

**MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 4, 2002

1. CALL TO ORDER

Chair Sodergren called the meeting to order at 6:30 p.m.

2. ROLL CALL

Commissioners Yearwood, Clinton, Egge, Gallop, Knight, Wagner, and Sodergren were present.

Staff Members Present: Planning Director Geoff Olson, Principal Planner Cary Teague, Associate Planner Virginia Finlayson, and Planning Intern Susan Thomas.

3. APPROVAL OF AGENDA: The agenda was approved as submitted.

4. APPROVAL OF MINUTES: March 21, 2002

Gallop moved, second by Egge, to approve the March 21, 2002, meeting minutes as submitted.

Clinton, Egge, Gallop, Knight, Yearwood, and Sodergren voted yes. Wagner abstained. Motion carried.

5. REPORT FROM STAFF

Olson briefed the Commission on land use applications considered by the City Council at its meeting of March 25, 2002:

- Adopted a resolution approving a three-year conditional use permit to allow temporary nursery sales at 17501 Minnetonka Boulevard for Holasek Greenhouses.
- Adopted a resolution approving a conditional use permit to erect a 130-foot-tall water tower at 4537 Williston Road with a condition increasing the amount of landscaping on the north.

Olson reported that the April 1, 2002, City Council work session reviewed the City's affordable housing needs. The City Council favored being proactive in purchasing and developing properties to be used for affordable housing. Using density as an incentive to provide affordable housing was also discussed.

Olson announced Finlayson's retirement from the City would begin the next afternoon. He expressed appreciation for her technical abilities, and that she has been a pleasure to work with. Chair Sodergren congratulated Finlayson on behalf of the Commission.

Chair Sodergren introduced the newly appointed Planning Commissioner, Tony Wagner.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA

A. Resolution approving a side yard setback variance for an addition to the home at 16033 Dawn Drive for Daniel and Jean Sigurdson (02013.02a)

Item 7A, a resolution approving a side yard setback variance for an addition to the home at 16033 Dawn Drive for Daniel and Jean Sigurdson (02013.02a), was removed from the Consent Agenda for discussion.

Thomas reported. Gallop was concerned with living space, rather than a garage, being located six feet from the property line. He questioned if the living space side of other residences in the neighborhood had similar setbacks.

Dan Sigurdson, 16033 Dawn Drive, the applicant, stated that the garage side of residences primarily faced the side with a similar setback. Mr. Sigurdson stated that staff's report was correct in explaining the natural features and angle of the lot that made the variance necessary. Increasing the length of the proposed setback would make the living space unusable.

Gallop was concerned that the neighbor to the west would be restricted from expanding to the east. Gallop asked if the addition could be built while maintaining the setback. Mr. Sigurdson explained where large trees were located in the front and back. He agreed that the residences would be close to each other if the residence on the west expanded.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Thomas stated that staff reviewed the application and considered alternatives with the applicant.

Clinton moved, second by Yearwood, to approve the Consent Agenda as recommended in the respective staff report as follows:

Adopt the resolution on pages A1–A3 of the staff report, which approves a side yard setback variance for 16033 Dawn Drive. This resolution is based on the following findings:

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. Hardship is caused by the location of mature trees and a substantial slope. The proposal attempts to preserve these natural features.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. Side yard setbacks within Woodland Hills Addition vary significantly.
 - b. The proposed addition would be located 30 feet from the adjacent property to the north.

Approval is subject to the following conditions:

1. Existing drainage patterns must be maintained.
2. Basketball hoop adjacent to Miracle Lane must be removed.
3. The installation and maintenance erosion control and tree protection, subject to review by the City's Environmental Resources Coordinator.
4. Submit proof of having recorded this resolution with the county before the City issues a building permit.
5. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.

Clinton, Egge, Gallop, Knight, Wagner, Yearwood, and Sodergren voted yes. Motion carried and the items on the Consent Agenda were approved as submitted.

8. PUBLIC HEARINGS

- A. Resolution approving side yard setback variances for an addition to the home at 17204 Grays Bay Boulevard for Paul W. Pedersen (02007.02a)**

Chair Sodergren introduced the proposal and called for the staff report.

Finlayson reported. She recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Paul Pedersen, 17204 Grays Bay Boulevard, applicant, stated he was available to answer questions. He agreed with staff's report and agreed that working with Finlayson was a pleasant experience.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Clinton questioned if conditions for the rain garden should be added. Finlayson agreed that a condition should be added to regulate the rain garden.

Yearwood asked if shoreline setback requirements would be met. Finlayson answered in the affirmative.

Clinton moved, second by Gallop, to adopt the resolution on pages A1–A4 of the staff report with the addition of a condition regarding the rain garden and gutters. This resolution approves side yard setback variances from the north property line from 25 feet to 18 feet and from the west property line from 25 feet to 22 feet for an addition at 17204 Gray's Bay Boulevard, based on the following findings:

1. Strict enforcement would cause undue hardship because of the following circumstances that are unique to this property:
 - a. The lot is non-conforming in size.
 - b. The home and garage have non-conforming setbacks, and the site exceeds the impervious surface area requirement for lakeshore lots. An addition could not be constructed without a variance.
2. The variance would be consistent with the spirit and intent of this ordinance for the following reasons:
 - a. The proposal would not alter the character of the area.
 - b. The proposal does not increase the amount of hard surface coverage.

Approval is subject to the following conditions:

1. Submit proof of having recorded this resolution with the county before the City issues a building permit.
2. Submit proof of having recorded a driveway easement in favor of 17200 Gray's Bay Boulevard before the city issues a building permit.
3. This variance will end on December 31, 2003, unless the City has issued a building permit for the project covered by this variance or approved a time extension.
4. Rain gardens and gutters must be used to regulate allowable water drainage rates.

Clinton, Egge, Gallop, Knight, Wagner, Yearwood, and Sodergren voted yes. Motion carried.

B. Resolution approving a conditional use permit for a 75-foot-high pole with wireless telecommunication antennas at 3311 County Road 101 for Sprint PCS (01010.01a)

Chair Sodergren introduced the proposal and called for the staff report.

Olson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Egge questioned if the application would fit into the aesthetic, long-range plans for the corner. Olson stated that the tower would be constructed to provide for co-location. He mentioned other improvements being considered for the area.

Egge asked if the pole's appearance would be modified if another provider would be added. Olson stated that the applicant could describe how another user would be incorporated into the design.

Gallop confirmed with Olson that the proposal would use one parking stall. Olson referred to an illustration of the eight-foot, screened-in antennae enclosure.

Steve Scriver, Sprint PCS representative, applicant, agreed with staff's report and was present to answer questions.

Chair Sodergren asked for his views regarding co-location. Mr. Scriver explained that the proposal was a two-carrier pole, so it would accommodate two users without modification. Each user has different requirements, but he predicted that at some point there should be another carrier that would want to put an antenna on the pole.

Yearwood asked if the pole would have lights. Scriver confirmed that there would be no lights.

Yearwood asked if the proposed pole would become obsolete. Scriver explained the industry history and predicted that every person would carry a cellular phone eventually.

Egge asked if more than two users could locate on the pole as proposed. Mr. Scriver stated that it might be possible if the pole was extended, but each carrier has a little different technology that made it hard to predict. Egge asked if providing a location for the equipment might restrict the number of carriers for each pole. Mr. Scriver answered in the affirmative and stated that if the building space was filled, there would be an issue as to where to put the equipment.

Gallop asked what the proposed pole's diameter would be at the base and top. Mr. Scriver stated that a two-carrier pole would be about three feet in diameter at its base and 18 inches at its top.

The public hearing was opened.

Patricia Olsen, 3333 County Road 101, was concerned with:

- the parking needs of the businesses adjacent to the parking lot;
- the proposal working against the proposed aesthetic improvements to the area;
- a 75-foot pole making the intersection pedestrian unfriendly; and
- the use of cellular phones causes automobile accidents.

Olson explained the parking requirements. The site needed 52 stalls to meet the parking requirement and it would still have 66 stalls.

Vicki Clement, owner of a residential property to the north of the proposed site, stated she and her husband strongly opposed the proposal. She stated:

- The application did not meet the intent of the conditional use permit zoning regulations, in regard to providing protection for adjacent, neighboring properties, and providing proper screening or buffering, and the building codes.
- The proposal would impact the residential properties located to the north.
- She favored locating the pole on a corner, not next to residential property.
- Parking was currently insufficient to sustain the dance studio's traffic.

Chair Sodergren discussed the specifications provided in the antenna ordinance. Ms. Clement stated she heard Olson review the antenna ordinance earlier.

Dr. Kaaren Howe, 3318 Groveland School Road, Minnetonka Animal Hospital, stated:

- The general consensus of the businesses in the area opposed the proposed location of the antenna.
- They have been working to bury the power lines and improve the unsightliness of the neighborhood. The proposal would harm their efforts.
- The stealth tower would be an eye sore.
- She sold her residential property at 3306 Groveland School Road because she did not want to live next to a cellular phone tower.
- There currently was not adequate parking for the businesses.

Olson addressed the ordinance requirements relating to the review of a site and building plan. He stated screening or buffering a 75-foot pole would be difficult, but welcomed suggestions. Olson explained the Federal Communications Commission's requirements and reviewed the advantages and disadvantages of each location considered.

Ms. Clement questioned how trees located on the residents' property could be considered as buffering, since buffering must be located on the site, and felt that the bank and commercial businesses provided a buffer to the residential neighborhood. She asked if correspondence she received from Xcel Energy was correct. Olson stated that the original proposal required Xcel Energy to receive permission from the Clements to construct a 60-foot pole that would allow the burying of existing above-ground utility lines and remove the existing poles. He clarified that the proposal she received the correspondence in reference to was no longer being considered.

Ms. Clement questioned if the tower located by Cub Foods could be used. Mr. Scriver stated that the bank location did not work because there was not enough space. He reviewed other locations considered and provided the reasons why they did not work. He stated that since the equipment was required to be located inside the building, a substantial amount of space was required. Mr. Scriver stated that the Cub Foods tower is a Sprint facility and provides coverage for that area. Chair Sodergren clarified with Mr. Scriver that the Cub Foods site would not cover the needed area.

Egge asked what created the need for wireless coverage. Mr. Scriver explained that there are gaps in coverage. Users are using wireless phones as their primary phone and need reliability. Egge asked if the antenna could be located on the corner where the existing Quest antenna is located. Mr. Scriver stated it would be next to impossible because there would be no room for the 20-foot by 20-foot required equipment structure.

Olson reviewed the City Attorney's comments regarding the application meeting the City's requirements. Olson stated the stealth pole would resemble a flag pole and the equipment would be enclosed in a building.

In response to Knight's request, Olson reviewed how the conditional use permit and antenna ordinances relate to each other.

Knight asked if parking standards were met, and if they were, did the Commission have the authority to intervene. Olson stated that if the use met the City's ordinance requirements, there was nothing legally the City could do. He felt removing one parking stall, in regard to the current proposal, was fairly insignificant and would not be a sufficient basis to deny the application.

Yearwood favored the adjacent businesses being more involved in the application process, rather than the property owner solely negotiating with a telecommunication company. Olson agreed that adjacent property owners have a role to provide their opinion at the public hearing, but the applicant is not required to gain their approval. Yearwood acknowledged that the property owner had the right to act independently, but favored bringing parties together earlier to review applications.

In response to Yearwood's questions, Olson clarified that the proposed site is zoned and guided for retail and commercial uses. Olson confirmed that no easements were needed. Yearwood asked who would be responsible to complete the screening requirements. Olson stated that the City would hold the property owner responsible, but the property owner and the leased business may have an arrangement.

Chair Sodergren mentioned that each telecommunication tower would be reviewed by the Planning Commission to address landscaping and buffering issues.

Chair Sodergren tried to recall how many additional towers one telecommunications provider predicted would be needed in the City. Mr. Scriver predicated that Sprint would not have additional requests to locate antennas in the City.

Chair Sodergren invited Commissioners' comments.

Knight and Olson discussed each user's needs and when co-location could be utilized.

Clinton confirmed with Chair Sodergren that a sunset clause was included in the antenna ordinance. He believed that the applicant had done the best job, given the constraints of the area. He understood the neighbors' comments. He supported the proposal.

Egge looked at it as a balance between the public demand for wireless services and the impact of antennas on adjacent properties. She favored the flag-pole appearance and the ability for two users to use the same tower. She supported staff's recommendation.

No additional testimony was submitted and the hearing was closed.

Egge moved, second by Knight, to recommend that the City Council adopt the resolution on pages A1–A4 of the staff report. This resolution approves a conditional use permit for a 75-foot-high pole with wireless communication antennas at 3311 County Road 101. This resolution is based on the following findings:

1. The proposal meets the required conditional use permit standards.

Approval is subject to the following conditions:

1. Record this resolution with the county before the City issues a building permit.
2. The site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site Plan, dated February 25, 2002
 - Certificate of Survey, dated February 25, 2002
 - Enlarged Plan and Details, dated February 25, 2002
 - Tower Elevation, dated February 25, 2002
3. The City Council may reasonably add or revise conditions to address any future unforeseen problems.
4. Any change to the approved use that results in a significant increase in traffic or a significant change in character would require a revised conditional use permit.
5. The applicant, the pole owner, the landowner, and their successors must allow the shared use of the pole if an additional user agrees in writing to meeting reasonable terms and conditions for shared use, must submit a dispute over the potential terms and condition to binding arbitration, and must sign the conditional use permit agreeing to these requirements.
6. The applicant and the landowner must agree to the above conditions in writing.

Clinton, Egge, Gallop, Knight, Wagner, Yearwood, and Sodergren voted yes. Motion carried.

Chair Sodergren stated that the item was tentatively scheduled to be reviewed by the City Council on April 8, 2002.

C. Ordinance amending the conditional use permit standards for utility poles, transmission lines and substations (01062.01a)

Chair Sodergren introduced the proposal and called for the staff report.

Olson reported. He recommended approval of the application based on the findings and subject to the conditions listed in the staff report.

Yearwood asked if some scrutiny would be lost regarding the affected uses. Olson clarified that the conditional use permit standards would still be reviewed by the Planning Commission as done in the past.

Chair Sodergren asked Olson to explain how the proposal related to state law. Olson explained that the State of Minnesota had approved legislation that exempted the city approval process over transmission lines of 100 kilovolts or more. It exempted the Xcel Energy project from the City's review, but after talking with the state lawmakers, Xcel Energy agreed to follow the City's ordinance requirements.

The public hearing was opened. No testimony was submitted and the hearing was closed.

Egge moved, second by Gallop, to recommend that the City Council adopt the ordinance on pages A1–A5 of the staff report.

Clinton, Egge, Gallop, Knight, Wagner, Yearwood, and Sodergren voted yes. Motion carried.

9. Other Business

A. February 21, 2002, Workshop Results

Olson reviewed the events that took place and results of the February 21, 2002. Areas identified to focus on included making the Planning Commission's role clear to the public, possibly providing a timeline of the whole application process, and providing a debriefing time.

Chair Sodergren suggested a survey questionnaire be submitted with the resident form and hearing notices to be reviewed by the commission in the next packet.

Knight suggested providing legal restrictions that affect the Planning Commission's decisions with public notices. He favored quarterly debriefing meetings and a mentoring program for new Commissioners.

Yearwood favored a similar work session annually. Another work session within the next few months would be favorable to see how some of the ideas had been implemented.

Gallop felt it would be helpful for new Commissioners to discuss with current Commissioners their decision-making process to feel more comfortable participating in discussions and understand what was taking place.

Wagner took it upon himself to reach out to other Commissioners to gain from their knowledge and experience.

Egge suggested conducting a survey to obtain residents' comments would be helpful for the next meeting.

Yearwood mentioned that a Commissioner could be assigned as a mentor to discuss each meeting and answer questions about future items with a new Commissioner.

Egge stated that it had been considered, in the past, to enlist the help of former Commissioners as mentors.

Chair Sodergren preferred to have a follow-up meeting before the end of May. She suggested having the meeting an hour before a regular meeting. Knight favored holding the follow-up meeting immediately before a regularly scheduled meeting

10. ADJOURNMENT

Gallop moved, second by Knight, to adjourn the meeting at 8:30 p.m. Motion carried unanimously.

By: _____
Bernadette H. Leaf
Planning Administrative Assistant