

Hodgson Road is closing for approximately 10 days from South Birch Lane to County Road J. Mr. Wesolowski stated that new asphalt will be laid; only local traffic will be allowed. There will be a detour over to Lexington.

Councilmember Wickstrom:

The trail along County Road I between Lexington and Hodgson has been reopened. The low area that floods has been filled in significantly. Also, there is a new trail going in from County Road I to Rice Creek. Mr. Wesolowski stated that it is anticipated the new trail will be done by the end of August.

Councilmember Johnson:

Nominations are being accepted for Citizen of the Year Award. This is an opportunity to recognize someone who is active and generous in contributing to the community. The nomination deadline is October 3, 2014.

The Community Center pool will be closed September 2, 2014 through September 19, 2014 for annual maintenance.

CONSENT AGENDA

MOTION: by Councilmember Quigley, seconded by Councilmember Johnson to adopt the Consent Agenda for August 18, 2014, and all relevant resolutions for item Nos. 1 through 10:

1. August 4, 2014 City Council Meeting Minutes
2. Receipt of Committee/Commission Minutes:
 - Planning Commission, July 22, 2014
 - Economic Development Commission, July 22, 2014
 - Bike and Trails Committee, August 7, 2014
3. Monthly Reports:
 - Administration
 - Community Development
 - Finance
 - Public Works
 - Park and Recreation
4. Verified Claims in the Amount of \$822,175.49
5. Purchases
6. Developer Escrow Reduction
7. Renewal of City/County Joint Powers Agreement for Recycling Funding
8. Approval of Application for Exempt Permit - Emmet D. Williams PTA

9. Receive Assessment Rolls, Order Public Hearings
 - Red Fox Road, Project 12-04
 - County Road D, Project 13-01A
 - Cottage Place, Project 13-01B
 - Gaston/Grove, Project 13-03
10. Declare Cost and Order Preparation of Assessments
 - Red Fox Road, Project 12-04
 - County Road D, Project 13-01A
 - Cottage Place, Project 13-01B
 - Gaston/Grove, Project 13-03

VOTE: Ayes - 4 Nays - 0

PUBLIC HEARINGS

There were none.

GENERAL BUSINESS

WIRELESS TELECOMMUNICATIONS FACILITY PERMIT AND LEASES

- AT&T/SAC WIRELESS, 745 COUNTY ROAD E
- AT&T/SAC WIRELESS, 5880 LEXINGTON AVENUE NORTH

Presentation by City Planner Kathleen Castle

Applications have been submitted for facility permit locations at the City's north and south water towers. The applications request antenna placement and an equipment shelter, 12 feet by 28 feet, and an emergency power generator.

Both towers are in the TOD-2 District, which allows facilities over 75 feet in height. The plan shows antennas will be painted to match the tower. Antennas will be located at 140 feet on the south water tower and at 102 feet on the north water tower. Landscaping is recommended to screen the shelters from the streets--Victoria for the south tower and Lexington for the north tower. The proposed shelter locations do not pose problems for utility staff operations. Shelters will be accessible to AT&T staff and fenced from the tower compound.

OWL Engineering, the City's consultant, reports that RF interference is unlikely. RF emissions are in compliance with the FCC standards. OWL Engineering will verify compliance when the site is operational. The generator will be used for emergency power only and routine testing/maintenance.

Notice was mailed to property owners within 350 feet of each site. Three written comments were received regarding the north water tower. Concerns focused on noise and screening of the

shelter when viewed from the north. In response, the shelter has been moved. The City has noise standards that will be enforced. There were also RF health concerns.

The Planning Commission reviewed the application and voted 5 to 0 to recommend Council approval. Site Lease Agreements would be for 5 years with four 5-year renewable terms. Annual rent for each lease is \$41,000 with a 3% annual escalator. Staff is recommending approval.

Mayor Martin noted that the lease agreement is for more than the other users due to the increased usage of the site. She asked if there is a limited amount of space for other potential users. Ms. Castle explained that there is no limit on the water towers, but space for the needed shelters is limited.

Councilmember Wickstrom noted that RF frequency is regulated by federal law through the FCC. The City has no authority on this issue.

MOTION: by Councilmember Quigley, seconded by Councilmember Johnson to approve the Wireless Telecommunications Facility Permit application for New Cingular Wireless PCS LLC to collocate antenna on the existing City-owned water tower located at 5880 Lexington Avenue, and to install an equipment shelter within a 26 by 40 leased area, and to authorize the Mayor and City Manager to execute the Site Lease Agreement with New Cingular Wireless PCS LLC, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Wireless Telecommunications Facility Permit application. Any significant changes to these plans, as determined by the City Planner, will require review by the Planning Commission and approval by the City Council.
2. This approval authorizes execution of the site lease agreement with New Cingular Wireless PCS LLC, including the 26 by 40 foot equipment site and an easement for ingress and egress. Minor changes to the site lease agreement may be approved by the City Manager and City Attorney. Significant changes to the lease agreements shall require approval by the City Council.
3. Prior to lease execution, the construction plans shall be reviewed and approved by the City's engineering consultant, SEH.
4. Landscaping shall be planted to provide visual screening of the equipment structure from Lexington Avenue.
5. The site is subject to confirmation that RF emissions conform to FCC requirements. New Cingular Wireless PCS LLC shall notify the City when the system is installed, prior to

operation. A City selected RF engineer shall be provided access to the site to test RF emissions.

6. The site shall bear necessary OSHA required warnings regarding RF emissions.
7. A permanent emergency power generator may be installed within the equipment shelter. The emergency power generator shall be used for emergency power only, except the times it is being run for routine maintenance, which shall not exceed thirty (30) minutes once a week between the hours of 4:00PM and 6:00PM CST, Monday through Friday, holidays excluded. The operation of the emergency generator shall comply with City regulations pertaining to Noise (Section 209.020 of the Municipal Code).
8. The applicant shall enter into a Wireless Telecommunications Tower/Antenna Agreement with the City, as required.

Approval is based on the following findings of fact:

1. The site is located in the TOD-2 where wireless telecommunications facilities collocated on an existing tower is a permitted use.
2. The proposal complies with the adopted City standards for Wireless Telecommunications Facilities, as specified in Section 207.040 of the Municipal Code.

ROLL CALL: Ayes: Johnson, Quigley, Wickstrom, Martin
 Nays: None

MOTION: by Councilmember Quigley, seconded by Councilmember Wickstrom to approve the Wireless Telecommunications Facility Permit application for New Cingular Wireless PCS LLC to collocate antenna on the existing City-owned water tower located at 745 County Road E, and to install an equipment shelter within a 20 by 40 leased area, and to authorize the Mayor and City Manager to execute the Site Lease Agreement with New Cingular Wireless PCS LLC, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Wireless Telecommunications Facility Permit application. Any significant changes to these plans, as determined by the City Planner, will require review by the Planning Commission and approval by the City Council.
2. This approval authorizes execution of the site lease agreement with New Cingular Wireless PCS LLC, including the 20 by 40 foot equipment site and an easement for ingress and egress. Minor changes to the site lease agreement may be approved by the City Manager and City Attorney. Significant changes to the lease agreements shall require approval by the City Council.

3. Prior to lease execution, the construction plans shall be reviewed and approved by the City's engineering consultant, SEH.
4. A landscape plan shall be submitted for approval by the City Planner. The landscaping shall be planted to provide visual screening of the equipment structure from Victoria Street.
5. The site is subject to confirmation that RF emissions conform to FCC requirements. New Cingular Wireless PCS LLC shall notify the City when the system is installed, prior to operation. A City selected RF engineer shall be provided access to the site to test RF emissions.
6. The site shall bear necessary OSHA required warnings regarding RF emissions.
7. A permanent emergency power generator may be installed within the equipment shelter. The emergency power generator shall be used for emergency power only, except the times it is being run for routine maintenance, which shall not exceed thirty (30) minutes once a week between the hours of 4:00PM and 6:00PM CST, Monday through Friday, holidays excluded. The operation of the emergency generator shall comply with City regulations pertaining to Noise (Section 209.020 of the Municipal Code).
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1. The site is located in the TOD-2 where wireless telecommunications facilities collocated on an existing tower is a permitted use.
2. The proposal complies with the adopted City standards for Wireless Telecommunications Facilities, as specified in Section 207.040 of the Municipal Code.

ROLL CALL: Ayes: Quigley, Wickstrom, Johnson, Martin
 Nays: None

City Manager Schwerm noted that the money received from the lease agreements will go into the Community Investment Fund.

AUTHORIZATION TO TERMINATE MEMBERSHIP IN NORTH SUBURBAN COMMUNICATIONS COMMISSION

Presentation by City Manager Terry Schwerm

At the June 2, 2014 City Council meeting, the Council tabled action to withdraw from the North Suburban Communications Commission (NSCC). Action was tabled because the other nine-member cities had met and requested Shoreview delay action to give more time for negotiations.

Shoreview has been a member of the NSCC since its inception in 1982. The purpose of the NSCC is: 1) administration and oversight of the cable franchise for cities; and 2) to administer and develop Cable programming, done by North Suburban Access Corporation (NSAC). The NSCC budget is approximately \$350,000 and is paid by the member cities. The NSAC budget is approximately \$1.5 million collected from subscribers through a PEG fee of approximately \$4.15 per month per subscriber.

Currently, the City is in negotiations for a new franchise agreement, which expired in October 2013. Comcast and NSCC agreed to continue the agreement to November, 2014. Negotiations are in a formal process which required submittal of formal proposals from both Comcast and NSCC. All 10 of the NSCC member cities have denied the formal proposal from Comcast. Comcast has requested an administrative hearing which has not yet been scheduled.

NSCC is also in the process of reviewing a franchise transfer request from Comcast that would transfer the franchise to another company. This is a result of Comcast's proposed merger with Time Warner. This transfer is currently expected to be completed by the end of October.

A number of meetings have taken place with both Comcast and NSCC. The Council has identified a number of concerns with continuing to be a member of NSCC:

- Amount of money spent on legal fees as part of the franchise renewal process;
- Ongoing spending on franchise administration and oversight;
- Changing the nature and access of public access and video program.

Video contact can be done now through smartphones, tablets and YouTube. The City's Community Survey shows viewership of public access programs has dropped from 20 percent in the 2005 survey to 1 percent in the most recent survey. The changing nature of public access is a concern that has been identified by the Council.

Mr. Schwerm further stated that he and Mayor Martin have had several meetings since the motion was tabled in June. A number of changes to the joint powers agreement that establishes the NSCC were proposed. Two of the proposed changes include: 1) representation on the NSCC only by elected officials; and 2) creation of a City Manager/Administrator committee that would make budget and public access recommendations to the NSCC. These recommendations would

provide more City input into the policies and budgeting of both the NSCC and NSAC. Although some cities supported these changes, consensus on the proposed changes was not able to be reached. The NSCC reviewed the proposed changes and voted 9 to 1 to not adopt any changes at this time.

The deadline for the City to withdraw from the NSCC is October 15, 2014. If the decision were made to withdraw, the City would lose access to the public access studio and technical assistance from the NSCC, as well as have reduced bargaining power by not being part of a larger group. Shoreview has approximately 5,500 subscribers; the NSCC represents approximately 29,000 subscribers. Council meeting playback and webstreaming services are currently provided by the NSAC, and these services would have to be taken over by the City. City Council and Planning Commission meetings would continue to be broadcast on a City local government channel.

Advantages to withdrawal would be a significantly lower cost for franchise administration and oversight. Currently, the City contributes approximately \$70,000 a year to NSCC. Also, the City would maintain any PEG fees for its own use, i.e., capital equipment for programming.

If membership of the NSCC is terminated, staff recommends hiring a law firm with expertise in franchises to assist in negotiating a franchise agreement with Comcast. According to the Joint Powers Agreement, the City retains its right to rescind withdrawal at any time prior to the expiration of the franchise agreement, although it is recommended the City not participate in the Strategic Planning Committee of the NSCC because intent to withdraw would create a conflict situation.

Councilmember Wickstrom stated that in the 10 weeks since June there has been little progress in negotiations between NSCC and Comcast. She does not expect any further significant movement in negotiations in the next 8 weeks. She urged Councilmembers to vote for the motion to withdraw. Although there are a number of things the City would lose by withdrawing from the NSCC, there is no guarantee the City would retain these benefits by continuing membership. A significant change in PEG fees will likely occur in any case. FCC rules state that cable companies are not required to pay operational funding. Comcast has made it clear that they do not intend to pay operational costs. This means that if CTV is going to continue current operations, that money will have to come from franchise fees and would be a significant cost to the City. The list of things to be lost with withdrawal is the same that could be lost with continuing membership. Viewership has declined significantly. Technicians at Comcast state that if the City withdraws from the NSCC, a one-time piece of equipment would be needed for public meeting broadcast. The equipment would not be significantly expensive. One gain would be that any broadcast would go directly from the City to Comcast rather than to CTV and then to Comcast where it is actually broadcast. The relationship between NSCC and Comcast is so negative that she believes the City can negotiate a better agreement on its own. At this time, the NSCC is hopeful that an administrative hearing will rule in their favor. She believes the PEG fee issue will be ruled in Comcast's favor. The NSCC has made no plans to address that issue. Comcast has made it clear that when the franchise agreement expires in November, they will no longer pay PEG fees, which means approximately six weeks of no PEG fees for CTV.

Councilmember Johnson commended City Manager Schwerm, Mayor Martin and Councilmember Wickstrom for their incredible effort at working on this issue. The collaborative effort to reach agreement that the City seeks has been hindered.

Councilmember Quigley stated that he has examined the budgets of the NSCC and NSAC and costs of litigation. It does not appear to him that the City would benefit greatly from this. This process has become burdensome, and the NSCC is intractable in its position.

Mayor Martin stated that it has been the City's goal to stay in the NSCC. She acknowledged the many volunteers who work hard to produce good public access programming. However, it is troublesome that the issues raised by Shoreview in the last year have not been addressed by the NSCC. Before deciding to opt out, a meeting was held with other member cities to notify them of Shoreview's possible withdrawal. At that time the other mayors and city managers encouraged resolving issues with alterations to the governance structure of the NSCC. In looking at other cable commissions in the metro area, glaring discrepancies could be found. One cable commission spends only \$55,000 annually on oversight; the NSCC spends \$360,000. Some commissions have limited legal fees over the course of the franchise agreement. NSCC will likely spend over \$800,000. There has been consistent resistance on the part of NSCC to address these issues. The gain of negotiating individually would allow focus on what Shoreview needs. There may be some savings to residents. Her concern is that after negotiating an agreement with Comcast, it is unknown who the agreement will actually be with because of the merger of Comcast and Time Warner causing the transfer of the agreement to another company. For that reason, she supports the recommendation to seek legal expertise on this transfer. She supports withdrawal with the option that withdrawal takes place at the optimal time.

Mayor Martin opened the discussion to public comment.

Mr. Emmett Coleman, Comcast Representative, stated that he does not disagree with any of the comments expressed by Councilmembers. He expressed disappointment at how City Manager Schwerm has been treated by the NSCC; that is how Comcast is treated. He commended the Council on how seriously this issue has been taken. The Council has done its homework. Comcast appreciates the leadership this Council has shown. Comcast is ready to work individually with Shoreview. He expressed his sincere appreciation for an engaged public policy discussion.

Councilmember Wickstrom asked if Comcast staff would work with the City to set up the proper equipment and training to operate it for public broadcasts. **Mr. Coleman** stated that there is no issue in providing that technical help. This is done routinely with other communities.

MOTION: by Councilmember Quigley, seconded by Councilmember Johnson to recommend the following actions:

1. To authorize the Mayor to send a notice to the NSCC of Shoreview's intent to withdraw from the Commission at the end of the year prior to October 15, 2014;
2. To encourage NSCC and Comcast to resolve their differences informally and avoid the pending administrative hearing;
3. To reserve Shoreview's right to rescind this decision prior to the end of the year consistent with Article XI, Section 2 of the Joint Powers Agreement; and
4. To authorize the hiring of Kennedy & Graven to assist in negotiating a franchise agreement with Comcast and to handle the pending transfer of ownership of the franchise.

ROLL CALL: Ayes: Wickstrom, Johnson, Quigley, Martin
 Nays: None

Councilmember Wickstrom questioned continuing attending NSCC Board meetings or if it would be more of a hindrance.

Mayor Martin stated that the City will seek legal counsel on this question.

ADJOURNMENT

MOTION: by Councilmember Quigley, seconded by Councilmember Johnson to adjourn the meeting at 8:00 p.m.

VOTE: Ayes - 4 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 2nd DAY OF SEPTEMBER 2014.

Terry Schwerm
City Manager