the lots be required to submit proposed building and landscaping plans for
25 review by the Planning Commission and approval by the City Council prior to any building
26 permits being issued for the property. In addition, there would be some requirements to expand
27 the roadway or add additional hydrants to meet fire code as specified by the Fire Marshall.

28 The Council asked if the Comprehensive Plan in the Bushaway Conservation District
29 overrides the R-1 zoning. Mr. Gadow replied the Comprehensive Plan provides overriding
30 guidance on lot area for properties that fall within the Bushaway Conservation District.

31 Mr. Schelzel stated one of the specific criteria in the Wayzata Subdivision Ordinance for
32 evaluating subdivision and preliminary and final plat requests is conformance with the
33 Comprehensive Plan, so the Subdivision Ordinance itself directs our attention to the
34 Comprehensive Plan.

35 Peter Benincasa, 8749 Hillswick Trail, Brooklyn Park, the Applicant's representative,
36 reported on the proposed layout and square footage of the lots.

37 Roy Lecy, 2640 North Saunders Lake Drive, Minnetrista, developer of Enchanted Woods
38 project and head of Enchanted Woods Homeowners Association, addressed the Council about the
39 size of the lots. He stated the applicant sued him for overburdening the easements, and now they
40 are trying to add two more lots that would use the easements. Mr. Lecy stated he won the lawsuit,
41 but expressed concern with adding two more lots to the easement, which would increase traffic by
42 30 percent.

43 The majority of the Council indicated they oppose the requested subdivision and
44 variances, based upon the criteria specified in the Subdivision Ordinance and the Comprehensive
45 Plan.

46 Mr. Mullin stated he would support the subdivision of the property into two lots, but not
47 three.

48 Mrs. Anderson made a motion, seconded by Mr. Tyacke, to approve Resolution No. 27-
49 2015 Denying Application for Concurrent Preliminary and Final Plat Subdivision and Related
50 Variances at 250 Bushaway Road. The motion carried 5/0.

51

b. Review of Telecommunications Update Report

Mr. Dudinsky reported on the Telecommunications Study Update that was included in the meeting packet. It is the opinion of the City's consultant, SEH, that Wayzata West Middle School be considered as the primary location for a future macro telecommunication site. All present tenants have identified this site as their first choice of all the proposed locations, due in large part to its ability to meet their necessary criteria for coverage, constructability, and access.

Dale Romsos, SEH, 3535 Vadnais Center Drive, St. Paul, reported on the responses of the tenants and the concerns and requirements for each of the potential sites that include the Public Works Facility, Wayzata West Middle School, and South Frontage Road (Lift Station #21). The tenants also expressed a potential need for additional small cell sites in the City.

Mr. Dudinsky stated the initial goal and Council direction was to relocate the macrosite off the water tower, and offer potential new sites to the tenants to see which would be the preference. All four tenants have indicated the Wayzata West Middle School would be the best site, but they will need additional small cell sites to help with coverage especially in the downtown Wayzata area.

Mrs. McCarthy suggested meeting with each of the tenants to better understand their needs and develop an ordinance that works for everyone.

Jay Littlejohn, 150 South Fifth, Suite 1200, Minneapolis, attorney representing Verizon Wireless, stated they are trying to get towers where people need them in order to have better coverage. The height of the towers is determined by the surrounding topography and the density of users in the area. A macro site is being worked on at the intersection of Wayzata Boulevard and Superior Boulevard.

The Council expressed that a meeting with each of the tenants would be helpful in learning what the needs of the tenants were. Mr. Littlejohn stated his client, Verizon, could give parameters, but could not make long-range plans as technology is always changing, and the plans that are made are tested and often changed as well.

The Council clarified it needs to develop parameters for an ordinance and asked if it was possible to identify what the needs might be at a general level. Mr. Littlejohn replied he would be willing to participate in that process.

The Council asked about determining the height of the towers. Mr. Littlejohn replied it depends where the other sites are, the density of the people using the cells, and the topography of the area.

Cathy Carlson, 226 Minnetonka Avenue North, stated when she lost power she was surprised how loud the backup generators were for the nearby telecommunications equipment, and inquired if the generators were as loud with smaller sites. Mr. Littlejohn stated it depends on the wattage power of the site and if it is backed up with a battery or a generator, or if it is backed up at all.

Mr. Dudinsky concluded by stating that if the Council is interested in pursuing the preferred location, staff recommends ordering a feasibility study at the Wayzata West Middle School site. He outlined the list of tasks for consideration included in the meeting packet.

Mr. Tyacke made a motion, seconded by Mrs. McCarthy, to identify Wayzata West Middle School as the preferred macro telecommunication site and approve conducting a Telecommunication Tower Feasibility Study at that site as outlined by staff.

Mrs. Anderson asked if staff could ask the other tenants if they are working on small cell designs in relation to the macro site. Mr. Dudinsky stated the tenants have expressed interest in coming to a Workshop with the Council to address the ordinance parameters and could address this questions as well.

Mr. Gadow commented that some members of the Planning Commission were concerned about the use of a public space like Wayzata West Middle School for the macro site, and suggested this also be addressed in more detail at a joint meeting with the tenants.

The motion carried 5/0.

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2 The Council recessed at 9:00 p.m. and reconvened at 9:07 p.m.
3

4 **c. Consider Second Reading of Ordinance No. 754 Granting a Franchise to Mediacom**
5 **Minnesota LLC to Construct, Operate, and Maintain a Cable System in the City;**
6 **Setting Conditions; Providing for Regulation and Use of the System; and,**
7 **Prescribing Penalties for the Violation of its Provisions**

8 Ms. Nelson stated at the July 7, 2015, meeting several items were identified that needed follow
9 up. She introduced Brian Grogan who would address those issues.

10 Brian Grogan, Moss and Barnett, the City's legal counsel for the Franchise Ordinance,
11 reported on the concerns raised by Council at the July 7, 2015, meeting. These included: 1) The
12 legal, technical and financial qualifications of Mediacom; 2) The construction and operation plans
13 of Mediacom; 3) Numerous customer service issues; and, 4) Process to report and track
14 complaints.

15 The Council referred to page 141 and page 159 of the meeting packet and asked if each
16 of the issues listed have been addressed. It noted these issues were identified by an outside
17 company, and asked if there is a provision in the new Franchise Ordinance that allows for an
18 outside company to continue to look for these problems. Mr. Grogan stated the company did
19 reply to the issues found by CBG Communications. He explained the City would need to pay for
20 an engineer to conduct a review. This would cost between \$7,500 and \$10,000 and could be
21 covered by the franchise fee.

22 Theresa Sunde, 108 Sixth Avenue, Waseca, employee with Mediacom, stated Mediacom
23 is going to do better. She stated every complaint at the last Council meeting was legitimate. She
24 apologized and suggested having a meeting with Council in six months to assess how things are
25 going.

26 The Council asked if the picture quality has improved. Ms. Nelson stated it has improved
27 as Mediacom has replaced equipment.

28 The Council asked if the Mediacom National Corporation will stand behind the local
29 Mediacom's payment obligations. Ms. Sunde hesitantly replied yes, but stated she would let
30 Council know if it is different.

31 Mr. Tyacke asked staff and legal counsel if they are satisfied with the technical ability,
32 financial conditions, and legal qualifications of the franchise renewal. Mr. Grogan stated there is
33 no reason to deny the franchise renewal on the basis of those things. Ms. Nelson stated the work
34 the City did with CBG showed Mediacom's operation met FCC standards.

35 Mr. Tyacke made a motion, seconded by Mrs. Anderson to approve the Second Reading
36 of Ordinance No. 754 granting a Franchise to Mediacom Minnesota LLC to Construct, Operate,
37 and Maintain a Cable System in the City of Wayzata, Minnesota; Setting Forth Conditions
38 Accompanying the Grant of the Franchise; Providing for Regulation and Use of the System; and,
39 Prescribing Penalties for the Violation of its Provisions, with the conditions prepared by staff
40 relating to a customer bill of rights for distribution to residents as previously discussed and for
41 Mediacom to give Council a progress report in six months.

42 Mr. Mullin offered a friendly amendment requesting staff add a consumer complaint form
43 on the website that is routed to Mediacom. The motion carried 5/0.

44 Mr. Tyacke made a motion, seconded by Mrs. Anderson, to approve the friendly
45 amendment requested by Mr. Mullin. The original motion carried 5/0.
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47 **d. Consider First Reading of Ordinance No. 755 Repealing the Cable Television**
48 **Regulatory Ordinance No. 602A**

49 Mr. Tyacke made a motion, seconded by Mr. Mullin, to Adopt Ordinance No. 755 Repealing the
50 Cable Television Regulatory Ordinance. The motion carried 5/0.
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1 **e. Consider Updated Strategic Plan**

2 Ms. Nelson reported on changes to the Strategic Plan that were discussed at the July 7, 2015,
3 Council meeting.

4 The Council asked if the topic of additional access points to Highway 12 was intended to
5 be part of the Strategic Plan. Mr. Gadow stated this might fit better in the transportation chapter
6 with the City's three-year Comprehensive Plan. Ms. Nelson stated it was intended to be part of
7 the traffic study. It is not about putting another access on Highway 12, but to do a traffic study on
8 whether there needs to be another access point on Highway 12 in preparation for the
9 Comprehensive Plan. She suggested removing the word "additional" and have it say "consider
10 access points to Highway 12." The Council agreed.

11 The Council asked if the City or the Chamber of Commerce should be responsible for
12 marketing and branding and requested further discussion on that topic. It was suggested to use
13 the wording, "determine scope and feasibility of marketing and branding for the City." The
14 Council commented on parking and suggested the wording, "improve parking capacity by
15 December 2017".

16 Mr. Mullin made a motion, seconded by Mr. Tyacke, to adopt the Strategic Plan as
17 revised. The motion carried 5/0.

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

20 **a. Update on the Storm**

21 Ms. Nelson reported that the water treatment plants and 11 lift stations were without power after
22 the storm, but everything is operational again.

23 Mr. Willcox recognized the firefighters and Public Works employees who worked behind
24 the scenes to get things restored.

25
26 **b. Update on Bushaway Project**

27 Ms. Nelson reported that with regard to the work in the Railroad corridor along Bushaway, the
28 train whistle in the quiet zone does not preclude the conductors from blowing the horn nor does it
29 require them to. If there is ever a safety issue, they will blow the horn. Residents along Crosby
30 and the north end of Bushaway should expect to hear the train whistle during the upcoming
31 months as work is performed in the Railroad corridor for the new bridge.

32
33 **c. Upcoming Dates**

34 Ms. Nelson stated due to Night to Unite events on Tuesday, August 4, the next Council meeting
35 will be on Wednesday, August 5. The public is welcome to attend the Night to Unite luncheon at
36 the Country Club.

37
38 Mr. Gadow reported the City received 13 submittals for the Lake Effect RFP.

39
40 Mr. Tyacke commented on a letter from Representative Hertaus that stated the City is entitled to
41 \$51,000 in street funding aid from the State and asked whether that raised any budget issues. Ms.
42 Nelson stated the City received the first half of that payment and the plan is to incorporate it into
43 the Street CIP Fund.

44
45 Mr. Mullin stated he is waiting for an update on the timing of pedestrian crossings on 101 and
46 Wayzata Boulevard. He asked that someone check on the cleanliness of the restrooms at the
47 Muni, functioning of the sinks in the female bathrooms, and for an update on the Eastman Lane
48 design.

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50 **AGENDA ITEM 8. Public Forum Continued (if necessary).**

51 There were no comments.

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2 **AGENDA ITEM 8. Adjournment.**

3 Mrs. Anderson made a motion, seconded by Mr. Tyacke to adjourn. There being no further
4 business, Mr. Willcox adjourned the meeting at 9:53 p.m.

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6 Respectfully submitted,

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9 Becky Malone, Deputy City Clerk

10 Drafted by Shannon Schmidt, *TimeSaver Off Site Secretarial, Inc.*

Becky Malone 08-05-2015