

**MINNETONKA PLANNING COMMISSION
MINUTES**

APRIL 1, 2010

1. CALL TO ORDER

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

2. ROLL CALL

Commissioners Adams, Lehman, Sjeklocha, A. Thomas, and Cheleen were present. Walker was absent.

Staff members present: Community Development Director Julie Wischnack and City Planner Loren Gordon.

3. APPROVAL OF AGENDA: The agenda was approved with the removal of item 8A, ordinance amending city code regarding correctional facilities, for reasons explained in the change memo dated April 1, 2010.

4. APPROVAL OF MINUTES: March 18, 2010

Adams moved, second by Lehman, to approve the March 18, 2010, meeting minutes as submitted.

Adams, Lehman, Sjeklocha, A. Thomas, and Cheleen voted yes. Walker was absent. Motion carried.

5. REPORT FROM STAFF

Gordon briefed the commission on land use applications considered by the city council at its meeting of March 22, 2010:

- Introduced and referred to the planning commission an ordinance amending city code regarding correctional facilities.
- Adopted the resolution approving the conditional use permit, site and building plan review, and variance concerning the Williston Center at 14509 Minnetonka Drive.

Gordon pointed out an article in the *Minnetonka Memo* that provided information on diversifying native landscape.

The next planning commission meeting will be April 15, 2010.

6. **REPORT FROM PLANNING COMMISSION MEMBERS:** None

7. **PUBLIC HEARINGS: CONSENT AGENDA:** None

8. **PUBLIC HEARINGS**

A. Ordinance amending city code regarding correctional facilities. (86060.10a)

Gordon explained that the public hearing will be opened and closed in accordance with the notification, but that no action is needed.

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

B. Conditional use permit to install a wireless telecommunication facility on the property at Faith Presbyterian Church, 12007 Excelsior Boulevard. (91008.10a)

Sjeklocha recused herself from discussion and action for this item.

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

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

A. Thomas asked what distance one antennae covers. Gordon referred the question to the applicant.

Lehman asked if there is a structure or pole in the area the same height as the proposal. Gordon responded that the Wells Fargo building in Hopkins is the next tallest structure. There may a couple monopoles similar in height in the industrial area on the south side of Hopkins.

Lehman asked for the height of athletic field light poles. Gordon estimated most are 60 feet to 90 feet tall. A football field typically has lights on 90-foot poles. Smaller fields have shorter light poles. New poles would be taller than old poles.

Chair Cheleen noted a letter from a resident who questioned why the antennae would be located in a church parking lot rather than in the commercial area 5 blocks to the east. He commented that, in order to locate 20 towers in the city,

some would have to be located in areas besides commercial areas in order to provide coverage for the hilly areas. Gordon explained that there are many variables that go into determining optimal coverage. The city has a number of providers. The locations are typically commercial areas where the equipment is more able to adapt to the surroundings. Antennae are usually not seen in residential areas. Topography and trees fight against the ability to provide good coverage. The ordinance allows antennae to be located in institutional areas. Coverage issues are recognized. The applicant will describe the interconnected system which is a little different than others.

Christopher Coughlin, representing the applicant, stated that:

- Clearwire's transmission distance is not as far as some of the cellular companies. That is the reason why the applicant is forecasting approximately 20 sites in Minnetonka.
- He provided a spread sheet with proposed locations to staff. Most of the proposed antennae would be located on an existing structure.
- He provided a map of Minnetonka with the proposed sites and radius of the transmissions marked. The red circle represents the prescribed search area.
- The applicant did its best to use existing structures. Clearwire would rather install an antenna on an existing structure.

A. Thomas asked if coverage would be provided for areas not located in circles. Mr. Coughlin provided an illustration that showed the coverage gap. It is difficult to have a completely perfect network. The applicant uses mapping software that takes topography into account and shows how well the area would be covered. Flat terrain is necessary to have no coverage gaps.

A. Thomas lives in Glen Lake. He asked if his neighborhood would be covered. Mr. Coughlin said that the area south of his map is handled by another consultant, so he was unsure. Adams asked Mr. Coughlin if a resident who lives inside a circle would receive coverage and a resident who lives outside of the circle may or may not receive coverage. Mr. Coughlin responded that it would depend on topography. Another site is being assigned to the Williston Road and Excelsior Boulevard area. There is a search going on in the area currently.

Adams confirmed with Mr. Coughlin that 20 sites are currently being sought. Once the network is live, it may be determined that more would be needed. There might be a way to tilt the towers to increase the coverage area.

Adams asked if 100 percent of Minnetonka's residents would have access. Mr. Coughlin said that could not be guaranteed. A resident would check their address with Clearwire's database to determine if service would be available. The primary use of the service is residential. The signal is measured with a device by driving down every street.

Adams asked for the time line to construct all 20. Mr. Coughlin said that this application is the first to apply for a conditional use permit. He has received 2 administrative review approvals for collocation on existing communication towers. No additional height would be added. This is the third one.

Adams questioned when the service would go live. Mr. Coughlin estimated 12 months to 18 months. That is a decision that is made outside the scope of his work.

Adams asked him how many of the 20 antennae would be collocated. Mr. Coughlin knew of 2 others that would require conditional use permits. One would be in a right of way and one in an industrial area on Williston Road and Minnetonka Boulevard. The Glen Lake area would probably require a pole with the height of 75 feet to 90 feet.

Adams asked if Minnetonka residents would be able to purchase the service prior to it going live. Mr. Coughlin explained that Clearwire would make the public well aware when the service is available and testing has been completed with a marketing ad campaign and commercial launch. There may be trial runs.

A. Thomas asked for the estimated cost of the service to a resident. Mr. Coughlin said that the starting package costs \$40 per month and goes up from there.

A. Thomas noted that the opportunity for a second provider must be provided on each antenna. He asked who chooses the second provider. Gordon said that the owner of the antennae would authorize a second party to be collocated and then the city would perform an administrative review. A. Thomas questioned what would stop Clearwire from refusing each provider that requests to be collocated. He had a problem with that. If Clearwire denies a service provider, the city should have the ability to hold Clearwire to the agreement. Gordon has not heard of a case where the owner of a pole has denied another provider collocation. The pole owner and property owner must authorize the collocation. The ordinance forces conversation between the providers.

A. Thomas questioned why three other providers would not be required to be allowed to collocate. Gordon explained that the ability to collocate depends on a

distance separation vertically on the pole. The industry standard is 15 feet between providers. The 90-foot tower would allow a 2nd provider to be located at 75 feet. The problem is that a signal needs to be above 60 feet in Minnetonka due to mature trees and hills.

Wischnack stated that the city forces collocation. When the city has an application that proposes to construct a new tower, engineering staff verifies the information to confirm that there is no other opportunity. Many times, staff meets with applicants and another option is agreed upon. The collocation process prevents towers from being created unreasonably. A. Thomas said that was his concern. Competition is good and he understands the issues with topography, but he wants to be vigilant to prevent towers from ending up all over. Each tower should be utilized as much as it possibly can.

Gordon echoed A. Thomas' comments. He has not seen a rivalry between the companies. From staff's view, there seems to be a bit of dependency between the companies. When a tower is erected, a company may delay until another provider collocates on its tower. A. Thomas asked if a city kept a list of towers that could accommodate additional antennae. He noted that the landlord gets paid by the provider of the antenna. There is a benefit to put an antenna on one's property. Pretty good money can be made. Gordon explained that staff is tracking the geographic location of each antenna. There is an inventory of our public facilities and what is available.

Lehman asked Gordon to provide a characterization of a conditional use permit. He wanted to know what the city would gain by approving the conditional use permit. Gordon explained that the value to the city is the aesthetics. There are no other collocation facilities in the area. If the requirements for a conditional use permit are met, as determined by the planning commission and the city council, then the application would go through the process. Conditions may be utilized to minimize impact. That is where the planning commission may use its discretion.

Lehman asked if the city has regulatory authority over a business with a conditional use permit. Gordon responded that the city regulates compliance with the conditions of the conditional use permit. If the use evolved to something other than what would be provided by the conditional use permit, then the city would review, void, and/or modify the conditional use permit.

In response to Lehman's question, Gordon stated that securing a second site on a monopole is a first-come first-served process. The city is not typically put in a position where more than one application is submitted for the same tower at the same time.

Adams asked what kind of transmission speed residents would be able to expect with this broadband service. Mr. Coughlin said 1.54 MB upload and download speed based on the smallest of packages. It could be distributed through a Wi-Fi connection. Adams asked how that compared to Comcast internet service. Mr. Coughlin did not want to get into a commercial pitch. Some of those companies are partial shareholders in Clearwire. It is out of his scope to enter comparative analysis into the public record. Generally, Clearwire would be the fastest service available to residents.

Adams asked what other communities Clearwire would service. Mr. Coughlin responded 500 sites are under various stages of development throughout the metropolitan area. The west limit is Shorewood and Minnetrista and the east boundary is Maplewood and Woodbury. The initial launch is focusing on the Interstates 494 and 694 corridor and building out from there. The sites are all in the permit and acquire stage. The next step would be the budgeting process.

Adams asked if the service is commercially available in any other metropolitan area in the United States. Mr. Coughlin answered affirmatively for 24 metropolitan areas which all have NFL football teams. There is an earlier generation of Clearwire technology in the St. Cloud market.

Mr. Coughlin testified that he never presented a collocation application to a provider and had it denied. The reality is that Clearwire has a master lease agreement with every other carrier. If Clearwire denies a collocation application, then the next time Clearwire wants to collocate on one of the other provider's towers it becomes an issue. The master agreement sets reciprocal rates. It is a revenue producer. The carriers are friendly toward one another in that regard. Chair Cheleen noted that sharing towers as much as possible would be a financial incentive for all companies. Mr. Coughlin agreed.

Chair Cheleen was curious why Clearwire would need 20 locations. Mr. Coughlin explained that Clearwire technology operates at a much higher frequency. The higher frequency has less of a penetration rate so the trees and buildings knock down the signal. In South Dakota, a person can drive 25 miles, not see a tower, and have service because as long as there is line of sight with a tower service is available. The equipment keeps getting smaller. Rural areas need to be 300 feet off the ground. In metropolitan areas, the average is 75 feet or 90 feet.

The public hearing was opened.

Mary Schneider, 4700 Church Lane, objected to having the tower go up. She asked if there would be electrical power connected to the tower. Chair Cheleen stated that a resident would have to be within 5 feet of the antennae for a long time to be affected by radiation. The FCC has rules that regulate antennae.

Ms. Schneider asked if there would be a lot of digging. Mr. Coughlin provided an illustration that showed the route off of Nelson Drive. All of the wires would be buried. Erosion mitigation regulations would be followed. Silt barriers would be provided if necessary. Buried wires would be located from the garage to the tower. Chair Cheleen noted that a condition of approval requires the wires to be buried.

No additional testimony was submitted and the hearing was closed.

Adams felt that the proposal is an opportunity to bring exciting, new technology to the city and to offer residents an alternative to current internet access. If a couple of monopoles are needed for antennae with the remainder collocated, then he would be in favor of the conditional use permit.

Chair Cheleen concurred. An ugly wooden pole is located near his residence. After a while, it blended into the view. The proposed pole would be painted winter sky blue. From a distance, it would look like one, tall, thin pole. It will provide new coverage and competition. It is important for the city to stay ahead of technology. He supported staff's recommendation.

A. Thomas moved, second by Adams, to recommend that the city council adopt the resolution on pages A17–A24 of the staff report with a change to 5.01 Item 2, second sentence to say “This resolution does not imply or ensure . . .” This resolution approves a conditional use permit for a 90-foot telecommunication tower to be located on the east side of the existing Faith Presbyterian Church parking lot at 12007 Excelsior Boulevard. Approval is based on the following findings:

- 1) The proposal meets the conditional use permit standards as outlined in City Code 300.34–Telecommunication Facilities.
- 2) The proposed 90-foot height is reasonable, as it allows for realistic collocation opportunities.

Approval is subject to the following conditions:

- 1) The city's consulting engineer must finalize an intermodulation and height study for the proposed telecommunications facility confirming that: (1) the proposal would not interfere with existing radio frequencies used in the area; and (2) the proposed 90-foot height is appropriate.
- 2) This resolution approves only the telecommunication facility at 12007 Excelsior Boulevard, detailed in associated site plans and elevations date-stamped January 27, 2010. This resolution does imply or ensure future approval of any other telecommunication facilities in the community, regardless of their physical or wireless connection to the Excelsior Boulevard site.
- 3) The site and facility, including ground mounted equipment, must be developed in substantial conformance with the following plans:
 - Site Plan date-stamped January 27, 2010
 - Enlarged Site Plan date-stamped January 27, 2010
 - Tower Elevation and Antenna Plan date-stamped January 27, 2010
- 4) All utility and/or fiber connections to the telecommunication tower and/or ground-mounted equipment must be underground.
- 5) The telecommunication tower, ground mounted equipment, and associated utilities must be located and installed to minimize impacts within the critical root zones of adjacent trees, including the group of large oak trees west of the existing accessory building and the large walnut tree south of the existing parking lot.
- 6) The telecommunications tower/antennas must be painted "Winter Sky" or another color consistent with the color of the city's water towers, as reviewed and approved by staff.
- 7) No advertising message or identification sign larger than two square-feet may be affixed to the telecommunications facility.
- 8) The telecommunications facility may not be artificially illuminated unless periodically necessary to facilitate service to ground-mounted equipment.
- 9) No telecommunication employees are allowed on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.

- 10) The applicant must obtain appropriate electrical and building permits prior to installation of the antennas.
- 11) Prior to issuance of any required electrical or building permits, complete the following:
 - a) Submit individual written statements from the property owner and applicant, or their authorized representatives, agreeing to the conditional use permit conditions, agreeing to remove the telecommunication facilities when they are unused, obsolete, or become hazardous, and agreeing to the city's right to assess removal costs under City Code Section 300.34.5(n).
 - b) Submit appropriate easements for location of and access to the proposed telecommunication tower and ground-mounted equipment. These easements must be prepared by an attorney knowledgeable in the area of real estate. They are subject to the review and approval of the city attorney.
 - c) Record this resolution and required easements with the county. A copy of the recorded documents must be returned to the city.
 - d) The applicant must agree to the above conditions in writing
- 12) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 13) 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.

Adams, Lehman, A. Thomas, and Cheleen voted yes. Sjeklocha abstained. Walker was absent. Motion carried.

9. ADJOURNMENT

*Sjeklocha moved, second by Adams, to adjourn the meeting at 7:41p.m.
Motion carried unanimously.*

By: _____
Lois T. Mason
Planning Secretary