Minutes
Minnetonka City Council
Monday, January 25, 2016

1. Call to Order

Schneider called the meeting to order at 6:30 p.m.

2. Pledge of Allegiance

All joined in the Pledge of Allegiance.

3. Roll Call

Council Members Dick Allendorf, Patty Acomb, Brad Wiersum, Tony Wagner, and Terry Schneider were present. Bob Ellingson was absent. Tim Bergstedt was excused.

4. Approval of Agenda

Wiersum moved, Allendorf seconded a motion to accept the agenda with an addendum to item 15A. All voted “yes.” Motion carried.

5. Approval of Minutes: January 4, 2016 regular meeting

Allendorf moved, Wiersum seconded a motion to approve the minutes of the January 4, 2016 regular council meeting, as presented. All voted “yes.” Motion carried.

Ellingson was present at 6:32 p.m.

6. Special Matters: None

7. Reports from City Manager & Council Members

City Manager Geralyn Barone reported on upcoming meetings and events.

Allendorf noted the information about the city’s tree sale in the Minnetonka Memo was good but one thing that was missing was the price. Barone said residents could sign up online and the price would be included there.

Schneider reported at the January 11 study session, the council went into a closed session to evaluate Barone’s performance based on the city’s shared values. For each of the six shared values components the council determined Barone consistently met or exceeded expectations. In the area of management competency, the council rated Barone on leadership, management, mayor and
council support, fiscal management, community relations, and strategic planning. He said the council again determined Barone met or exceeded expectations in all those areas. The council approved the 2016 performance goals in the various areas.

Wagner reported there was a meeting the previous week of the Southwest Community Works Steering Committee. One agenda item was receiving and discussing the Southwest Corridor Housing Strategy document. This document would help set the stage for the city’s comprehensive plan discussion. He said there was also some discussion about the naming of the stations.

Schneider presented Community Development Director Julie Wischnack and City Planner Loren Gordon an Economic Development Association of Minnesota award the city received for the work in the redevelopment of the Ridgedale area.

8. Citizens Wishing to Discuss Matters not on the Agenda

Tristan Lundblad, 1801 Welland Avenue, said he wished to make comments about poor people in the city including himself. He pays over ten dollars a day in property taxes in order to live in the city. He lives in a single income home. His girlfriend stays at home to take care of their child. The couple have a one acre farm. He said he doesn’t have any debt other than his mortgage. He struggles to become part of the community and one thing that upsets him are the fees charged at the Williston Fitness Center. It costs $700 for a family. He can’t afford to pay that amount. He noted there are discounts for seniors. He said there are poor people who need discounts as well. There are scholarships for individual programs but not an overall scholarship for joining. He asked the council to remember a time in their life when they were poor and to keep that in mind when decisions are being made.

9. Bids and Purchases: None

10. Consent Agenda – Items Requiring a Majority Vote:

A. Twelve-month time extension of site and building plan and conditional use permit approval for Bauer’s Custom Hitches at 13118 Excelsior Boulevard

Allendorf moved, Acomb seconded a motion to approve the twelve-month time extension. All voted “yes.” Motion carried.
B. Ordinance regarding dangerous and potentially danger animals

Allendorf moved, Acomb seconded a motion to adopt ordinance 2016-03 regarding dangerous and potentially danger animals. All voted “yes.” Motion carried.

C. Agreement with Intermediate School District #287 for police liaison services for 2016

Allendorf moved, Acomb seconded a motion to approve the agreement and authorize the mayor and city manager to enter into an agreement with Intermediate School District #287 for police liaison services for 2016. All voted “yes.” Motion carried.

D. 2016 Pay Equity Implementation Report

Allendorf moved, Acomb seconded a motion to approve the Pay Equity Implementation Report and authorize staff to submit to the Pay Equity Office at Minnesota Management and Budget to comply with Minnesota State Statute. All voted “yes.” Motion carried.

11. Consent Agenda – Items requiring Five Votes: None

12. Introduction of Ordinances:

A. Ordinance amending City Code Section 300.02, regarding zoning ordinance definitions

Gordon gave the staff report.

Allendorf commended staff for the review work that was done.

Wagner said he thought the city allowed accessory apartments that were not necessarily in the same physical dwelling. Wischnack indicated that was not correct.

Wiersum said going through the definitions was informative.

Wiersum moved, Allendorf seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

B. Ordinance amending the City Code Section 300.37 regarding the lot width in the R1-A zoning district

Gordon gave the staff report.
Acomb asked if the widths were taken into consideration when the Seville project was approved. Gordon said he could not recall the specific number for Seville but the widths would have complied with the proposed ordinance.

Acomb moved, Wiersum seconded a motion to introduce the ordinance and refer it to the planning commission. All voted “yes.” Motion carried.

13. Public Hearings:

A. Items related to the granting of a cable communications franchise

Assistant City Manager Perry Vetter gave the staff report.

Brian Grogan, an attorney with Moss and Barnett, said he was representing the Southwest Suburban Cable Commission.

Schneider closed the public hearing related to the qualifications that was opened May 18, 2015.

Grogan noted the city and the cable commission adopted a 10 year cable franchise with Comcast in the fall of 2012 following lengthy negotiations. It was that document that served as the foundation for the negotiations with CenturyLink. The goal was to get as close to identical agreement with CenturyLink as possible. This would allow the two companies to equally compete in the market. He said the federal cable act was designed to promote competition and not to impose undue economic burdens on the cable operators. He said in negotiating the proposed agreement the commission had the benefit of reviewing other metropolitan area cities that had gone through the same process.

Wagner said the city has had some issues with some of the utility partners with systems in the city’s right-of-way not being as responsive to non-service outage type activities. He said he spoke with Grogan about the issue last fall. In reviewing the proposed agreement, he noted he didn’t see any enhanced language to address the issue. He asked if the city at this stage had the ability to influence some customer service standards. Grogan said that the approach was to drive the company back to the city code rather than create a unique set of obligations that would apply only to the cable operator. He said there were provisions in the agreement that reference compliance with the city code, the pulling and payment of permits, and any conditions the city chooses to impose as part of granting the permit. This was done because the city has greater control in the city code to address the issues. If it was built into the franchise it would have
to be negotiated with the other party. He said the grantee in this case was Qwest Broadband Services, Inc. This company was the content provider. The company that owns all the wires in the streets in the city was Qwest Corporation. Qwest Corporation was not a party to the contract. He noted there was a guarantee obligation in the agreement that requires Qwest Broadband Services, Inc. to stand behind the performance of Qwest Corporation. If the city determines Qwest Corporation was failing to perform, then Qwest Broadband Services, Inc. has to stand behind the performance of Qwest Corporation or risk being in material violation of the franchise.

Wagner noted the city had major sewer and water construction projects going on and there were long delayed responses from some of the utilities providers in the right-of-way in terms of finishing up the work. He asked if the current city code allowed the city to enforce compliance as Grogan had suggested. He was concerned that he had not seen compliance through the city code. Barone said the city had a right-of-way ordinance that would be used for enforcement if needed. Part of the challenge last summer was some of the construction work was not in the right-of-way but instead involved the service line to the home. She said probably the most effective approach would be reviewing the right-of-way ordinance with the utility contractors prior to the new construction season to make sure they understood all the provisions. City Attorney Corrine Heine said she would research to what extent the city could regulate conduct outside of the right-of-way. Wagner said he was concerned given the issues last fall, that there was no escalation protocol in the agreement associated with the end service being delivered and how complaints are resolved.

Schneider said it would be a challenge to extend the city’s authority beyond the right-of-way. The strongest leverage might be the competition between the companies. If a customer doesn’t like the service being provided they now would have the option of changing to the other provider.

Barone noted there was a utility summit hosted by Hennepin County because the issue was not unique to Minnetonka. Staff also met with Comcast representatives recently to reiterate the issues and to see how the company’s customer service could be enhanced. She said in most cases the service was restored fairly quickly but the issue was the lines laying open in the yard or street for months. Wagner said many times the issue impacts people regardless if they were subscribers or not. He said there was an opportunity with this five year agreement and when the Comcast agreement comes up again to seek some enhanced resolution of customer complaints. He would ask the commission to consider some type of amendment to the agreement.
Acomb noted Grogan’s memo attached to the agreement included information about competitive equity between the two franchise agreements. She asked if one agreement were to change, if it would always require staying competitive with the other agreement. How would one company implement discounts for low income residents, seniors or those with disabilities if it wasn’t included in the original agreement? Grogan said it would be challenging. The state statute requires a level playing field in terms of franchise fees, Public Educational Governmental (PEG) access, and areas of service. The Comcast agreement contains a provision protecting them from the city granting a more favorable or less burdensome franchise. If the city were to offer a much more favorable franchise, Comcast could opt out of their contract and into the competitor’s franchise. He said in 2015 the Federal Communications Commission (FCC) essentially took what little rate regulation authority cities had and issued an order stating the all cities in the entire country were subject to effective competition. There is a pending legal challenge to the order. Acomb said because of the burden it seemed to her that made it much more important to include a provision in the original agreement. Grogan said the only previous regulation authority cities had was the ability to regulate the maximum permitted rate for basic service.

Barone noted the big picture issue was with two franchise agreements that were required to be substantially the same, if the city wanted to impose something new, it would be difficult if it wasn’t included in the original agreement. If renewal of the agreements occurred at different times it would be challenging to have any leverage to impose a change. Grogan said that was one of the reasons for the five year franchise term for this agreement. The Comcast franchise would expire around nine months later. This would allow the Southwest Suburban Cable Commission to renegotiate a potential change with both cable operators around the same time.

Wiersum said he was interested in the CenturyLink opportunity because he thought the competition would benefit residents. He asked if Grogan had any information from other cities and other parts of the country about what occurs with customer satisfaction and rates and other benefits when a second franchise enters a community. Grogan said the most objective information comes from FCC orders. He noted several phone companies have gotten into the cable business. What the FCC found was that the operators tend not to compete as much on price as one would hope. The operators understand that if they drive down to an at cost purchase price ultimately all systems would be doomed to fail. What they do compete with each other on were services including faster speeds, more channel offerings, more interactive services, greater choice with wireless modems
and other things that benefit the customer without increasing the rate. The FCC found the competition adds a stabilizing effect on rates mitigating the annual increases. Wiersum said his concern was the same as Wagner's. Customer service was a very challenging realm in both the cable and cell phone industries. Anything that could be done to emphasize the need for good customer service and satisfaction would be beneficial for residents.

Schneider asked for clarification about the build out provision. He assumed CenturyLink could not guarantee a customer would subscribe but could provide the ability for the customer to subscribe. Once the fiber was available at the residence this would meet the build out criteria. It really was a zero sum game if a customer chose to switch because most of the city was already wired. Grogan said in the CenturyLink agreement a living unit was either made a qualified living unit or it stayed a living unit. A qualified living unit would have sufficient speed to support Prism. He agreed with Schneider's comments about a zero sum game. The city gets a franchise fee from every customer Comcast provides cable services to. If CenturyLink comes in and takes five to ten percent of Comcast's customers, it wouldn't necessarily change the amount of revenue but would simply shift who the revenue comes from. He noted the FCC report showed there was some evidence that as advertisements start playing in the community there might be an increase in the overall subscribership. The Southwest Suburban Cable Commission was not anticipating an increase in revenue.

Schneider said looking at the general trends and direction things are going, the days when AT&T had a monopoly were long gone. Every action he sees happening from the federal level basically was removing local authority and control and granting free competition and access. He didn't envision that five or ten years from now the city would have more authority to make changes so hopefully allowing more competition would mean the customers would be the ones that demand better service and follow up. Technology advances might also mean eliminating the need for wires in the ground. He wouldn't suggest spending a lot of time addressing the issue other than for all utilities in the right-of-ways.

Grogan said he agreed with most of Schneider's observations but he would not be surprised if five years from now the city would still be assessing the parity between the franchises and what the next franchise would look like.

Wiersum said one of the unfortunate consequences with increased competition was an increase in the number of advertisements.
Schneider opened the public hearing about the resolution relating to findings and fact at 7:37 p.m.

Kirstin Sersland, director of local government affairs for CenturyLink, thanked the council for considering the resolution to welcome CenturyLink to the city to provide some competition.

Schneider closed the public hearing at 7:37 p.m.

Allendorf moved, Wiersum seconded a motion to adopt resolution 2016-007. All voted “yes.” Motion carried.

B. Consider Competitive Franchise Agreement with Qwest Broadband Services, Inc. d/b/a CenturyLink

Wiersum moved, Wagner seconded a motion to introduce the ordinance granting a cable television franchise to CenturyLink. All voted “yes.” Motion carried.

14. Other Business:

A. Discussion regarding use of city water towers

Wischnack and Barone gave the staff report.

Jay Littlejohn, an attorney representing Verizon Wireless, said the request was for a single antenna on top of one of the water towers. The rest of the antennas could be located down below. He said after conducting an analysis, the city’s communications consultant agreed that an antenna needed to go at the height of the top of the water tower. Verizon understood that down the road a higher priority user might need the top of the tower. The companies were used to dealing with these types of issues all the time and they are often addressed in master agreements. He said Verizon didn’t have any problem taking the risk of having to move the antenna in the future if the space was otherwise needed. The devices were pervasive and many people only have a cell phone and no wired phone. This meant the companies had to be more careful about where the antenna are located so people have good signals everywhere.

Ellingson asked why the preference was to be located at the top of the water tower rather than on a monopole. Littlejohn said Verizon’s experience was there were routinely objections from neighbors about having to look at additional structures when an existing structure was already there.
Allendorf asked if another provider had an existing monopole that Verizon could use. Littlejohn said in the area there were three competitors who were already on the water tower so they wouldn't build a monopole. Allendorf asked why Verizon could not locate the antenna on the side of the water tower like its competitors had done. Littlejohn said the issue was the topography. There was a ridge to the south that the signal could not go over. Allendorf asked how the other three competitors were able to provide service that Verizon could not also provide. Littlejohn said he didn't know how the other companies provide the service they provide but it was likely they had other sites that filled in from other directions.

Wiersum asked Littlejohn if the city were to allow Verizon to put an antenna on top of the water tower, if the antenna would have the capacity for colocation or would it be exclusive for Verizon. Littlejohn said it would only be a Verizon antenna. Each company has its own antenna. The companies collocate on each other’s’ towers. Wiersum said assuming Verizon got the advantage of being granted the location on the top of the water tower it would likely mean the city would get similar requests from the competitors. He asked if it was feasible that any structure Verizon put on top of the water tower could benefit its competitors as well. Littlejohn said Verizon was not asking to put a structure on the water tower, it would just mount an antenna on the existing rail. Wiersum said he was struggling with what made Verizon distinctive so it could not locate the antenna in the same area on the water tower as its competitors. Barone noted the city had received requests from the other vendors to locate an antenna on top of the water tower. Those requests were denied.

Wagner asked what percentage of the useable space was already used on top of the water tower. Barone said in 2012 SCH did a study for the city that indicated there was room for one more antenna. Since that time the city has added a couple of its own antenna. Theoretically there might be space for another antenna. She said the bigger picture issue was having said no to the other vendors and also the space was a prime location because it was among the highest, if not the highest, locations in the entire county. There were security aspects as well. Wagner said his viewpoint might be different if the situation was the space used was at 50 percent as opposed to if there was no space left.

Allendorf said the city had a policy and the policy had been followed in the past. He preferred keeping the policy as is and to only allow the city to use the space rather than having to fight with somebody to remove an antenna because there was a higher priority or that there wasn't space left. The unintended consequence was that the city may have to look at a request for a monopole that might be objectionable to some residents. Still, he
would much rather do that than letting Verizon have an antenna on top of the water tower and then later having them have to find another location.

Wiersum said he agreed with Allendorf. He was convinced that the space was tight on top of the water tower. He recalled another proposed monopole in the area and the company wanted to build the monopole even though there was space on the water tower for an additional antenna. The council denied the request for the monopole. He would prefer as few monopoles in the city as possible. However given the capacity of top of the water tower was used up and the public purpose of the top of the tower and existing policy, he thought tackling the issue of a new monopole if there was a true need, would be something the council would consider.

Schneider said the policy did not give providers the right to locate on the water tower. The policy says the city will follow the FCC requirements of not prohibiting companies to come in to provide cell phone coverage at the appropriate locations. If the company can demonstrate the need then the company has to consider the locations the city makes available. In this case he felt staff had the authority to deny the request because the space was needed for public safety reasons. This was an administrative level decision not a council level decision. This meant an alternative needed to be provided. He heard staff saying it would work with Verizon to find the best location for a monopole that could be eventually shared. He thought this was the right approach.

Wiersum said he agreed with Schneider and there was a clear public purpose for the city to do everything it could to facilitate quality cell coverage throughout the city.

B. Resolution supporting Metro Cities Policy 4-B - Regional Governance Structure

Barone gave the staff report.

Schneider said it was likely other cities would adopt a similar resolution if they hadn’t already done so. He said some of the proposed alternatives were really bad ideas.

Wiersum moved, Wagner seconded a motion to adopt resolution 2016-008 supporting Metro Cities Policy 4-B-Regional Governance Structure. All voted “yes.” Motion carried.
15. Appointments and Reappointments:

A. Appointments and reappointments to Minnetonka boards and commissions

Schneider moved, Wiersum seconded a motion to approve the 2016 appointments and reappointments to the Minnetonka boards and commissions with the addendum. All voted “yes.” Motion carried.

16. Adjournment

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 8:04. All voted “yes.” Motion carried.

Respectfully submitted,

[Signature]

David E. Maeda
City Clerk