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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1379**

Mediacom Minnesota, LLC,
Relator,

vs.

City of Prior Lake,
Respondent.

**Filed June 22, 2010
Affirmed
Toussaint, Chief Judge**

City of Prior Lake
Resolution 09-093

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Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge; and Crippen, Judge.*

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Relator Mediacom Minnesota, LLC, the existing nonexclusive cable television franchiseholder in the City of Prior Lake, challenges the decision by respondent City of Prior Lake to enter into a franchise agreement with a second cable communications provider, Scott Rice Telephone Company (Integra), the proposed service area of which a portion overlaps relator's service area. Because we conclude that respondent was not unreasonable, arbitrary, or capricious in its application of the law to the facts, we affirm.

DECISION

When a city council performs a quasi-judicial action, it is subject to certiorari review by this court. *Pierce v. Otter Tail County*, 524 N.W.2d 308, 309 (Minn. App. 1994), *review denied* (Minn. Feb. 3, 1995). “Quasi-judicial proceedings involve an investigation into a disputed claim that weighs evidentiary facts, applies those facts to a prescribed standard, and results in a binding decision.” *In re Dakota Telecomm. Group*, 590 N.W.2d 644, 646 (Minn. App. 1999). Decisions involving the grant of a cable television franchise are guided by Chapter 238 of the Minnesota statutes. Minn. Stat. §§ 238.02-.43 (2008); *see also* 47 U.S.C. §§ 521-573 (2006) (directing states in adoption of cable television franchises). In order to grant a cable television franchise, Section

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

238.081 prescribes a procedure for notice, time limit, contents of the franchise proposal, public hearing, and awarding of the franchise. Minn. Stat. § 238.081. The procedure requires documentary evidence in the proposal and allows for testimonial evidence at the public hearing and results in a binding decision. *Id.*, subds. 4, 6; *see Minnesota Ctr. For Env'tl. Advocacy v. Metro Council*, 587 N.W.2d 838, 844 (Minn. 1999) (noting that quasi-judicial proceeding is marked by binding decision); *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996) (finding proceedings quasi-judicial because they involved testimonial and documentary evidence). A city council's grant of a cable television franchise is a quasi-judicial proceeding if it complies with the requirements of Minn. Stat. § 238.081. *Dakota Telecommun.*, 590 N.W.2d at 647. Here, because the city council complied with the cable act by properly publishing notice, requiring and reviewing the franchise proposal, and issuing a binding decision, the decision to grant Integra a cable franchise was a quasi-judicial decision subject to certiorari review by this court.

Certiorari review of quasi-judicial proceedings is limited to “questions affecting the jurisdiction of the board, the regularity of its proceedings, and, as to merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quotation omitted).

Generally, decisions of municipalities “enjoy a presumption of correctness” and, as long as the municipality “engaged in reasoned decision-making, a reviewing court will affirm its decision even though the court may have reached another conclusion.” *CUP*

Foods, Inc. v. City of Minneapolis, 633 N.W.2d 557, 562 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). As a reviewing body, we will not retry facts or make credibility determinations; rather, we will uphold the decision “if the lower tribunal furnished any legal and substantial basis for the action taken.” *Senior*, 547 N.W.2d at 416 (quotation omitted).

In order for cable communications systems to operate within a city, they must enter into a franchise agreement with the city. Minn. Stat. § 238.08, subd. 1(a). Prior to entering into a franchise agreement, a city must solicit bids for a cable franchise by publishing notice of intent to consider an application for a franchise fulfilling the requirements of Minn. Stat. § 238.081, subds. 1,2. A party that wishes to apply for a franchise must submit a franchise proposal in accord with Minn. Stat. § 238.081, subd. 4. In order to satisfy the statutory requirements, a franchise proposal must include, *inter alia*, a statement indicating the applicant’s qualifications and experience in the cable communications field, and plans for financing the proposed system, indicating every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital. Minn. Stat. § 238.081, subd. 4 (7) (9).

In cases where the city has an incumbent franchise-holder, no additional cable-television franchise may be granted on terms and conditions more favorable or less burdensome than the existing franchise agreement with regard to (1) the area served, (2) public, educational, and government access requirements, or (3) franchise fees. Minn. Stat. § 238.08, subd. 1(b). After receiving the franchise proposal and prior to granting a

franchise, a public hearing must be held before the franchising authority affording reasonable notice and reasonable opportunity to be heard. Minn. Stat. § 238.081, subd. 6. A city may then award a cable communication franchise at its discretion. *See id.* at subd. 7 (“Franchises may be awarded by ordinance or other official action by the franchising authority.”).

Here, respondent complied with its statutory notice requirements by soliciting bids for a cable television franchise in the local newspaper. Integra was the only party to submit a franchise proposal. The written proposal provided information required by Minn. Stat. § 238.081, subd. 4. Specifically, regarding Integra’s qualifications and experience in the cable communications field, the proposal stated:

Integra Telecom currently operates and maintains a fiber optic and copper communications system which provides telecommunications and information services to residents and businesses within the City of Prior Lake pursuant to authority prescribed in the Certificate of Need issued by the Minnesota Public Utilities Commission. We have maintained this system for over 60 years with a technologically proficient staff of over 40 individuals. The City of Prior Lake will be the first City in which Integra provides cable services. Integra will be augmenting its experienced telecommunications staff with video expertise and personnel from CISCO, DASCOS and JACI.

Regarding Integra’s plans to finance the system, the proposal stated: “Because the Integra telecom video product will be implemented utilizing our existing infrastructure, the investment will be minimal and will be internally funded from Integra Telecom corporate operating cash.”

The Prior Lake City Council considered the Integra proposal during a series of public hearings from April through June 2009, during which reasonable opportunity to be

heard was given to both Integra and relator, which opposed Integra's proposal. The city council's consideration of the Integra proposal involved dialogue with Integra employees and the city attorney throughout the public hearings. Upon making findings regarding the statutory requirements for a cable television franchise, respondent ultimately chose to enter into a franchise agreement with Integra.

Relator challenges the grant of the Integra franchise by respondent. Specifically, relator argues: (1) that the Integra franchise agreement was granted with more favorable terms regarding public, educational, and government access requirements funding and coverage area than are contained in relator's franchise agreement, and (2) Integra was not required to establish its qualifications for operating and ability to finance the system prior to entering into the franchise agreement. We find these challenges to be without merit.

In order to reach its decision, the city council relied on information from Integra, relator, the city attorney, and FCC Report and Order and Further Notice of Rulemaking No. FCC 06-180, which discusses the local franchising process under the Cable Communications Policy Act of 1984. With regard to public, educational, and government access requirements funding, the city council concluded that, while the Integra agreement called for a different total amount of money paid in a different format from relator's agreement, Integra would end up paying a proportionately comparable amount as relator over a shorter period of time. The city council concluded that, given the economic situation of the city at the time, the Integra plan would be financially beneficial to the city. With regard to coverage area, the city council found that a level playing field would be created by this plan, taking into account build-out costs and the

fact that relator already had full control of the market for the area in which Integra would be offering its services. Finally, regarding Integra's qualifications for operating and ability to finance a cable television franchise, the record demonstrates that Integra's franchise proposal adequately addressed these issues.

We conclude that respondent supported its grant of the Integra franchise with substantial evidence and therefore did not act arbitrarily or capriciously in reaching its decision. *See Dakota Telecomm.*, 590 N.W.2d at 648 (noting that decision of city to grant cable franchise may be reversed if unsupported by substantial evidence or if arbitrary and capricious). Additionally, we conclude that respondent's decision was not oppressive, unreasonable, fraudulent, or made under an erroneous theory of law.

Affirmed.