

## MEDINA CITY COUNCIL MEETING MINUTES OF NOVEMBER 18, 2008

The City Council of Medina, Minnesota met in regular session on November 18, 2008 at 7:00 p.m. in the City Hall Chambers. Mayor Crosby presided.

### I. ROLL CALL

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

**Members absent:** Cavanaugh

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

### II. PLEDGE OF ALLEGIANCE

### III. ADDITIONS TO THE AGENDA

Crosby announced the Council met in Worksession prior to the regular meeting to review Greenfield's Comprehensive Plan and discuss Tax Increment Financing from the Uptown Hamel/Target area that may be expended by July 9, 2009.

*The agenda was accepted as presented.*

### IV. APPROVAL OF MINUTES

#### A. Approval of the November 5, 2008 Regular City Council Meeting Minutes

The following changes were requested: Page 2, Line 40, "the Council or an audience member could remove..." Page 3, Line 7, "...store trucks and has ultimate plans..." Page 4, Line 47, "To reduce costs, they cooperate with utilities..." Page 5, Line 42, "...no impact on horses nor on horses near the turbine at the Carleton location..." Page 8, Lines 22, 24, 29, 33, change "Kettelson" to "Heddelson" Page 9, Line 33, "of electricity forever and the..." Page 13, Line 47, "...and will come here as well." Page 15, Line 42, "...of what it might bring, and the fear was driven..." Page 19, Line 31, "...will be a new Loretto Fire Chief..." Page 20, Line 8, "...one-acre minimum, and developers wanted smaller lots..." Line 22, "typical commercial setback for fire safety."

*Moved by Weir, seconded by Johnson, to approve the November 5, 2008 regular City Council meeting minutes as amended. **Motion passed unanimously.***

### V. CONSENT AGENDA

- A. Approve Wetland Permit Application to Hennepin County for County Road 19 Trail
- B. Approve Wetland Permit Application to 3940 Linden Place
- C. Authorize Staff to Obtain Final Quotes/Pricing for Public Works Tractor and to Prepare Cooperative Use Agreement with City of Loretto
- D. Approve Raffle Permit for Tribute to the Troops at Medina Entertainment Center on September 13, 2009

Weir asked to remove Item A from the Consent Agenda.

*Moved by Weir, seconded by Smith, to approve the Consent Agenda Items B, C, and D.  
**Motion passed unanimously.***

**A. Approve Wetland Permit Application to Hennepin County for County Road 19 Trail**

Weir stated the County had agreed to keep the horse trail but she believes there is not enough room to accommodate a horse trail. Scherer stated they did agree to put a horse trail along the bike trail where it would co-exist and then it would be separated in the area of the creek. He stated he will contact Hennepin County staff about this question.

*Moved by Weir, seconded by Smith, to approve the Wetland Permit application to Hennepin County for County Road 19 Trail. **Motion passed unanimously.***

**VI. COMMENTS**

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

There were none.

**B. Park Commission**

Adams noted the Park Commission will meet November 19, 2008 to discuss the timing and use policy of a potential field house/concession building and to discuss and rental rates for recreational facilities.

**C. Planning Commission**

Planning Commissioner Michelle Litts reported they met last Wednesday to discuss the ordinance amendment to create commercial zoning districts. She advised that most of the concerns related to setbacks from surrounding residential properties to create adequate buffering. The Planning Commission reached a consensus to recommend approval and move the ordinance forward to the City Council.

**VII. OLD BUSINESS**

**A. Hennepin County Wind Turbine – Ordinance Amending Hennepin County Public Works Facility Planned Unit Development by Approving a Concept Plan and General Plan of Development for a Wind Energy Conversion System and Civil Defense Siren**

Crosby reviewed that at the last City Council meeting, the Council authorized preparation of an ordinance for approval, which has been done and will be discussed tonight. He advised that the Hennepin County Energy Fair open house was held last night was well attended and stated his appreciation to those who were against the wind turbine yet took time to attend the open house, a generous use of their time. The Council is now at the decision point. Crosby explained that most times, this type of item would be on the Consent Agenda. He reviewed the procedure that will be used tonight, explaining that after Council's discussion about the specifics of the resolution, the meeting will be opened to public comment. It is hoped the comments made tonight will not be duplicates of past comments.

Crosby noted there has been an increased amount of activity on comments and e-mail related to this topic, some on substance and others on procedure. The Council will not be looking at changing usual procedures but will look at bringing more to the public through e-mail, a redesign of the front page of the City's newsletter to be more vocal on issues before the Council, and to review the City's official newspaper. He stated Medina does not have a newspaper that covers the whole City. Weir reminded the audience that the City's website is an up-to-date source of information.

Benetti presented the 22 conditions of the draft ordinance for the PUD amendment, noting Condition #1 needs to be filled in to identify the maximum megawatts to be allowed. ***The Council agreed to amend the ordinance to indicate: "a maximum of 4.9 megawatts."***

Crosby noted the proposed project meets most of the conditions, except the wind buffer setbacks. Benetti stated that is correct.

Benetti read the rest of the conditions, noting the grading plans will be reviewed by the City Engineer and his staff. He advised that the County has indicated it will host the radio tower at no charge to Medina. Benetti pointed out that Condition #13 requires a WECS decommission plan within six months of the turbine becoming non-operational.

Benetti noted the 3 final conditions and that Condition #2 needs to be filled in to identify the maximum height in meters and feet. He advised that 80 meters appears to be the industry standard at this point. Benetti explained that once Hennepin County issues RFPs and gets the bids, they will be able to determine the size of turbine they can afford.

The Council discussed the best way to describe the maximum height, whether the language should allow an "up to" maximum height or be measured from sea level to avoid the ability to raise the elevation through the use of a pad.

***The Council agreed to amend the ordinance by adding and indicating that: "maximum height to not more than 125 meters (approximately 410 feet) for a WEC over 3.0 megawatts"***

Batty pointed out that the term "Final Plan" is used repeatedly and capitalized because it is a term from the PUD ordinance. He advised of the three types of approvals contained in the PUD ordinance, the final being a staff only approval of the Final Plan. In that review, staff will assure there is not a deviation from what was approved by the City Council. Batty noted there will be some subjectivity in this matter but since height was such an issue, staff wanted Council to indicate how much leeway would be allowed before it was considered to be a substantial deviation.

Crosby asked the Council to address the findings as contained in the draft ordinance. Smith noted the Planning Commission did not forward any findings for their recommendation.

Crosby read the findings of fact indicating this project is consistent with the Comprehensive Plan; the intent and purpose of the PUD ordinance; is not detrimental to public health, safety, or welfare (noise, property values, threats to flying animals, effect on horses, visibility /impact on rural character of the City, other threats to public health, safety or welfare).

Smith suggested the University of Minnesota study be identified and referenced in Finding d), Effects on horses. Batty stated this language was drafted after reviewing the evidence presented and comments made. He agreed the University of Minnesota study could be directly referenced in Finding d) since it was raised at the last Council meeting. Smith asked staff to add that language. **The Council agreed.**

Crosby described the sections of the draft resolution. He then asked Hennepin County if they are comfortable with the conditions imposed on the project.

Carl Michaud, Hennepin County Director of Environmental Services, stated they have concern with Condition #13 that deals with the decommissioning plan and deadline of six months. He explained that once the warranty period has expired, a repair may result in delays and cause the turbine to be taken down. Crosby recommended staff add language indicating: "...extended in the case of equipment malfunction for a reasonable time as long as Hennepin County is making its best effort to make the repair." Michaud stated his agreement with that added language. **The Council agreed and directed staff to redraft Condition #13 to include this suggested language.**

Weir asked about moving the turbine, maybe 100 feet farther north, to give property owners some relief. Michaud stated they will make an effort to see if it can be located farther north, but they have to assure it does not interfere with the Sheriff's communication tower.

Michaud stated if the PUD is approved by Medina, they would hope to send out bids to secure a turbine by end of this year, make a decision during the winter months, and begin discussion with the utilities on the power purchase agreement, which will take several months. They would hope to start construction the summer of 2009.

Crosby invited comments from the public.

Elizabeth Sedgwick, 4182 Arrowhead Drive, read a prepared statement indicating she does not believe they have been heard. She read a quote from Einstein and suggested the wind turbine never has been a "green issue" but a gross and reckless misuse of the Council's positions. Medina residents have opposed it, the Planning Commission opposed it, Hennepin County wants it but they don't need it because they are not a utility and have no buyer for the power it produces. Sedgwick stated the phrase "of the people, by the people, and for the people" has not been represented in this issue. She stated that no matter how emotional she is, factual she is, the community will not be heard by the Council. She suggested the "agenda" this represents will not be known and she wished there was transparency. Sedgwick presented the Council with two appraisal opinions and asked that they be entered into the public record because the Council will be held accountable for impact to their property value. She stated they have a landscape company, and are a very "green" family having executed numerous landscapes for residents of Medina and western suburbs, planting over 200,000 trees in the last 20 years. Sedgwick suggested that wind turbines "totally destroy and rapes the natural landscape." She commented on her life growing up, her parents involved in the legal field and time spent with those in the national news media where they talked of litigation, respect, injustice, and holding decision makers accountable, all familiar issues to her. Sedgwick suggested the wind turbine have a plaque with the Council Member's names on it so all can remember who made this decision. She thanked the Council for

listening, even though they did not hear her, and to the audience for being in attendance whether they are for or against the wind turbine. She suggested the cons of the wind turbine request outweigh the pros and asserted there is an undisclosed agenda by the Council.

Randall Hogan, property owner to the south on Hamel Road, asked staff to clarify if the ordinance indicates one turbine. Benetti noted Condition #1 states "The County is authorized to install a single WEC..."

Hogan stated in Condition #6, the word "adjacent" is a concern because there is one property between the wind turbine and his property. He stated his concern is with harmonic vibration of the building. ***The Council agreed to revise the language of Condition #6 to indicate: "...to buildings on affected properties..."***

Hogan thanked Weir for responding to every one of his requests for comments and to Crosby for recognizing the audience still has comments. He stated he is satisfied that horses will be well served but opposes the wind turbine because of the impact on property values and the incredible, radical, impact on the viewshed. He quoted a phrase from the Declaration of Independence by Thomas Jefferson, commenting that property rights is a foundational element of this country and do not come from government. Rather, the government was formed to protect those rights. He stated that neither "life or liberty" are at issue here, but property values need to be taken into serious account. He stated his core objection is that Medina and Hennepin County have not done due diligence on impact to property rights from a 407 foot tall piece of industrial machinery. He stated the current communication tower is 2,571 feet from his property line and towers over his property. The wind turbine is about the same height but 1,200 feet closer to his property so it will appear, to the eye, 50% taller. He noted that one of the property value studies was done in Madison County, where he and his wife moved from ten years ago. He stated he called the author of that study and the conclusion was that property values were not impacted. However, he believed he had a better data point because had he known about the wind turbine in May, he would not have purchased this property, would not have offered the purchase price he paid, or paid \$125,000 for conditions placed by Medina. He stated he thinks his property value has been diminished. Hogan stated they do not live at the property, the Underwoods live at the property; however, he pays taxes on the property and has a right to an opinion. He explained their dream at retirement was to move close to this area but it may have died with the building of this turbine. He suggested that property rights are important, regardless of economic standing, and should be weighed against Hennepin County's property interests. Hogan questioned the measures Hennepin County will take to reduce their electric bill and whether this turbine is the best use for the money being earmarked, noting there have been cases where the benefactor of the wind turbine paid an amount to impacted property owners. This project does not propose those types of payments but maybe Hennepin County will consider that. Hogan stated before purchasing the property, maybe he should not have missed this issue, which has been under consideration for a year and a half. However, he looked at the Medina Comprehensive Plan that indicated the property was to be maintained as rural and saw nothing about a 407-foot turbine.

Crosby acknowledged the issue with property rights, noting that we live in a changing world and need to recognize new things (i.e., railroads, water towers, airports, nuclear plants). He stated it is his view that we need to recognize the need for a change in our

way of life. Crosby stated it is a difficult role for those on the Council. He restated that in his discussions he has acknowledged property rights and also the demands and compromises of a larger society.

Larry Zilverberg, Tuckborough Farms resident, stated all of the representations made to him over the years were in the context of limiting development, preserving the uniqueness of Medina. He stated there was one instance where wind turbines are in rural communities; however, Medina is not that type of rural with farms or "country." He stated that Medina is unique and he put an investment in his home to reinvest in the City, but not in his wildest dream would he have thought this Council would consider this wind turbine. He asked what motivates the Council to do this. Zilverberg stated his relatives in South Dakota were wondering if their ranches should be converted to wind farms but they are in the middle of nowhere and would have to build transmission lines to bring in power. He stated advances are made each year with electronics and it will be the same with energy to create low profile wind turbines. He asked what is the rush and suggested the City wait a few years. Zilverberg stated there will be a new administration in Washington that will push wind and wave energy. He commented that Ted Kennedy had fought wind energy on the coast where he lives, and he is probably an environmentalist. Zilverberg stated he wrote letters to the Council last week and Weir said when politicking, one of two people were okay with the wind turbine, which means that half of Medina's residents do not support it. He stated he thinks 75% to 80% of Medina's residents oppose the wind turbine and asked why the Council would consider this request. He stated it is a bad idea and he does not want to look at the wind turbine. He stated he is an environmentalist and promotes renewable energy but it needs to be in the right location. He asked how wind energy can be done without dotting the whole landscape with wind turbines and encouraged the Council to wait and study the issue before making this type of decision. He stated he remains extremely opposed to the wind turbine.

Crosby stated this application request was brought to the City so it has to be dealt with. He noted the Council has spent a fair amount of time looking into the many issues involved and did not take anything for granted.

Jim Burkstrand, 4475 Maple Leaf Court, stated he is generally in favor and suggested Condition #13 be reworded because as currently worded the wind turbine would need to be taken down, not repaired, if it blows a bearing. It was noted that the Council had already directed staff to reword Condition #13 to address the timing for repairs of the wind turbine.

Elizabeth Sedgwick, 4182 Arrowwood Drive, stated she appreciates Crosby's comment about the time he spent on this issue. She asked Crosby if he would address his objection to the WCCO radio towers and indication at a meeting that he had spent many hours and months fighting it because he didn't want to look at it. Sedgwick asked Crosby if he fought the WCCO tower since it affected him personally and his property. She also asked Crosby if he can understand and have some empathy about resident's position in having to deal with the wind turbine issue when they work hard in this economic climate and, on top of everything, depleted property value.

Crosby stated his recollection is opposite and stated he had voted in favor of the WCCO tower because he had reached the conclusion that WCCO would not get FAA permission and, ultimately, they did not. He explained it was a studied and calculated

situation. Crosby stated it has been quite a while ago, but he remembers getting into some trouble at a civic session when he said he would vote in favor of it, because he did not think it would get built.

Sedgwick asked the Council to remember a comment made at the last meeting, while discussing the Hogan property and the issues of the sound and/or vibration of the barn, when Crosby said something about "you live on the north side and you don't count." She stated that expresses what she is trying to say, that no matter what she says or does, she does not think the Council heard or cared about any of them because there is a "south side of Highway 55" and a "north side of Highway 55" and they live on the north side so they do not count.

Weir stated she remembers that comment and the conversation was in relation to noise, and only the issue of noise. Crosby stated that is correct and he regrets if his comment was misinterpreted.

Smith stated the Council does listen to its residents and have done a lot of homework. She stated the evidence she has seen does not support the concern with noise, vibration, or property value reduction. She explained she is in the environmental field after fighting a landfill project in the City and cited studies that landfills do not lower property values, and that is true. Smith stated the Council spent time to tour wind turbines but the Council cannot "fix it so you can't see it." She stated one of the reasons she is voting for the PUD is that she thinks about the future, not just where she lives, but for the future of the next generation and she knows we have to change our ways. Smith stated she is doing what she can at her home and pointed out that coal/fire generation is how we get electricity, which is the number one cause of mercury pollution in our environment. Smith stated if she could waive a "magic wand," she would do so but she truly believes that at some point Sedgwick will drive by the wind turbine and not see it.

Sedgwick stated she believes what Smith is saying is truthful in her own heart. She stated at the last meeting one gentleman, an engineer in the energy field for years and an expert, made the comment that there is a tremendous amount of information the Council reviewed that is incorrect and has not been disclosed. She stated if Medina residents had voted and 51% supported the wind turbine, it is not so much that she cannot accept it. She advised of their heavy work schedule and that they took a vacation last year for the first time in 12 years. She is concerned the wind turbine will deplete their livelihood. She stated she is not a lawyer but God created litigation for a reason and maybe this is the first time she will use it.

Crosby stated he agrees with Sedgwick and Hogan on land values and the uncertainty of what it will be like. He stated that nobody likes uncertainty and suggested a sunset date be established. Batty advised the ordinance includes a two-year time limit.

Zilverberg commented on the need to save the planet, but to first save Medina. He suggested that all want the planet preserved, but he believed there was a better way.

Crosby closed the public comment session.

Smith commented that it is difficult for the Council when 100% of the people are not happy. She explained she recently had surgery and has not had access to her e-mails. Smith noted that Hennepin County held the open house, as requested by the Council,

and talked about the wind turbine becoming an educational opportunity for schools and residents. This could be of benefit in Medina, in being a symbol of Medina and Hennepin County working together to become more energy efficient, environmentally responsive, and create opportunities to conserve energy and resources. Smith proposed Hennepin County and Medina work together to create an energy fair so residents understand changes they can make that will make a difference.

Crosby stated he wants to assure there is no misunderstanding about the economics of this wind turbine. He stated if this was only an educational or public relations wind turbine, he would not support it.

Johnson stated this is a choice that is not easy to make and no one on the Council takes pleasure in having neighbors and friends angry with them. He stated he wished the landscape didn't have radio towers and water towers but the infrastructure is necessary for the greater good of the community. He stated he would not support the wind turbine if Hennepin County was not consuming the energy. He noted there is no question that Hennepin County will consume a similar amount of energy on site as being produced so it will off set what they consume. He stated he does not know how the Council can be more transparent.

Crosby clarified that Hennepin County will sell the wind turbine power and then buy it back.

*Moved by Weir, seconded by Smith, to adopt the Ordinance Amending Hennepin County Public Works Facility PUD by Approving a Concept Plan and General Plan of Development for a Wind Energy Conversion System and Civil Defense Siren, with revisions as noted. **Motion passed unanimously.***

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

*Moved by Weir, seconded by Smith, to approve the Resolution Authorizing Publication of the Amended PUD Ordinance by Title and Summary. **Motion passed unanimously.***

B. **Trunk Highway 55/CR116 Intersection – Resolution Approving Preliminary Concept Layout for the Reconstruction of the TH55 at CR116/CSAH 115 Intersection**

Crosby stated this involves a study for the layout and reconstruction of the TH55 at CR116 intersection. He stated staff will present the concept layout, after which he will recuse himself because the law firm of which he is a partner represents McDonalds for its condemnation work.

Adams used a PowerPoint presentation to describe the project endorsement by Council dating back to spring 2006, \$1.24 million received through the TH55 Corridor Coalition, available State funding of \$500,000, project cost estimates, City staff's work with Hennepin County on the TH55 corridor concept, and Environmental Assessment. He reviewed that in April of 2008 the Council held a workshop to discuss the intersection concept layout and held an open house to present the TH55 intersection concept, which has been provided to Mn/DOT and Hennepin County for comment. The Council held a workshop to discuss those comments and provided staff with direction to meet with businesses individually about the project. Staff incorporated many of the business

owner's comments but not all businesses were satisfied with what they wanted in the project.

Adams presented the next steps to be taken for Council approval of the concept layout, staff to continue its work with Mn/DOT and Hennepin County to resolve layout concerns, and, if necessary, preparation of a feasibility report. He advised that from March through July of 2009, the MnDOT geometric layout environmental document will be prepared to determine right-of-way needs. During August of 2009 through July of 2010, they will assemble a comprehensive funding package for construction, acquire right-of-way, and prepare final plans and specs for the intersection reconstruction project. Under a best-case scenario, construction would begin the Fall of 2010.

Crosby asked when the specific "what's in it for me" discussion will take place with the landowners. Adams stated that process has been started but the plan is conceptual and not yet narrowed down.

Kevin Hogle, Bonestroo, stated the timeline gets down to refining the geometric layout. He stated they are working with the landowners of the property to address access location, connections, and also dealing with environmental documentation issues, wetland impacts and mitigation, and location of connecting roads being placed on the high ground. He explained that before we can get to the precise impact to each property, the process needs to move into the environmental documentation stage to do that analysis, address growth in the corridor, look at the Clydesdale intersection, and the proposed signal.

Crosby asked whether Medina can indicate they do not support the project if, in 12 months, it is determined that a semaphore is not needed at Clydesdale. He also asked how much control Medina will have with this project. Hogle stated it is a City project and a City-led project so, at any time, if Medina can't resolve an issue with Mn/DOT or Hennepin County, it can pull out of the project. Hogle explained that the more information presented to Mn/DOT and Hennepin County, the more likely they will be willing to discuss the key issues, like a signal at Clydesdale.

Crosby stated all on the Council have talked with the affected landowners and expressed desire to not "throttle" businesses. He asked whether the Council can pull out of the project if it feels justice is not being done to Medina's businesses. Hogle answered in the affirmative.

Crosby recessed the meeting at 8:36 p.m. The meeting was reconvened at 8:45 p.m. by Acting Mayor Smith. It was noted that Crosby had recused himself from the discussion and action on this matter.

Hogle advised of comments received from Hennepin County, Mn/DOT, and business owners as well as revisions made to the concept presented at the April open house. He used a map to point out and describe the revisions. He explained that once the concept plan is finalized they will begin the study of environmental impacts.

Weir asked how long the phase-in period would be. Hogle stated it may be as long as three years.

Smith asked if the road section south of TH55 will be installed at the same time as the northern section. Hogleund answered in the affirmative and explained the need to assure the turn lanes are aligned and the intersections are operational and do not conflict with each other.

Weir asked when Medina will be forced to close the access points and make the intersection work if this project does not proceed. Hogleund stated if Medina does not move forward with the project, Mn/DOT and Hennepin County won't move forward either and Mn/DOT would likely raise the medians but not close any access points. As congestion builds, it is Mn/DOT's priority to give "green time" to TH55 so more congestion will build on CR116.

Adams stated the McDonalds property will have a "right-out" to Clydesdale Trail included in the layout with a phased period. Hogleund stated that is correct and noted the access location on the map.

Weir asked when Mn/DOT approved TH55 to become a principal arterial. Hogleund stated the businesses have a right to access and Mn/DOT will not just come in and start closing access points. If the designation changes to principal arterial, however, it may change Mn/DOT's Access Management Policy for future projects in this corridor.

Smith stated if Mn/DOT raises the medians, it will limit access. Hogleund stated Mn/DOT has the right to raise the median and limit access in that way with no compensation.

Weir asked about the timing for a light at Clydesdale. Hogleund stated Hennepin County has indicated it is not likely that enough traffic will be generated to warrant a signal; however, there may be strong argument for traffic that leaves the properties and drives north since a gap has to be created on CR116 to allow access.

Smith stated this is not a public hearing but the Council will entertain comments from the floor.

Ken Darula, McDonalds Restaurant owner, asked if the intersection of Clydesdale and CR116 is the best location for the signal. He suggested the intersection of Hackamore and CR116 may be a better location because it would give a longer break in the traffic, and there is a school in that location. He thanked staff and Hogleund for working with the business owners and listening to their comments. He stated he supports the changes made and wants to assure that once Hennepin County gets the plan, Medina can still finalize the plan to assure it is right. He stated he does not support the program without the changes. Darula noted an elevation change needs to be addressed on his property to assure there is no ice buildup and he is unsure if a semitrailer can pull into the cul-de-sac and get to his property. He stated this is a big job and he appreciates how staff has listened to them.

Smith asked whether the plan would come back to Medina for final approval after review by Mn/DOT and Hennepin County. Hogleund stated that is correct and approval of Medina is needed to move ahead.

Hogleund stated a semi delivery truck was modeled through the area and it was found there is one area of encroachment, but that has been addressed.

Carol Lansing, representing McDonalds Corporation, stated she is an attorney at Faegre and Benson. The property is owned by Archland Properties, McDonald is the tenant, and Mr. Darula is the subtenant. She stated the concerns of the McDonalds Corporation are with issues of sight line, access, and eminent domain. They have not had a lot of time to review the plan but did talk with City staff and Bonestroo about preliminary sketches and plans. However, they are preliminary in form and there is an evolving discussion about what will work. She noted the plan being presented tonight was not yet viewed by Darula and shows a significant loss in access; not as viable of access. Lansing advised that two major access points are needed for this type of restaurant. If proceeding, McDonalds Corporation would want additional study on CR116, and an internal McDonalds' traffic analysis to preserve viability of the drive-thru service to assure no loss of value, which can result in increased condemnation costs. Lansing stated she believed that additional study was needed to determine realistic impacts before it goes to Hennepin County.

Smith pointed out that McDonalds does not have two full access points now, noting one access is right-in/right-out. Hogleund stated that is correct, they have one full and one partial access.

Lansing thanked Smith for that clarification, saying they need a continuance to do additional study. She noted a customer coming from the west has to circle the building to get to the order window, go to pick up, then circle the building again to go north on CR116. She stated more discussion is needed on that issue. They are also concerned about traffic backing up in the cul-de-sac. She noted the depiction of a trail on CR116, which may result in loss of parking and setbacks so it deserves additional consideration. Lansing stated this concept also leaves a remnant piece of property on the west side of the cul-de-sac, which will impact the value of the building.

Weir asked the nature of the land to the west of the cul-de-sac. Hogleund stated it is highland, not wetland.

Smith asked how many months has staff been working with McDonalds. Hogleund stated staff has met with Ken Darula to discuss this concept and is proceeding to meet with businesses a second time. He stated they understand the traffic study has not yet been done. Hogleund pointed out that Medina has invested money into the development of this concept and the costs for refinement (environmental documentation, traffic analysis, and refinement of the geometric layout according to Mn/DOT metrics) can be covered by federal funds.

Lansing asked if the analysis will include the internal circulation needs of a restaurant of this type. Hogleund answered in the affirmative.

Lansing stated if the best answer is different than this, McDonalds would be interested in having more discussions. She noted they are a big corporation and did not get notice as the taxpayer of the property. She stated that while they may have "arrived late" in this discussion, they are here now.

Jim Burkstrand stated he lives about one mile north of this intersection and asked the City to consider using dotted guidance lines through the intersection. Hogleund stated that is standard now, especially with the skew of this intersection.

Burkstrand commented on the need for good signage when access roads go through businesses and asked who will pay for it, and where it will be placed. Smith stated she read a comment about the need for significant signs in the back area and asked whether the Sign Ordinance will need to be changed. Batty stated that suggestion is for off-site signage.

Rob Stefonowicz, Larkin Hoffman Law Firm, stated they represent Peggy Rasmussen, the owner of Peg's Countryside Café and have submitted comment letters to the Council, which are part of the record. He explained that Ms. Rasmussen's fear is that the closure of her direct access to TH55 will devastate and perhaps destroy her business, which she has successfully owned and operated for well over 30 years. There is also an underlying fear that the City project is sacrificing local business needs for the benefit of regional traffic concerns. Stefonowicz explained the position of Ms. Rasmussen is that closing the driveway access to TH55 will not leave her with reasonable and suitable access even with the proposed Clydesdale Trail extension, which may create different traffic situations and problems. It also directs more traffic to CR116 where the purported problem is that needs to be resolved. With respect to access to the Café, the shared McDonalds access off Clydesdale is problematic because McDonalds and the Café share the same peak hours of operation. McDonalds has indicated they have 500 vehicles entering their site and there will be traffic attempting to get to the Café at the same time, resulting in stacking of vehicles. The position of the entrance is also a concern because it requires a further taking of Café parking lot property and may result in problems with routine delivery trucks entering and exiting the site. Stefonowicz stated the critical point is the direct driveway access on TH55 because, to their knowledge, the right-in/right-out access with the median is not contributing to any traffic concerns on CR116. He referenced a Mn/DOT comment with respect to the closure of access indicating: "since the goal of this project is access management, all the driveway accesses to local businesses should be eliminated." He stated he did not understand this to be the goal of this project and if the Council agrees to closure of any access points, Hennepin County may hold Medina to that. Stefonowicz stated the engineer has commented that to get federal funds, Medina has to commit to something and, as McDonalds has pointed out, it will be difficult once you take that step to pull back in this project.

Smith asked that this letter to be entered into the record. Adams stated all of the letters submitted are part of the permanent packet record.

Mark Hamel, lawyer at Dorsey and Whitney, stated he represents Bill Toles, the owner of Tol-O-Matic, a manufacturing facility that also owns property to the south of Clydesdale. He stated Mr. Toles has owned this property for the last 15 years and moved to Medina to have the right public environment for his business and spent a lot of money on landscaping the front yard. Hamel stated they appreciate being able to meet with City staff to review specifics of the plan and know that some changes have been made to mitigate impacts to the parking lot but Mr. Toles still has great concerns about this project and thinks more planning is needed before he can support this project. In regard to their parcel, they have two access points into the parking lot and not any real engineering has been done on where access would be provided to the parking lot with this design. They also think the City should consider moving the intersection of Clydesdale farther south even if contrary to what Mn/DOT and Hennepin County support because it would create less impact to their property. Hamel stated a further concern is one of future expansion on a parcel that would be constructed upon with this plan.

Hamel stated they would like to talk about moving those road alignments to preserve the development potential of that expansion property.

Smith asked where the parking lot access points were located. Hoglund stated the access points are not yet shown because those refinements will be worked out with Tol-O-Matic and other property owners.

Weir asked why the Clydesdale intersection elbows up. Hoglund explained that cars need to be perpendicular for adequate sight distance before progressing through the signal. Also, the design speed curve is at 25 miles per hour to assure the correct geometrics are included.

Bill Toles, Tol-O-Matic, stated there is only one time to make a good impression and when his company was invited to come to Medina 16 years ago, they were assured everything would be the same so they invested hundreds of thousands of dollars because this is their world headquarters and used to impress people who come to their facility. He stated the proposed road project would take away their good first impression. He advised of their costs to maintain the property and wetlands. He stated he is at work most every day and assured the Council that a lot of traffic is backed up as far as he can see but he does not know if this intersection will take care of that congestion. Toles stated staff is doing a good job but he does not agree with the message they are bringing. He stated he employs over 200 families with profit sharing and bonuses and is one of the larger taxpayers in Medina. He noted we are in the worse economic times ever seen in our lives and now he has to pay money for an attorney to defend his property rights. He stated it was indicated that the County must reimburse the City for its expenses, yet he will not be reimbursed for his expenses. He stated the City begged him to come and he spent about half a million dollars on an expansion plan that will be taken away from him if this project is approved. They also have plans for a second story on their main building. Toles stated the families employed by him will get laid off because he needs to make money and asked whether there is a worst time to do this project. He stated he made an environmental pledge to take care of the adjacent wetlands, which his employees do.

Toles stated a traffic study has not been done. Hoglund explained that a minor traffic study has been done. Smith clarified that another traffic study will be done when further into the process. Hoglund explained the City's grant funds can be used on this project if it is moved forward. Otherwise, the Coalition will use the funds for another project.

Toles suggested that to "pull the trigger" on a project like this, at this cost, and at this time, is insane. He stated his business is slowing down every day and begged the Council to hold off on this project. Toles asked what a traffic study can cost. Hoglund stated it can vary from \$5,000 to \$50,000, depending on the scope. Toles suggested the business people be asked to put together some funds for a traffic study instead of moving forward with the project in order to get grant funds. He stated too many lives will be impacted by this road project and it will waste hundreds of thousands of dollars. He stated there is a lack of information and, at this point, he is against the project.

Weir asked about the horseshoe road configuration south of Toles' building. Hoglund used the map to show the current alignment and shift made to accommodate the concern of the Mobile owner about access to their car wash. He stated that until today, staff had not heard from Mr. Toles. He stated they are attempting to align the roadway

on the high strip of ground, but this can be changed and modified, if needed. He stated the City will have the authority to make those decisions and staff will continue to work with business owners to refine the concept plan. He explained that once Hennepin County and Mn/DOT agree with the concept plan, the City can start to use the federal money. Heglund noted this has been worked on for over two years and through recent meetings with Mn/DOT and Hennepin County, they are close to reaching an agreement.

Toles stated his operational people have been involved and talked with City staff but they did not realize their land for building expansion was being impacted. He stated there are other smaller pieces and issues that need to be addressed. He stated he has been in business a long time and knows that once the "trigger is pulled" on this project it will be too far to pull it back. Smith stated Medina has to approve the final project or it will not proceed.

Weir stated if Medina did have to compromise the land to the south of Clydesdale, the City would be open to consider variances to allow the expansion to happen. She noted that a hardship not created by the landowner can probably be found.

Ken Barkow, Dairy Queen owner, acknowledged staff listened to their comments. He stated a large percentage of their business is impulse buys and if the access is closed, his business won't be far behind. He asked if the City should relocate their business because when his access closes, his business will be gone. Barkow stated his other concern is that traffic coming in will butt against traffic in the drive through. He stated again that he appreciates that staff is working with business owners.

Smith closed the floor to further comments and asked Council for their input.

Weir noted the federal money can be used to help relieve this traffic problem. Heglund agreed that part of the project is federally funded and additional money is needed. More money will be coming to the Coalition and it is expected the funding will come to this project, creating a comprehensive funding package. He stated the Coalition wants to see traffic improved through this intersection. It was noted the Mn/DOT funds are strictly for access management.

Johnson stated he hears the comments of the businesses. He stated as a business owner, if he felt a change like this would fundamentally impact his business, he would be vocal in articulating that. He stated he hopes there is a way to accommodate those needs. Heglund stated the next step is to move forward and utilize federal funding for additional studies. If the studies show that it won't work, the City can decide to not move forward with the project. Johnson noted the federal funds can be used to do that homework. Heglund stated that is correct.

Toles asked how many projects use federal funding for the study and then the project is stopped. Heglund stated that happens if it is found the impacts are too great. Toles asked the Council to remember the businesses were invited and begged to come to Medina.

Johnson asked Mr. Toles if he would agree with the project if the intersection remains in its current location. Toles stated he would be okay with that piece of the project but the other issue is their plan for expansion when better days are ahead.

Toles stated this is their world headquarters because they want to make a good first impression. Now one-third of their front yard will be taken away and he thinks traffic will increase on Clydesdale to get to TH55. He stated his property is impacted on the north, south and west sides. The Council discussed the possibility of using the area created by moving the Clydesdale intersection to mitigate potential wetland impacts on the Tol-O-Matic expansion site.

Weir stated it appears the City should consider taking the next step so more studies can be conducted. Adams advised that three affirmative votes are required to advance this item.

*Moved by Johnson, seconded by Weir, to approve the Resolution Approving the Preliminary Concept Layout for the Reconstruction of the TH55 at CR116/CSAH 115 Intersection adding Whereas language to indicate the Council reserves the right to withdraw the project if the concerns of affected property owners are not sufficiently addressed. **Motion passed 3/0/1 (Crosby).***

Crosby returned to chair the remainder of the meeting.

**C. Ordinance Creating the Commercial-Highway, Commercial-Highway 2, Commercial-General, and Commercial-Neighborhood Zoning Districts; Amending Sections 825.07 and Adding New Section 838**

Crosby stated he would like additional time to research this ordinance and asked staff to provide examples of practical applications for the standards. Weir asked staff to also provide information on the types of uses that would be invited to Medina if there are .5-acre lots and the types of development that would be allowed with 15,000 square feet.

***The Council agreed to table consideration to a future meeting.***

**VIII. NEW BUSINESS**

**A. Ordinance Amending Section 720, Regarding Individual Sewage Treatment Standards**

Adams stated staff would like comments from the Council prior to forwarding the ordinance amendment to the MPCA for their review. He advised that after the review period, the ordinance amendment will come back for Council consideration and action.

Batty explained that the current ordinance was adopted 7-8 years ago, considered to be state-of-the-art at the time, and adopted by reference the relevant State Statutes and regulations. As a result, it was a fairly short ordinance. Unbeknownst to the City, the State repealed the regulations about a year ago. Batty explained that when an ordinance gets repealed it is easy to track but this was a set of regulations. New regulations were adopted in January of this year that do not allow cities to adopt the regulations by reference but requires specific articulation of the regulations. Batty stated this is why it went from a fairly short ordinance to a much longer ordinance. The current draft is 23 pages long but will not end up that long once it is decided which options to include. Another regulatory change is that Medina needs to give the MPCA 30 days notice of the amendment before it is adopted but the MPCA has up to six months to make comment.

Staff realizes it makes no sense to proceed with enforcement actions under the old ordinance because of the legal deficiencies. In addition, it is difficult to enforce during the winter months so staff would like to get the ordinance in place before next spring. Batty stated that staff would like Council comments to shape the document before it is sent to the MPCA. The critical part is to have Loren Kohlen with Metro West review it. However, Kohlen is currently out of the county and not been able to review it with the degree of technical examination hoped. Batty noted the Statute is set up to give counties the primary responsibility for ISTS unless cities take on that responsibility. If Medina does it themselves, the draft ordinance assumes Medina will continue to take primary responsibility to do inspections instead of Hennepin County. Batty advised that some of the option points relate to policy issues.

Crosby suggested that staff and Kohlen review this draft ordinance and make decisions on the options. Then the Council can review the document to see if they agree with it. He stated he thinks Medina should take responsibility for the inspections to assure they are being properly conducted.

Weir stated it is appropriate for the Council to discuss the policy issues and she supports the requirement to bring the property up to Code when the house is sold. Batty stated there are many technical options that Kohlen should review but there are also policy questions that the Council should determine, such as a point of sale provision.

Crosby stated a careful buyer will always have this as a condition. If not a careful buyer, then you end up with a first class argument after the sale. Crosby stated if a number of other cities have this policy, he supports it because it is a service to the homeowners.

Smith stated with the new separation of soils rules, systems installed 10-15 years ago will not meet that standard.

Scherer asked about liability if City staff tests the systems. Crosby clarified that the City would require the system to be inspected but would not do the inspections.

Crosby asked how this will be enforced since they go to the County, not the City, when property is sold. Batty stated one of the practical ways is to inform Realtors and general education. Crosby asked upon whom is the burden, buyer or seller.

Johnson stated if Realtors are informed that this is a requirement of Medina, then it becomes a disclosure item.

Weir pointed out that the title of Section 720.11. Retroactivity. Sub. 3, is incorrect.

Crosby stated if the building permit effects the creation of sewage, inspection should be required. Smith stated sewage is related to the number of bedrooms. Batty read ordinance language addressing what triggers the compliance inspection.

Weir stated support to require a point of sale inspection. Smith stated she would like to know what the surrounding communities require before making that decision. Johnson concurred. Kellogg stated Orono has discussed the point of sale requirement. Crosby stated he does not want Medina to be on the leading edge of the point of sale requirement.

Batty stated staff will contact surrounding communities to get that information, complete the technical review, and determine the options to include. Adams stated this will likely be on the Council's December 16, 2008, meeting agenda.

## **IX. CITY ADMINISTRATOR REPORT**

### **A. Solid Waste Ordinance Enforcement**

Smith stated it does not matter if it is a commercial or agriculture use because Hennepin County bans the burning of waste for everyone in the County, there are no exceptions, including farmers. She stated a Statute also prohibits open burns for garbage so the City needs to ensure residents have garbage collection service. Adams clarified Randy's list of properties questioned if a property was commercial or agriculturally oriented which affects if they provide service to the property.

Adams stated letters will be sent to residents to ask how they deal with garbage disposal. Smith stated if they bring it to their place of work, she would like to see a letter from that business stating their agreement to that practice, as illegal dumping at businesses is a major problem.

*Moved by Weir, seconded by Smith, to direct Staff to review properties refusing solid waste collection services and report to City Council on possible enforcement measures.  
**Motion passed unanimously.***

### **B. Code Enforcement Update**

Adams provided an update on Code Enforcement, advising that in addition to the memo, the City is prosecuting a contractor for not moving forward with requirements of the Building Inspector. It was noted that staff is proceeding with quadrant inspections for nuisance abatement and also acting on resident complaints.

In response to Weir, Scherer stated the property owner on Lakeshore is attempting to stabilize the bank with vegetation.

Weir asked about the building on Hunter Drive. Benetti stated he met on site with the property owner. The project was stopped and the owner submitted a wetland report. Staff will field verify and a surveyor will delineate the wetland on the survey.

Weir asked if a violation is found, will the owner be required to remove the building and restore the wetland. Benetti stated the violation was found after the fact, the property owner is being cooperative, and complied with directives to obtain a survey. Benetti stated this is one of the many illegal landscape projects that will need to be addressed.

Benetti stated there are also a large number of activity (not structure) CUPs on the books that need to be researched and verified. If the activity is no longer there, staff will ask the property owner to sign a form requesting the CUP be revoked. Crosby stated if the use is abandoned and the property owner does not respond, the City should be more assertive to revoke the CUP. Benetti stated he will provide the Council with quarterly updates.

Weir asked about the educational component on the storm water treatment train in Wild Meadows. Scherer stated he has tried to reach Ken Anderson, homeowners association, to provide some education on the drainage issues.

**C. City Logo Update**

Adams stated he contacted freelance graphic artist, Lori Dalrympte, and she is ready to accept terms in a letter of understanding to compensate her \$500 for up to 20 hours of work. If more than 20 hours are needed, they will renegotiate. Adams advised of the work to be done by Ms. Dalrympte, noting the City would own the copyright for the logo as well as all of the work product suggested by Mayor Crosby.

*Moved by Smith, seconded by Weir, to direct staff to move forward. **Motion passed unanimously.***

**X. MAYOR & CITY COUNCIL REPORTS**

Smith stated she would like the Planning Commission to provide findings of facts or rationale when they make a recommendation to the Council. Weir agreed there is a need for education on that issue. Crosby noted reappointments will be made the first of the year, which would be a good time to address that matter.

Benetti stated he had asked about findings with the Planning Commission's recommendation on the wind turbine but, instead, each Commissioner stated their reasons for voting against the wind turbine and it was memorialized in the meeting minutes. Smith stated that is different than a findings of fact.

Crosby advised of his schedule, noting he will be out of town and unable to attend meetings and events scheduled for December 2 and December 4, 2008.

Weir thanked staff for an efficiently run election.

**XI. APPROVAL TO PAY THE BILLS**

Moved by Weir, seconded by Johnson, to approve the bills, EFT 000346-000352 for \$30,957.72 and order check numbers 033201-033301 for \$221,499.86 and payroll checks EFT 501652-501684 for \$49,863.10. **Motion passed unanimously.**

**XII. ADJOURN**

*Moved by Weir, seconded by Smith, to adjourn the meeting at 10:37 p.m. **Motion passed unanimously.***

---

T.M. Crosby, Jr., Mayor

Attest:

---

Chad M. Adams, City Administrator-Clerk