

**CITY OF SHOREVIEW  
MINUTES  
REGULAR CITY COUNCIL MEETING  
June 2, 2014**

**CALL TO ORDER**

Mayor Martin called the regular meeting of the Shoreview City Council to order at 7:00 p.m. on June 2, 2014.

**PLEDGE OF ALLEGIANCE**

The meeting opened with the Pledge of Allegiance.

**ROLL CALL**

The following members were present: Mayor Martin; Councilmembers Johnson, Quigley, and Wickstrom.

Councilmember Withhart was absent.

**APPROVAL OF AGENDA**

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to approve the June 2, 2014 agenda as submitted.

VOTE:                   Ayes - 4                   Nays - 0

**PROCLAMATIONS AND RECOGNITIONS**

There were none.

**CITIZEN COMMENTS**

**Mr. Steve Hanson**, 1549 Knoll Drive, stated that he has two ash trees that are healthy but found an ash borer trap in one of his trees. He was given no advance notice of its placement. When he called the City, the staff person was very polite and explained the reason for the trap. He asked what Shoreview's plan is for the future for ash borer and his hope that the City does not cut the trees down. There is a treatment plan that can be used.

City Manager Schwerm explained that the City's policy toward emerald ash borer is to remove boulevard trees that are declining and replace them with a more diverse tree species. The City's policy is not to systematically take down trees. Shoreview is one of the only cities to adopt an ash tree treatment program to inject trees. Interns are hired in the summer to do the injections. Property owners are only charged for the approximately cost of the chemical. He acknowledged that the ash borer is increasing in Mr. Hanson's neighborhood and residents are encouraged to participate in treatment of their trees in order to protect their trees.

Councilmember Quigley asked the cost of treating a tree. Mr. Schwerm stated that residents can contact the Environmental Officer for detailed information. The cost is based on the diameter inch of the tree. He estimated the City's cost at \$3 to \$5 per diameter inch depending on the size of the tree.

Councilmember Wickstrom added that the Tree Trust is working on a tree inventory for the City and is seeking individuals to help with this project. Another pest beetle is coming that will impact four or five different kinds of trees. The inventory will be very important for protecting trees that will be susceptible to this new disease. Anyone interested in helping with the inventory can contact Karen Zumac at 952-767-3886 or at [karenz@treetrust.org](mailto:karenz@treetrust.org).

## **COUNCIL COMMENTS**

### **Mayor Martin:**

Beginning June 16th, Victoria Street at County Road E will be closed for work on the railroad crossing. The work is expected to take approximately two weeks and will qualify the crossing to be a rail quiet zone. Also, Representative Isaacson announced at the last meeting that funding has been secured to create quiet zones at the crossing at North Owasso and Jerrold Avenue crossings.

The Farmers' Market will open Tuesday, June 17, 2014.

### **Councilmember Wickstrom;**

Thank you to the members of the Shoreview Green Community group who weeded and mulched the rain garden by Island Lake Park and near the pavilion in the Commons.

### **Councilmember Johnson:**

The summer Concert in the Commons Series will begin Wednesday, June 18, 2014, at 7:00 p.m. The opening concert will feature *Divas through the Decades* performing a musical tribute to influential female artists.

The groundbreaking for the *Playground for Everyone* will be Friday, June 6, 2014, 4:00 p.m.

On June 12, 2014, the City Council and Economic Development Commission (EDC) will host a Business Exchange at the Hilton Garden Inn, from 5:00 to 7:00 p.m.

## **CONSENT AGENDA**

Item Nos. 2 and 12 were pulled for separate discussion:

2. May 19, 2014 City Council Meeting Minutes: Councilmember Wickstrom noted a correction to Ms. Sprain's name—Jen Sprain, not Jan Sprain.
  
12. Election Judge Salary Increase: Councilmember Johnson requested further explanation of the significant increases for election judges from \$7.50 to \$9.50, and head judges from \$8.75 to \$11.50. Mr. Schwerm stated that increases are being given for two reasons: 1) to keep up with the minimum wage; and 2) to pay at a similar level of other cities and Ramsey County. A 20% increase was budgeted.

**MOTION:** by Councilmember Johnson, seconded by Councilmember Wickstrom to adopt the Consent Agenda for June 2, 2014, and all relevant resolutions for item No. 1 through 12:

1. May 12, 2014 City Council Workshop Meeting Minutes
2. May 19, 2014 City Council Meeting Minutes, as corrected
3. May 19, 2014 City Council Workshop Minutes
4. Receipt of Committee/Commission Minutes:
  - Planning Commission, April 22, 2014
  - Human Rights Commission, April 23, 2014
  - Environmental Quality Committee, May 27, 2014
5. Verified Claims in the Amount of \$623,870.09
6. Purchases
7. Adopt Sign Management and Retro-Reflectivity Policy
8. Developer Escrow Reduction
9. Amendment for Professional Services Agreement - Owasso St. Realignment, CP 09-12
10. Award and Installation Quote for 2014 Street Light Replacements, CP 14-03 and Hanson/Oakridge, CP14-01
11. 2014 Trail Construction and Reconstruction, CP 14-05
12. Approval of Election Judge Salary Increase

**VOTE:**                      Ayes - 4                      Nays - 0

## **PUBLIC HEARINGS**

There were none.

## **GENERAL BUSINESS**

### **ACCEPT THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED DECEMBER 31, 2013**

#### **Presentation by Finance Director Fred Espe**

Three reports are issued through the financial audit: 1) Legal Compliance Audit; 2) Management Report; and 3) Comprehensive Annual Financial Report and Opinion.

The Legal Compliance Audit consists of an extensive review of the following:

- Contracts and bidding
- Deposits and investments
- Conflicts of interest
- Public indebtedness
- Claims and disbursements
- Miscellaneous provisions
- Tax increment financing

There were no findings for 2013, which means the City is in compliance in all of the above categories.

The Management Report consists of an auditor's report to the City Council that discusses the following:

- Audit summary
- Governmental funds overview
- Enterprise funds overview
- Government-wide financial statements
- Legislative updates
- Accounting and auditing updates

No audit issues were identified.

The Financial Report reviews the following City funds:

- General Fund
- Special Revenue Funds
- Debt Service Funds
- Capital Project Funds
- Enterprise Funds
- Internal Service Funds
- Agency Fund

In 2013, revenues exceeded the budget by \$696,769, mainly as a result of the following:

- Strong tax collection--99.5%
- Building permit revenue exceeded budget by \$309,000
- Capital project administrative charges exceeded budget by \$146,000 for infrastructure built in the City during 2013.
- State Fire Aid was received in the amount of \$206,815, which is passed through to the Lake Johanna Fire Department. Previously, this was budgeted as an agency expense. In the future, this item will be budgeted as both a revenue and expense.
- Interest earnings are under budget because accounting principles require the City to adjust investments held to market value at year end. The City invests in fixed income securities, such as Fannie Mae and Freddie Mac. It is the City's policy to carry investments to maturity so there is no loss of principal.
- Plan check fees and rental license fees exceeded budget by \$87,000

General Fund expenditures exceeded the budget by \$111,709. The City's policy to transfer a portion of the General Fund at year end exceeded the budget by \$417,000. The transfer was put in the Street Renewal Fund. If the State Fire Aid were taken out, the City's actual expenditures are below budget for 2013.

The minimum General Fund balance is calculated using property tax revenues and state aid. A significant source of revenue in the General Fund is property taxes, which are collected in July and December. In order to meet cash flow needs, it is necessary to designate a portion of cash flow at year end to meet expenses from January to June of the next year. That designation is 50% of the following year's tax levy. The City collects no state aid. From the 2014 budget, 10% is designated for any unanticipated expenditures. No special designations were made for 2014. The General Fund balance increased by \$167,597 from 2012 to 2013 in accordance with the City's policy.

All special revenue funds had positive operations for 2013, except for Cable Television. The reason is the improvements to the Council Chambers, which was a planned decrease.

Utility funds also experienced positive operating income. Gallons of water sold were about 4% higher than estimated. Significant capital contributions were received in 2013. These are assets constructed by governmental funds and then given to the Water or Sewer Funds, which shows revenue for that portion of assets.

Debt balances increased from \$24,055,000 in 2012 to \$30,965,000 in 2013. In 2013, the City issued a refunding bond issue of \$2,900,000. Proceeds went into an escrow account. Accounting principles require the City to show both the old debt and the new refunding debt on the books. When the call date occurs on the bonds, they will be paid off and removed from the books. The City saved \$291,484 in interest on old debt as a result of the refunding issue. The City's bond rating remains at AAA. A total of \$9,835,000 of debt was issued in 2013, which included the refunding bonds, street reconstruction bonds, capital improvement bonds and utility revenue bonds.

The City received the Certificate of Achievement in Excellence in Financial Reporting for the 28th consecutive year. The City's unemployment rate is 3.9% compared to 5.1% for the state and 7.4% nationally.

This report is distributed to the following agencies:

- State of Minnesota
- Bond rating agency
- Government Finance Officers Association for the Certificate of Achievement
- Springsted, the City's financial advisor
- Public library for public review
- City website

Staff is recommending acceptance of the financial report. The auditors have offered to meet with the Council in a workshop discussion if requested.

Mayor Martin noted that no concerns were raised by the auditor, and no recommendations were made to change any practices.

Councilmember Quigley suggested a workshop discussion, as the document is 175 pages and contains a lot of detail. City Manager Schwerm stated that he will schedule a workshop meeting with the auditor in July or August.

**MOTION:** by Councilmember Quigley, seconded by Councilmember Johnson to accept the comprehensive annual financial report for the fiscal year ended December 31, 2013.

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

### **APPROVAL OF LIQUOR LICENSE RENEWALS**

**Presentation by City Manager Terry Schwerm**

All liquor licenses in the City run from July 1 to June 30, and are, therefore, up for renewal. Staff is recommending renewal of all licenses.

Criminal background checks have been conducted. No significant issues have been reported. Staff also reviewed police calls to the businesses and found no significant concerns. License insurance and fees have been received from each business. All property taxes and utilities are current for each of these businesses.

Mr. Schwerm noted a license transfer at Bacchus Wine and Spirits. Originally, the license was granted to Diane Low in 2001. In 2007, the license was transferred to her son, Steven Low. At this time, Ms. Low is requesting the license be transferred back into her name. All necessary paperwork for the transfer has been completed.

**MOTION:** by Councilmember Wickstrom, seconded by Councilmember Johnson to approve the following liquor license renewals for the license term July 1, 2014 through June 30, 2015:

<b>Establishment</b>	<b>Type of License</b>
Green Mill Restaurant	On Sale Intoxicating and Sunday
Meister's Bar and Grill	On Sale Intoxicating and Sunday
Hilton Garden Inn	On Sale Intoxicating and Sunday
Red Robin Gourmet Burger and Spirits	On Sale Intoxicating and Sunday
Bacchus Wine and Spirits	Off Sale Intoxicating
Back Yard Liquor	Off Sale Intoxicating
Rice Creek Liquor	Off Sale Intoxicating
Trader Joe's	Off Sale Intoxicating
JJ's Wine and Spirits	Off Sale Intoxicating
Target	Off Sale 3.2 Malt Beverage
Rainbow Foods	Off Sale 3.2 Malt Beverage
Island Lake Golf Course	On Sale 3.2 Malt Beverage
Mansetti's Pizza and Pasta	On Sale 3.2 Malt Beverage and Wine
Wok Cuisine	On Sale 3.2 Malt Beverage and Wine
Red Ginger China Bistro	On Sale 3.2 Malt Beverage and Wine
Chipotle Mexican Grill	On Sale 3.2 Malt Beverage and Wine

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

## **AUTHORIZATION TO TERMINATE MEMBERSHIP IN THE NORTH SUBURBAN COMMUNICATIONS COMMISSION**

### **Presentation by City Manager Terry Schwerm**

The City has been a member of the North Suburban Communications Commission (NSCC) since 1982 through a Joint Powers Agreement with 9 other cities in the north metro area. The purpose of the agreement is to monitor operations and activities of the cable system; administer the franchise; and develop community cable television programming. Community programming is done by NSCC's sister organization, the North Suburban Access Corporation (NSAC). NSAC receives approximately \$1.5 million per year in Public Education and Government (PEG) fees collected from cable subscribers at the rate of \$4.15 per subscriber each month. The NSCC budget is approximately \$350,000 per year and funded primarily through contributions from the 10-member cities. Shoreview contributes approximately \$70,000 per year to NSCC. The franchise renewal process is specific in Federal law.

For the past few years, the NSCC has been engaged in the franchise renewal process, which included a technical review of Comcast's performance and a needs assessment. Negotiations were begun in an informal process, however, because the two parties are not in agreement and negotiations were not making progress, the NSCC voted to initiate the formal renewal process. This required the submittal of formal proposals from both the NSCC and Comcast. The formal process means that certain timelines would be triggered for the City to accept or preliminarily deny Comcast's franchise proposal. The deadline for acceptance or denial is June 20, 2014. The NSCC is recommending that all member cities preliminarily deny the proposal. If a city were to choose not to vote for either acceptance or denial, it would be interpreted as an acceptance of Comcast's proposal. Mr. Schwerm noted that Councilmember Wickstrom, Shoreview's representative to the NSCC, voted against the recommendation that cities preliminarily deny Comcast's proposal. If the proposal is preliminarily denied, the next step would be an administrative hearing before an administrative law judge. Results of the hearing could be appealed to either state or federal court.

During the formal process, informal negotiations have continued, but no agreement has been reached. The three major issues of disagreement in the negotiations are:

1. **PEG Funding:** A Federal Communications Commission (FCC) ruling states that Comcast is no longer required to provide operations support for public access as part of the franchise renewal. The requirement is only to provide reasonable capital support for public, education and government access. Operational support for PEG programming is typically provided by contributions from franchise fees by cities. However, the public access model at NSAC has been operation support from PEG fees, which has allowed significant public access programming. This is the major issue in franchise renewal negotiations.
2. **Number of PEG Channels:** Comcast currently dedicates eight channels for public education and government access. In its renewal proposal, Comcast is offering four channels (3 in standard definition, 1 in high definition), and an opportunity to add a fifth channel based on usage of the four.
3. **Institutional Network:** Comcast has constructed an institutional network (I-net) to connect all of the cities in the franchise. I-net provides for dedicated use of a small part of Comcast's network by the 10 cities. However, federal regulations do not require Comcast to provide free use of this network beyond PEG access use.

The City Council has discussed these issues with both the NSCC representatives and Comcast representatives and directed staff to prepare a motion to withdraw from NSCC due to the following reasons:

1. Amount of money spent on franchise administration and oversight--the 10 cities in the NSCC spend significantly more than other cities and other cable commissions.
2. Relationship between NSCC and Comcast which has been strained.
3. Changing nature of public access programming as a result of changing technology.

If the City were to withdraw from NSCC, Shoreview residents would lose the ability to use the public access studio operated by NSCC. The City would also need to purchase equipment for City programming and webstreaming to provide City Council and Planning Commission meetings. This would be an additional capital cost to the City. If the City chooses to withdraw from NSCC, there would be reduced administration and oversight, and the City would have less bargaining power with Comcast as a smaller subset of the NSCC. However, the City would retain all of its franchise revenue and increase its revenue by the \$70,000 now paid to NSCC. The City would also retain any PEG fees.

The Joint Powers Agreement requires that the City indicate its intent to withdraw from the Commission by October 15, 2014. If the Council votes to withdraw, it would not be effective until the end of the year. The City also has the right to rescind its withdrawal prior to the end of the year. The City has paid its full dues to NSCC for 2014. Withdrawal also forfeits any claims to equipment or any assets owned by the NSCC.

Mayor Martin stated that the NSCC is made up of the 10-member cities. It is important to note that the actual franchise agreement with Comcast is with the cities, not the NSCC. Shoreview is concerned with relationships with the other cities. All 10 cities met earlier in the day that was very productive. The other member cities have requested that Shoreview delay opting out of NSCC and continue to work with them in the process. Many of Shoreview's concerns are also concerns of the other cities. There is agreement that the franchise agreement oversight could be handled more efficiently and economically. Her recommendation is to table this issue indefinitely in light of the meeting with neighboring cities. The City still has until October 15, 2014 to opt out of NSCC, if it is desirable. The City would also have to make a decision on the NSCC recommendation to preliminarily deny Comcast's offer by June 20, 2014.

Councilmember Wickstrom stated that the City Manager's report is based on how operations currently exist. The losses will likely be losses under a new franchise agreement. It is important to realize that Comcast does not pay PEG fees for public access. The customers pay the PEG fee of \$4.15 per month per customer. That will change. In the past that money could be used for equipment and operating money. New FCC regulations state that the money can now only be used for capital expenses. That will be a significant change.

Councilmember Wickstrom stated that she is greatly encouraged by recent responses from the other member cities. She would like to see a new governance model. The franchise agreement is between the cities and Comcast, not NSCC and Comcast. NSCC operates on behalf of the cities based on the Joint Powers Agreement. She would be willing to support a motion to table a decision to withdraw from NSCC. However, she would like it to be clear that meetings are expedited to set up a new governance structure for NSCC and NSAC so they are more

accountable to the cities who have the contract and the customers paying the bills. If enough progress is not made to convince Comcast to postpone the June 20 deadline for voting to accept or preliminarily deny, no matter how the City votes, there will be legal battles.

Councilmember Johnson commended Mayor Martin and City Manager Schwerm for their leadership in bringing the 10 cities together on the critical issues of expenses and the future. Her concern is mostly with the relationship with NSCC and is pleased that there is collaborative action.

Mayor Martin stated that all mayors of the 10 cities have made a huge commitment to this process. While there is a potential loss of public access, there are other models for how the system can work. She added that it is difficult to vote for a renewal for 10 years when technology is changing so fast. People are finding different ways to watch TV and get the programming they want. She does not believe an agreement at this time would be relevant for 10 years.

Councilmember Wickstrom noted that the current contract is based on technology that is 16 years old. It is important to make sure the contract does not specify technical systems that may soon be out of date.

Mr. Schwerm stated that NSCC also discussed a shorter franchise agreement of five or seven years but Comcast does not support that. One downside to that is that franchise renewal begins approximately three years before the end of the franchise. He stated that city managers will meet within the next two weeks, but it will not be possible to have a new governance model by that time. He is encouraged by most recent informal negotiations with Comcast and noted that the tenor of the negotiations have changed some due to a new attorney representing the NSCC.

Mayor Martin stated that the goal is to reach an agreement so there will not be an administrative hearing before an administrative law judge, which would most likely be appealed and throw the process into legal action. This is why Shoreview discussed opting out, so as not to be part of long-term ongoing legal action.

Councilmember Wickstrom stated that it is very frustrating that in the last three years informal negotiations have not resulted in an agreement, which led to the formal process and now 18 days to make a decision.

**MOTION:** by Councilmember Quigley to table this new proposed motion in light of the next triggering event in this complicated calendar.

The motion died for lack of a second.

**Discussion:**

Mayor Martin asked if the Council needs a motion to table, or if the proposed motion can be ignored. City Attorney Kelly explained that there are a number of ways to call the motion. The proposed motion could be made and die for lack of a second, or the Chair could call for a motion that is not made, or the motion could be tabled as an agenda item, which, he believes, is cleaner and clearer in the record. Tabling should be tabled to a specific date.

Councilmember Quigley stated that not knowing the time specific, he used the next triggering date in his motion but would defer to the language proposed by the City Attorney.

Councilmember Wickstrom stated that by June 16th, the Council must accept Comcast's proposal or deny it and proceed with legal actions. In order to prevent that, significant progress must be made to stop the formal process. She does not want to see the City stuck in a position of not being able to opt out and have its own franchise agreement with Comcast, if no progress in negotiations is made. She wants Shoreview to have an agreement with Comcast either through the NSCC or on its own and not have to confront the decision of acceptance or denial, as is now proposed.

Councilmember Johnson stated that in light of the new cooperation among the 10 cities, there is leverage to ask Comcast for an extension.

Mr. Schwerm stated that the City would still be able to opt out on June 16<sup>th</sup>, but he does not believe it is realistic to expect a new agreement or new governance structure within the next two weeks because there are other issues besides the major ones identified. Unless Comcast grants an extension based on this new information, he believes the City will have to take the action to preliminarily deny. Even though that triggers the administrative hearing process, Shoreview could still decide to opt out. He believes informal negotiations will continue, and agreement is possible before an administrative hearing can take place.

Councilmember Wickstrom asked how much time it might take to get an administrative hearing.

**Mr. Mike Bradley**, NSCC Counsel, stated that he is not sure what time it would take to get an administrative hearing. All 10-member cities have to make a preliminary decision to accept the proposal or preliminarily deny it. Comcast then has the option of requesting an administrative hearing. There would be pre-hearing matters between the attorneys. Recommended findings from the administrative law judge would go back to all member cities for final action. There will be a full record transcribed by a court reporter. He would estimate that it would be fall or winter before that process might be completed. He noted that the League of Minnesota Cities has agreed to defend the NSCC through that process so many of the legal fees would be covered.

Mayor Martin asked if an appeal would go to district court or federal court. Mr. Bradley explained that the findings from the administrative law judge would go to NSCC who would make recommended findings to the 10-member cities. The cities will also receive the judge's findings and court record of the proceedings. Each city again would vote on that recommendation. He believes an appeal would go to federal court.

Mr. Schwerm noted that the issue before the administrative law judge will be whether Comcast is in default of its current franchise agreement. He believes the Council will have information on its concerns with NSCC and can decide to opt out at any time before October 15.

Councilmember Wickstrom stated that the important decision is not to opt out of NSCC. The important decision is to get an agreement with Comcast. The only reason the City would opt out of NSCC is if NSCC cannot come to an agreement. Mr. Schwerm stated that by September the City will know if informal negotiations are succeeding. At that time, the Council can still vote to opt out and negotiate directly with Comcast before the end of the franchise agreement at the end

of November. He suggested the motion be made to table this matter until the September 2, 2014, Council meeting.

**MOTION:** by Councilmember Wickstrom, seconded by Councilmember Quigley to table consideration of Shoreview's intent to withdraw from the North Suburban Communications Commission to August 18, 2014.

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

**ADJOURNMENT**

**MOTION:** by Councilmember Johnson, seconded by Councilmember Quigley to adjourn the meeting at 8:32 p.m.

**VOTE:** Ayes - 5 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 16<sup>th</sup> DAY OF JUNE 2014.

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Terry Schwerm  
City Manager