

**MINUTES
MINNETONKA CITY COUNCIL
REGULAR MEETING, MONDAY, SEPTEMBER 12, 2005**

1. CALL TO ORDER.

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

2. PLEDGE OF ALLEGIANCE.

All joined in the Pledge of Allegiance.

3. ROLL CALL.

Councilmembers Bob Ellingson, Brad Wiersum, Terry Schneider, Jan Callison, Al Thomas, Tony Wagner, and Karen Anderson were present.

4. APPROVAL OF AGENDA.

Anderson added an item to special matters--information concerning Hurricane Katrina.

Callison moved, Thomas seconded a motion to accept the agenda as amended. All voted "yes." Motion carried.

5. APPROVAL OF MINUTES:

A. August 22, 2005 regular council meeting.

Thomas moved, Wiersum seconded a motion to approve the minutes of the August 22, 2005 Minnetonka City Council meeting. All voted "yes." Motion carried.

B. August 23, 2005 joint council meeting.

Thomas moved, Wiersum seconded a motion to approve the minutes of the August 23, 2005 Joint City Council meeting. All voted "yes." Motion carried.

6. SPECIAL MATTERS:

A. Hurricane Katrina

Anderson shared information provided by the League of Minnesota Cities regarding the horrific effects of Hurricane Katrina. About 300 survivors will be airlifted to Minnesota on September 13, however, most survivors want to stay in their own region. A service center will

be opened in St. Paul later this week to coordinate services for those who relocate to Minnesota.

Anderson encouraged people to continue contributing to known, reputable agencies. They can also contact the United Way. People who learn of survivors who have relocated to this area on their own, should share that information with the American Red Cross or FEMA, so those people can register and be eligible for support services and funding.

The city will post Katrina relief information on its Web site. Questions may be directed to Joe Wallin, the city's fire chief and emergency preparedness manager.

B. Proclamation declaring October as National Breast Cancer Awareness Month.

Callison read a proclamation declaring October as National Breast Cancer Awareness Month.

C. Continued public hearing concerning proposed transfer of cable television system.

Anderson noted that the public hearing was opened at a previous meeting.

Gunyou provided the staff report.

Brian Grogan, an attorney with Moss & Barnett who represents the Southwest Cable Commission (SWCC), provided additional background information. SWCC met last week, and approved the proposed transfer. The transaction involves trading service areas between Time Warner and Comcast. The issue before the city council is whether Comcast meets the legal, technical and financial qualifications to operate the franchise. The transfer would take place at the end of the first quarter of 2006, but cities only have until October 10, 2005, to act on the request. He recommended that the city council adopt the resolution in the packet, as recommended by the SWCC. Grogan also noted that the city has the right to purchase the system, but there was no serious interest in exploring that option by the SWCC.

Callison asked if there was any contingency to ensure that the cable holding company is duly authorized to operate in Minnesota. Grogan responded that this issue was referenced in his report but was not included in the resolution. He suggested that it be added.

Callison asked who had the burden of proof in the review of qualifications. Grogan said that the city's approval could not be unreasonably withheld. There are no specific accounting standards to assess if Comcast is financially qualified.

Callison expressed concern that Comcast had not provided adequate information for the city to determine whether the franchise should be transferred. Grogan said that if there is no defect in the legal qualifications, the city has no basis to support a denial. He could not support denial. With respect to the technical qualifications, Comcast is the largest cable company in the country, so there would be no basis for a denial. Grogan said that he asked many questions of Comcast, but that antitrust laws prohibit Time Warner and Comcast from talking to each other.

Schneider asked when the 120 day review period started. Grogan responded that the period began the day the city received the federal form, and expires on or about October 10. Schneider asked whether any further insight on the qualifications might be obtained during that period. Grogan said that with the closing planned for the first quarter of 2006, he did not expect to receive any more information.

Wiersum asked how Comcast and Time Warner, as competitors, were able to bid together for Adelphia. He assumed that they would pay less than they would have if they bid separately. Grogan said that there were multiple bids. The bankruptcy court determined that a joint bid would be permitted. The companies are competitors, but they do not compete head-to-head. In this area, they are two competitors with two separate markets.

Anderson asked what changes Minnetonka subscribers would see if the transaction is completed. Grogan said that there will be a name change. Programming and channel line-ups may change. Comcast will become an ISP (comcast.net), so Internet services could also change. The city has no authority over broadband or phone services, and can only regulate cable. Grogan said there is no way to predict the rate impact. The city's ability to regulate rates only affects the basic tier.

Anderson asked if there would be changes to public access. Grogan has asked Comcast about that matter. They responded that they would honor the existing commitments to PEG access. As a new operator, they would step into the shoes of the current

operator. Comcast will assume the provisions of the existing franchise agreement.

Thomas asked about other cable operators if the city chose not to approve the transfer or if the council decided it did not like Comcast. He noted that the council had approved other franchises that never materialized.

Grogan said that the city approved Everett and Wide Open West four or five years ago. Those approvals were followed by a downturn in the economy, so the service was never initiated. One option might be IP based video services. In this transaction, the council's discretion to deny the request is limited. A basis for denial could be a franchise violation or defect by Time Warner, but there are no such violations or defects. If the operator is denied, there would be no cable option for Minnetonka residents.

Wagner asked if a material default in the obligations of the franchise would allow the city to purchase the franchise back. Grogan said that through the renewal process, the city could deny the transfer if a default was uncured, but the city could not purchase the franchise. The next franchise renewal will occur in about 2010. Grogan noted that there is federal legislation pending that would do away with local franchises.

Ellingson asked if Time Warner would stay if the city did not approve the transfer. Grogan said that the transfer could go forward if a certain percentage of the other cities in the country approved it. Time Warner would have to carve out Minnetonka, and perhaps contract with Comcast for that operation. Ultimately, Time Warner will not have any employees left in this region.

Callison asked about the effect on the Twin Cities if the transfer went through. Grogan said that Time Warner will no longer have a presence in the state. Charter Communications provides services in the south metro area and in St. Cloud. Mediacom provides services to the western Lake Minnetonka cities and to the southwest. There are other operators, but the vast majority of the metro area would be served by Comcast.

Tim Lovaasen, 5261 Beachside Drive, spoke as President of the Communications Workers, Local 7200 in Minneapolis and the Minnesota State Council. He said that they have been watching the franchise swap with interest. They are very concerned with Comcast and have had a very poor relationship with them. They are concerned about Time Warner's existing workers. They suggest

that Comcast take the current workers with their current wages and benefits. Under the terms of the proposed agreement, there is no such guarantee for the Time Warner employees. Lovaasen said that Comcast would not bargain in good faith with them in St. Paul and it took two years to reach an agreement. He believes that employers should allow employees to seek representation.

Lovaasen believed that Comcast has the financial capacity, but if they don't take the Time Warner employees, they may not have the technical capacity. He asked that the city require Comcast to bring on the existing workers.

Ellingson asked if Lovaasen was asking the city to approve the transfer resolution and a separate resolution regarding the Time Warner employees. Lovaasen said that would ensure the technical and operational expertise of Comcast. He said that cities are the only ones who could force these types of issues. He asked that the council consider this in their decision making process.

Emmet Coleman, Director of Government Affairs for Comcast in Minnesota, said that they are excited about the deal. They would be giving up Los Angeles properties to Time Warner. Comcast is looking forward to serving Minnetonka. Coleman appreciated Lovaasen's comments. There are no employment guarantees, but the transaction would allow his company the opportunity to grow throughout the region through greater efficiencies. He noted that Comcast has many skilled workers, but many of the Time Warner workers are critical to the future success of the operation.

Anderson noted that subscribers are also critical.

Coleman said that without the subscribers and partnerships with local communities, subscribers might seek other competitive services.

Anderson noted that there is a strong subscriber base in Minnetonka. She was concerned about the inability of the cable commission to control rates. She has heard that Comcast's record is to raise rates following an acquisition. She has stayed with cable to get local programming. She asked Coleman to share with the council any information about rates and their commitment to local programming.

Coleman said that he could not personally speak to pricing. He believed wholeheartedly that services are priced accurately for what is provided. Video has the largest customer base. Half of the

customer base subscribes to high speed internet. They have raised prices to continue to offer quality services. They continue to be competitive and reach out to a customer base that is becoming more demanding.

Wiersum asked if the transfer would increase efficiency. Coleman said he was uncertain how efficiencies might impact employment costs. There may be some efficiency with marketing costs.

Wiersum asked if over time, it would cost less to operate as a single cable operator. Coleman said that he does policy work and is not a business person. A number of factors drive up costs, such as programming costs. The market place is becoming more demanding.

Wiersum said that some efficiencies could be realized. He questioned the transfer if Comcast did not believe that costs would go down. Coleman said that the transfer would allow them to pick up communities that are demanding extra services.

Anderson commended Wiersum's logic. She served on SWCC, and has gone through several transfers. She has never seen a reduction in rates.

Wagner noted that there were no answers to some of the questions. He asked if Comcast had transferred services with Time Warner in any other regions.

Coleman did not personally know of specific transfers, but said that it is likely they have occurred. Comcast has operational agreements with Time Warner because they operate in each other's systems. They work daily with Time Warner and other cable companies to ensure that connections work.

Ellingson asked Coleman for his response to the resolution suggested by Lovaasen. Coleman said that the Communications Workers have promoted this issue on a national level, but he was not familiar with it locally. He felt it fell outside of the council's scope. From a volume perspective, there are 1,000 employees at Comcast, and they cannot cover 24 more communities. This is an opportunity to gain market.

Anderson asked Grogan to respond to the questions raised during the public hearing.

Grogan addressed the issue of other Comcast acquisitions of Time Warner. Comcast increased size when they acquired AT & T broadband. They have more than doubled in size throughout their history. Comcast generally acquires, and does not sell. He was not aware that Comcast had ever acquired any Time Warner franchises.

With respect to the resolution suggested by Lovaasen, Grogan reviewed the recitals and requirements. The existing franchise agreement already requires customer service standards, and there is no legal authority for the city to act on the other issues. For instance, the city could not withhold approval if Comcast does not provide employee health care benefits. The franchise gives the city some authority, but these issues would be outside the current franchise. He did not want to diminish the concerns that were raised, but said that the city did not have the ability to dictate any provisions in these areas. He was not comfortable recommending approval of the Communication Workers' resolution.

Wiersum asked if Minnetonka chose to purchase the system, whether we would have to pay the same as Comcast, and if the city could then contract with another company to operate the franchise. Grogan could not see any benefit with that scenario, unless a third party provider would put the city in a better position. Wiersum said that there were many unanswered questions. He thought that another option might encourage Comcast to better answer our questions.

Grogan said that it is no secret why someone would want to acquire this franchise. The demographics are terrific. A company cannot be faulted for making a profit, but the question is whether that will come at the expense of city residents. The city's hands are tied regarding rate regulation. The FCC believes that the market will provide competition. The city has the right to ask the questions, but ultimately, there is a deadline. If the council wishes to consider a denial, he would need more time to determine if there was any basis for such a denial.

Anderson then closed the public hearing.

Schneider recalled a similar discussion during the Time Warner transfer. At that time, the city received a commitment for local access. Rates will likely creep up. Schneider did not think the city should get in the middle of labor issues. He did not feel that the city was getting clear answers, especially on antitrust issues, and would

prefer to postpone the decision. However, there did not seem to be any alternative but to approve the transfer.

Thomas wanted to do what was best for the residents, but said that his hands were tied. There is not much leeway regarding fees, which have also increased with Time Warner. He understands that rates go up. If the city did not support the transfer, Time Warner would remain, but there could be a price tag for that. He went through the Time Warner transfer and the other two franchises that later disappeared. Thomas said that it is difficult when you are dealing with the only provider in town, but the city has limits as to what it can do. He was hopeful that Comcast would provide good service and noted that residents would have the option of not subscribing.

Callison agreed with Schneider and Thomas. She acknowledged that Comcast thought the transfer was exciting, but did not see anything in the transfer that was exciting for the community. Local access won't get worse. Rates won't go down. There is no increased competition. There is a benefit for Comcast, but that is the structure of this industry. There is no local regulatory authority. Comcast meets the legal, technical and financial criteria. Comcast has played the game very well and is entitled to approval. She supported the transfer and hoped that the city would have a good relationship with Comcast. She appreciated the Communication Workers' issues but did not support their resolution. She asked that the city's resolution be modified to add that the Secretary of State's approval is required.

Ellingson was concerned about broader antitrust issues, but said that Comcast has met the requirements. He was concerned about the consequences. He sympathized with the issues of the Communications Workers, who live in our communities. He thought it appropriate to express sympathy or support, but would not add anything to the city's resolution. He would consider offering it as a separate resolution.

Schneider said that with the convergence of technologies, what we see in the future may be different. Service will be more customer driven. The council needed to act on what was before it tonight.

Wiersum hated being in a position to have to vote for something that he disagreed with. He was bothered that ISP addresses will change, but said that the city has no jurisdiction on that matter. He supported the transfer because the reasons for which he would oppose it are not supported by the law.

Wagner said that the biggest drawback of the alternatives is the lack of local programming. He asked how the city could encourage emerging technologies to do local programming. He appreciated Ellingson's position, but did not think the city should get involved in labor issues.

Wagner moved, Callison seconded a motion to adopt Resolution No. 2005-110 approving the proposed change of control of Time Warner, adding a requirement regarding Secretary of State approval. All voted "yes." Motion carried.

7. REPORTS FROM CITY MANAGER & COUNCIL MEMBERS.

Gunyou reported on the special drop off, the primary election, and the schedule for upcoming council meetings.

8. CITIZENS WISHING TO DISCUSS MATTERS NOT ON THE AGENDA.

No one appeared.

9. BIDS AND PURCHASES:

A. Consideration of bids for the Park Renewal improvements at Spring Hill Park.

Gunyou provided the staff report.

Thomas asked if information about this project would be on the city's Web site soon. Gunyou said that staff is paying more attention to keeping the Web site up to date.

Callison moved, Thomas seconded a motion to award bid #18-2005-06 to Odesa II, LLC. for park renewal improvements at Spring Hill Park with a total bid of \$574,328.50. All voted "yes." Motion carried.

B. Consideration of bids for the Civic Center Improvements project.

Gunyou provided the staff report.

Wagner moved, Thomas seconded a motion to reject all bids for the Civic Center improvements to allow time to modify and better define the project's scope. All voted "yes." Motion carried.

10. CONSENT AGENDA (Items Requiring a Majority Vote):**A. Claims for council authorization – September 12, 2005.**

Wiersum moved, Callison seconded a motion to approve the September 12, 2005 claims list, including checks numbered 191522 through 191886, totaling \$2,042,559.98. All voted “yes.” Motion carried.

B. Proposed order for a tobacco license stipulation:

- 1) IHP Holdings Partnership, LP**
- 2) Kattly, Inc.**
- 3) Koehnen’s Amoco**

Wiersum moved, Callison seconded a motion to approve issuing the Finding of Fact, Conclusion, and Order for tobacco license violations for IHP Holdings Partnership, LP, Kattly, Inc., and Koehnen’s Amoco. All voted “yes.” Motion carried.

C. Proposed order for liquor license stipulation for Leeann Chin, Inc.

Wiersum moved, Callison seconded a motion to approve issuing the Finding of Fact, Conclusion, and Order for a liquor license violation for Leeann Chin, Inc. All voted “yes.” Motion carried.

D. Council policy regarding conferences, meetings and training expense reimbursement.

Wiersum moved, Callison seconded a motion to adopt Resolution No. 2005-111 approving the Council Policy 1.3 relating to city council conferences, meetings and training expense reimbursement. All voted “yes.” Motion carried.

E. Resolutions ordering the abatement of nuisance conditions.

Wiersum moved, Callison seconded a motion to adopt the following resolutions ordering the abatement of the nuisance conditions:

- 1) Resolution No. 2005-112 ordering the abatement of nuisance conditions existing at 709 Plymouth Road.
- 2) Resolution No. 2005-113 ordering the abatement of nuisance conditions existing at 12785 Amy Lane.
- 3) Resolution No. 2005-114 ordering the abatement of nuisance conditions existing at 14680, 14685, 14702, 14711, & 14720 Williston Glen.

- 4) Resolution No. 2005-115 ordering the abatement of nuisance conditions existing at 15224 Highwood Drive.

All voted "yes." Motion carried.

11. **Items requiring Five Votes:** None.

12. **INTRODUCTION OF ORDINANCES:** None.

13. **PUBLIC HEARINGS:**

A. **Public hearing on the issuance of revenue bonds by Deephaven for an assisted living facility in Minnetonka.**

Gunyou provided the staff report. Anderson opened the hearing.

James Blaha, the CFO of Walker Methodist, noted his presence.

Anderson closed the public hearing.

Callison moved, Wagner seconded a motion to adopt Resolution No. 2005-116 relating to an assisted living facility to be acquired and operated by Walker Minnetonka Assisted Living Suites, LLC, a Delaware limited liability company, and the issuance of revenue bonds by the city of Deephaven, Minnesota to finance the cost thereof under Minnesota Statutes, 469.152-469.165, as amended; granting approval thereto and taking certain other actions with respect thereto. All voted "yes." Motion carried.

14. **OTHER BUSINESS:**

A. **Items for the 2006 Preliminary Tax Levy:**

- 1) **Resolution setting a preliminary 2006 tax levy and budget for truth-in-taxation purposes.**
- 2) **Resolution setting a preliminary 2006 tax levy for the Bassett Creek Watershed Management Tax District.**

Gunyou gave the staff report, noting the following:

- The preliminary tax levy must be certified by September 15. The city council will hold a public hearing on the budget on December 5, 2005, before final adoption on December 19, 2005. He noted the city council discussed preliminary budget targets at a previous study session.
- Minnetonka takes a long-term perspective with financial management to ensure our on-going capacity to provide quality services at a reasonable price.

- About \$1 million in budget adjustments were made in 2003 to accommodate state cuts and revenue restrictions. In response to growing concerns from residents, the city has begun to restore some services, particularly public safety and transportation. Most notably, the council approved a road revitalization program in July.
- Among the challenges the city faces are:
 - The state has imposed \$800,000 in unfunded costs on Minnetonka residents.
 - The most significant unfunded mandate is the state's market value homestead credit property tax relief program, which will cost our taxpayers \$622,000 in 2006.
 - The city will also incur a \$94,000 charge for a state enacted program to make PERA (retirement plan for government workers) financially sound.
 - The city is now required to do locates for private utilities, which will cost about \$60,000 in 2006.
 - Other fees and requirements add another \$26,500 to city costs.
 - While not included in this accounting, cities are also required to pay sales taxes on our purchases to the state. It makes no sense for us to use property tax dollars to pay a state sales tax.
- To continue services at the same level would require an estimated 5% increase in spending. At the study session, council directed staff to reduce this increase to 4%, which is the traditional growth. This will require \$250,000 in budget adjustments. Council also directed staff to maintain current services, with streets and public safety continuing priorities.
- These targets will result in a 4.3% increase in property taxes, which is among the lowest increases proposed in the metropolitan area. Most cities are planning increases in the 8% range.
- The city council previously approved a comprehensive road revitalization program that will improve every local street in the city over the next ten years. Resources have not been available to keep pace with increased costs. Ten years ago, the city contributed \$1.5 million from local taxes, and received \$1.5 million in state aid, to fund a \$3 million annual road maintenance program. The city is now contributing \$2 million in local property taxes, but state aid is no longer available for local streets. The state's contribution has been frozen at \$1.5 million, and all of this amount is required for the local match of state and county road projects. The city used to spend \$3 million on its roads, it is now spending \$2

million, and it should be spending \$4 million. We are under funding the needed road investment by \$2 million annually. At its previous study session, the council decided to phase in the new program over two years to reduce the impact on property taxes, but there is a risk that the state could impose levy limits for 2007.

- The 4.3% increase for basic city services translates to a 1% increase for basic city services, 3.3% to pay for the unfunded state mandates. An additional 5.5% will be assessed for the new road program, for a total of 9.8%.

Anderson noted that the council has discussed the proposed budget targets at length. She thanked staff for their work since the study session, and said that the proposed budget reflects the council's discussion.

Wagner asked how the budget would deal with rising fuel costs. He also noted that the road revitalization program would redo every local street in ten years, and asked for clarification about roads that had recently been reconstructed.

Gunyou said that streets which had recently been redone would not be included in the next ten years of the new program. Priority would be given to those roads in the worst condition. The thin overlay program would be most intense for the first five years, and would be phased down during the ensuing years.

Gunyou also noted that rising energy and fuel costs affect the budget. An extra \$60,000 was being planned for fuel for police cars, snow plows, and public works trucks. While staff is judicious in its use of city vehicles, these costs are very uncertain. Adjustments may be needed if \$60,000 doesn't cover the increased fuel costs. Gunyou noted that staff is also looking at other alternatives, such as hybrid vehicles and engines designed for use with high ethanol content.

Anderson said that the additional tax levy for streets and roads is in response to demand from residents. When it was originally discussed, she hoped it could be done in one year. However, that burden would have been onerous, so the council decided to phase in the program over two years. The risk is whether the legislature institutes levy limits, which would prevent the city from raising the levy the following year. She asked if there were other ways to achieve the goal.

Gunyou said that major road reconstruction could be delayed, and that bonds are a more expensive option.

Thomas asked that typos in the resolutions be corrected. Gunyou said they would, and noted that the figures were correct.

Wagner moved, Wiersum seconded a motion to adopt the following resolutions:

- 1) Resolution No. 2005-117 setting a preliminary 2006 tax levy and budget for truth-in-taxation purposes.
- 2) Resolution No. 2005-118 setting a preliminary 2006 tax levy for the Bassett Creek Watershed Management Tax District.

Wagner suggested sharing information with the public about the extensive discussions by the council. Callison suggested summarizing the study session and the difficult tradeoffs between services and taxes. She also suggested seeking public feedback.

Anderson noted that there will be a public hearing before the final levy is adopted. The final levy cannot be higher than the preliminary levy.

All voted "yes." Motion carried.

15. APPOINTMENTS and REAPPOINTMENTS:

A. Appointment to the senior citizen advisory board.

Anderson moved, Callison seconded a motion to appoint William Lurth, to the senior citizen advisory board, to serve a two-year term, effective September 12, 2005 and expiring on May 31, 2007. All voted "yes." Motion carried.

16. ADJOURNMENT.

Thomas moved, Wiersum seconded a motion to adjourn the meeting 8:51 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Kathleen Magrew
City Clerk