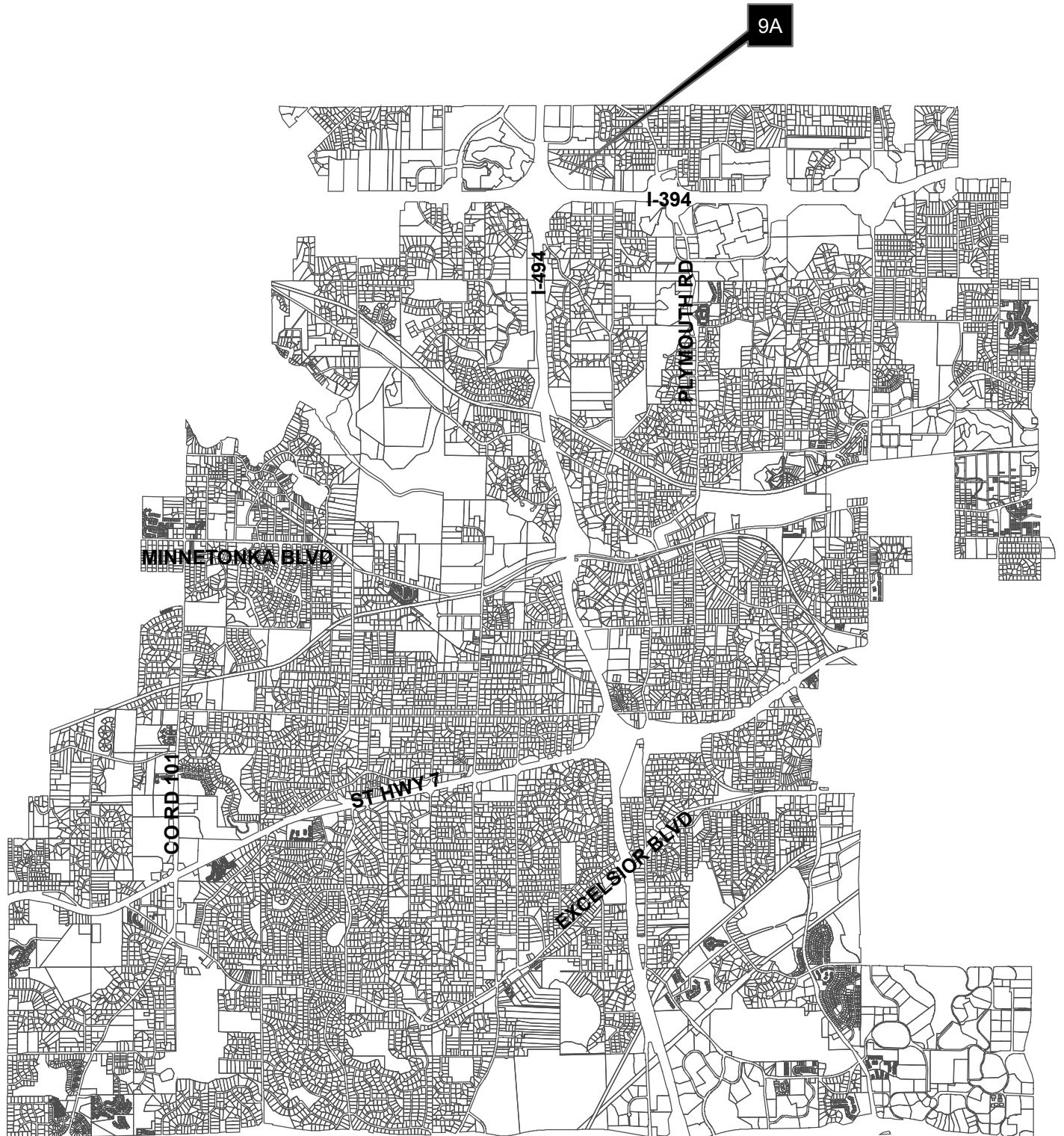


MARCH 3, 2011
PLANNING COMMISSION MEETING
AGENDA





PLANNING COMMISSION AGENDA

MARCH 3, 2011² 6:30 P.M.

CITY COUNCIL CHAMBERS² MINNETONKA COMMUNITY CENTER

1. Call to Order

2. Roll Call

3. Elections

- Election of Commission Chair
- Election of Commission Vice Chair

4. Approval of Agenda

5. Approval of Minutes: February 17, 2011

6. Report from Staff

7. Report from Planning Commission Members

8. Public Hearings: Consent Agenda

No items

9. Public Hearings: Non-Consent Agenda Items

A. Items concerning Toys R' Us and Babies R' Us located at 14200 Wayzata Boulevard

RECOMMENDATION: Adopt the resolutions approving the request. (4 votes)

- Recommendation to City Council (Tentative Date: March 7, 2011)
- Project Planner: Stephanie Scott-Sims

10. Other Items

A. Review of the Planning Commission Bylaws and Policies

11. Adjournment

Notices

1. Please call the planning division at (952) 939-8298 to confirm meeting dates as they are tentative and subject to change.
2. Applications scheduled for the March 17, 2011 Planning Commission meeting:
No items scheduled at this time.

WELCOME TO THE MINNETONKA PLANNING COMMISSION MEETING

This outline has been prepared to help you understand the public meeting process. The review of an item usually takes the following form:

1. The chairperson of the meeting will announce the item to be reviewed and ask for the staff report on the subject.
2. Staff presents their report on the item.
3. The Commission will then ask City staff questions about the proposal.
4. The chairperson will then ask if the applicant wishes to comment.
5. The chairperson will open the public hearing to give an opportunity to anyone present to comment on the proposal.
6. This is the time for the public to make comments or ask questions about the proposal. Please step up to the podium, speak clearly, first giving your name (spelling your last name) and address and then your comments.
7. At larger public hearings, the chair will encourage speakers, including the applicant, to limit their time at the podium to about 8 minutes so everyone has time to speak at least once. Neighborhood representatives will be given more time. Once everyone has spoken, the chair may allow speakers to return for additional comments.
8. After everyone in the audience wishing to speak has given his or her comments, the chairperson will close the public hearing portion of the meeting.
9. The Commission will then discuss the proposal. No further public comments are allowed.
10. The Commission will then make its recommendation or decision.
11. Final decisions by the Planning Commission may be appealed to the City Council. Appeals must be written and filed with the Planning Department within 10 days of the Planning Commission meeting.

It is possible that a quorum of members of the City Council may be present. However, no meeting of the City Council will be convened and no action will be taken by the City Council.

**UNAPPROVED
MINNETONKA PLANNING COMMISSION
MINUTES**

FEBRUARY 17, 2011

1. CALL TO ORDER

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

2. ROLL CALL

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

Staff members present: Community Development Director Julie Wischnack, City Planner Loren Gordon, Principal Planner Susan Thomas, Planner Jeff Thomson, Planning Technician Stephanie Scott-Sims, and Natural Resources Manager Jo Colleran.

3. APPROVAL OF AGENDA: The agenda was approved as submitted with additional comments and changes provided in the change memo dated February 17, 2011.

4. APPROVAL OF MINUTES: February 3, 2011

Lehman moved, second by Adams, to approve the February 3, 2011, meeting minutes as submitted.

Magney, A. Thomas, Adams, Daeges, Lehman, and Cheleen voted yes. Sjeklocha 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 February 14, 2011:

- Adopted the resolution approving a conditional use permit, expansion permit, and site and building plan review to expand the school's existing school bus loading area and east parking lot for Groveland Elementary School at 17310 Minnetonka Boulevard.
- Adopted the resolution approving a conditional use permit to operate a retail store in an existing office building at 11320 Minnetonka Mills Road.
- Adopted the resolution amending the existing conditional use

- permit for cemetery use of the existing properties at 3300 and 3228 Woodlawn Avenue.
- Adopted the resolution concerning a 6-lot subdivision of the existing property at 4625 Highland Road.

The next planning commission meeting will be March 3, 2011.

6. REPORT FROM PLANNING COMMISSION MEMBERS: None

7. PUBLIC HEARINGS: CONSENT AGENDA: None

8. PUBLIC HEARINGS

A. Conditional use permit for an indoor dog park at Cedar-73 Business Park

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

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

Adams asked if staff supports the addition of an enclosed, outside area. Thomson answered affirmatively. Staff recommends that the outdoor area be approved. Staff found that an outdoor area exists in similar uses. Staff was concerned with having an overhead door open for extended periods of time which would allow the indoor noise to be heard outside, so a condition would require access to occur at the exit door and allow the overhead door to remain closed.

Adams asked if the change necessitates renotifying neighbors. Thomson responded in the negative. Conditions of approval are not included in the notification. The change will be provided on the city's website, eminnetonka.com, and reviewed at the city council meeting.

A. Thomas wants to make sure the pet waste management plan applies to indoor and outdoor areas. Thomson clarified that the condition would apply to indoor areas, the outdoor play area, and the entire property.

Chair Cheleen asked if there would be a shortage of parking if the use of the adjoining building would change. Thomson explained that the uses in the buildings are fairly standard for multi-tenant industrial buildings and are not low

intensity compared to similar uses. Any use that would require more parking would have to be reviewed.

The applicant was present to answer questions.

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

Lehman moved, second by Adams, to recommend that the city council adopt the resolution on pages A10-A14 of the staff report with the changes provided in the change memo dated February 17, 2011. This resolution approves a conditional use permit for a 3,900-square-foot indoor dog park and dog daycare business at 2814 Hedberg Drive. Approval is based on the finding that the proposal meets the required conditional use permit standards and is subject to the following conditions:

- 1) Prior to issuance of a building permit or occupying the space, complete the following:
 - a) Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b) Submit a pet waste management plan for staff review and approval.
 - c) Submit a shared parking agreement for review and approval by the city attorney. This document must be filed with Hennepin County.
- 2) The outdoor play area on the back of the building must be fully enclosed with an opaque fence. Access to the outdoor play area must be provided from the overhead door.
- 3) The owners must obtain a kennel license as required by the Minnetonka Police Department.
- 4) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 5) 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.
- 6) The applicant must agree to the above conditions in writing.

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

Chair Cheleen noted that this item is tentatively scheduled to be reviewed by the city council March 7, 2011.

B. Conditional use permit for grading in excess of 1,000 cubic yards on and around the Cargill property at 15407 McGinty Road West

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

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

A. Thomas asked if a 22-foot wide road would be wide enough for emergency vehicles. S. Thomas answered that the fire department reviewed the plan. Since the street is replacing an existing street, fire staff found the proposal acceptable. There is a condition requesting more information regarding the roundabout to make sure that fire vehicles would be able to maneuver effectively.

Adams asked if 1,000 cubic yards would be removed from the length of the street. S. Thomas explained that 1,000 cubic yards of earth would be disturbed, not removed.

Adams asked if the parking lot east of the office would expand in size. S. Thomas referred the question to the applicant.

Chad Lockwood, civil engineer with Louckes and Associates, representing Cargill, applicant, stated that the parking lot would expand a small amount on the north side of the proposed drive aisle. Adams was wondering if it could be expanded that far due to the location of a tunnel. Mr. Lockwood agreed that the underground tunnel would restrict the expansion and create challenges.

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

Adams felt the proposal is very reasonable. His only concern was how much the parking lot would expand, but it appears to be minimal. The 80-year old road needs replacement. The proposal would provide a safer access route into the campus. He supports staff's recommendation.

Adams moved, second by Daeges, to recommend that the city council approve the resolution on pages A16–A20 of the staff report. This resolution approves a conditional use permit for grading in excess of 1,000 cubic yards on and around the Cargill property at 15407 McGinty Road West. Approval is based on the following findings:

- 1) The proposal would meet the general conditional use permit standards as outlined in city code.
- 2) The proposal would meet minimum engineering requirements.
- 3) The proposal would improve the safety of an existing roadway and better protect the adjacent water resources
- 4) The proposal would potentially improve pedestrian and vehicular safety by separating parking and through traffic.

Approval is subject to the following conditions:

- 1) The site must be developed in substantial conformance with the plan set date-stamped January 28, 2011, unless modified by conditions below.
- 2) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit applicant has been submitted, reviewed by staff, and approved.
 - a. The following must be submitted for the grading permit to be considered complete:
 - (1) A recorded copy of this resolution.
 - (2) Final site, grading, drainage and erosion control plans must be submitted for staff approval.
 - (3) Verification that the roundabout and connected legs, meet turning radii for emergency vehicles.
 - (4) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, wetland restoration, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release

or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.

- (5) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.
 - (6) One of the following:
 - (a) Escrow dollars, in an amount to be determined by natural resources staff, to contract with an erosion control inspector to monitor the site throughout the course of construction; or
 - (b) Evidence that an erosion control inspector has been hired to monitor the site through the course of construction. This inspector must provide weekly reports to natural resource staff in a format acceptable to the city.
- b. Prior to issuance of a grading permit:
- (1) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (2) Submit cash escrow in the amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge: (1) the property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and (2) if compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- 3) Permits may be required from other outside agencies including, but not limited to, MnDOT, Hennepin County, Minnehaha Creek Watershed District. It is the applicant's and/or property owner's responsibility to obtain any necessary permits.

- 4) Comply with all monitoring requirements of other appropriate regulatory agencies.
- 5) The city council may reasonably add or revise conditions to address any future unforeseen problems.
- 6) 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.
- 7) The applicant must agree to the above conditions in writing.

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

Chair Cheleen noted that the item is tentatively scheduled to be reviewed by the city council March 7, 2011.

C. Conditional use permit for a 150-foot wireless telecommunications tower on the property at 15001 Minnetonka Industrial Boulevard

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

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

Lehman asked if the ordinance regarding telecommunication towers addresses an applicant proving need for the service the tower would provide. S. Thomas answered affirmatively.

Lehman noted that the conditional use permit would expire if the use would not operate for a certain period of time. S. Thomas explained that the telecommunications facility would be required to be removed if it would be unused, would become obsolete, or would become hazardous as required by the city's telecommunications ordinance.

Lehman was troubled with naming a company in the conditions of approval as opposed to naming the technology that would be used by the company. S. Thomas agreed that usually a specific name would not be used in a conditional use permit. In this case, because the technical analysis is based on T-Mobile's coverage area, staff wants to make sure that what would be erected would fit T-

Mobile's coverage and capacity. The condition would allow for a different provider other than T-Mobile to locate on the tower as long as the new provider would have similar coverage needs. Lehman wants to make sure it does not appear that T-Mobile would be given a competitive advantage. S. Thomas restated that the analysis was based on T-Mobile's information and coverage and so include their name in the conditional use permit is appropriate.

A. Thomas asked what federal law regulates for the proposal. S. Thomas stated that the Federal Communications Commission (FCC) requires the city to allow telecommunications towers somewhere in the community. The city is allowed to establish standards for height and location within the city.

A. Thomas noted that the report stated that the tower would not cause interference with the 911 system. S. Thomas agreed.

A. Thomas asked if water towers are painted the color Winter Sky. S. Thomas answered affirmatively.

A. Thomas asked what would be on the ground to prevent individuals from climbing the antennae. S. Thomas responded that fencing, with barbed wire, would surround the tower.

A. Thomas questioned if the tower would be required to have a blinking light on top. S. Thomas answered in the negative. A tower 200 feet in height or taller would be required to have a light.

A. Thomas asked if staff had heard of new technology that would allow cellular phone service without towers. S. Thomas read that article in the newspaper and referred the question to the applicant.

Adams asked for the height of the two towers in the illustration provided by staff. S. Thomas explained that the tower on Hedburg Drive is 135 feet tall and the one on Baker Road is 180 feet tall. They were constructed prior to the adoption of the telecommunications ordinance.

In response to Chair Cheleen's question, S. Thomas clarified that the fenced enclosure would equal 2,500 square feet in size.

Garrett Lysiak, Shoreview, representing the applicant, stated that S. Thomas did a good job explaining the procedure. Mr. Lysiak looks at the proposal in accordance with federal rules, city ordinances, and how the towers make up the system. The problem is that the federal government decided that competition is

good. There are 8 different providers in this major market. The providers could not initially talk to each other. So, each company started putting up towers. Mr. Lysiak stated that:

- He determines if a tower is needed by doing a coverage study.
- He lowers the proposed tower height to determine the minimum height necessary.
- He does a tower search. He pointed out where existing towers are located.
- He assumes that the city and county 911 radio systems are located at the tower site and makes a radiation calculation to complete a worst-case study.
- T-Mobile was named because American Tower is not a licensee of the FCC.
- A tower with a user is good. A tower without a user is not good. He has never seen a tower removed because it was not being used.
- He has heard that towers would be going away for many years. The towers would always be used by some type of technology or radio.

Adams asked if the report is accurate that states that T-Mobile does not have coverage in a building or vehicle in the immediate area. Mr. Lysiak answered affirmatively. The problem is that the antennae of inexpensive phones are unable to carry the signal in a vehicle or building. The company is reacting to its computer system telling it that calls are being dropped. The company would not spend the money to install a tower if it is not necessary.

Adams asked who would own the tower. Mr. Lysiak explained that American Tower would construct and own the tower, leasing space to T-Mobile and other providers.

Adams noted that a tower 22.9 feet in height was dismantled in Hopkins. Mr. Lysiak said that it might have been dismantled due to its age or to replace it with a taller tower for multiple users. Towers under 200 feet are not registered.

Chair Cheleen asked if Minnetonka is unique due to its hills and topography. Mr. Lysiak said that terrain and trees are a big factor. The signal cannot penetrate vegetation very well. In the winter, the signal might work great, but in spring time and summer signals are lost. Public safety sees that a lot. Chair Cheleen noted that the 150-foot height is needed due to the trees. Mr. Lysiak agreed.

Mr. Lysiak noted that a lower tower height would limit the potential number of users on the tower. The ordinance is set up to require an applicant to utilize an

existing tower. Chair Cheleen noted that would decrease the number of towers. Mr. Lysiak has seen situations where one 150-foot tower saved 4 additional towers in the future.

Chair Cheleen asked how much radiation a tower would produce and how dangerous it would be. Mr. Lysiak explained that the standard is based on intensity and exposure time. He has only found a problem if a person is located 18 to 20 inches in front of the antennae. The tower would be difficult to climb.

Rob Vierra, St. Louis Park, representing American Tower, was present to answer questions.

The public hearing was opened.

Ingrid Berkholtz, 15403 Robinwood Drive, provided a written list of questions and asked what is meant by "an Industrial District." S. Thomas explained it referred to an Industrial Zoning District. There are industrial, residential, commercial, and office zoning districts in the city.

Ms. Berkholtz stated that some of her questions have been addressed. She thanked S. Thomas for answering some of her questions prior to the meeting. She reviewed the questions that had not been answered which included:

- Is the coverage gap for the uninhabited area real or perceived?
- Would the tower be considered an expansion of the industrial park?
- Could the proposal set a precedent to create a cell tower farm?
- What is the minimum acceptable height to provide coverage and fulfill ordinance needs to house multiple carriers?
- Would all equipment located on the tower in the future be FCC compliant?
- How would it be screened?
- How will the added impervious surface and landscaping plan affect the storm water drainage for the industrial park?
- She requested accurate simulations of the proposed structure.
- What stealth design techniques would be applied to the proposal?
- Were alternate technologies considered for the proposal?
- What would qualify as a "change in character?"
- What maintenance would be required and how often for the facility?
- What amount of noise would be created by the proposal?
- Does the 2.4 acre site include the entire industrial park?

- Clarify how the surrounding use is considered in respect to the industrial park.
- Have the Minnetonka Watershed District and Regional Trail authorities commented on the project?
- Is the height of the proposed tower appropriate?
- Clarify how a barbed-wire fence enclosure would blend with the surrounding environment.
- Does not comply with the restriction of no more than one accessory building.
- If the negotiations are not fruitful for the user to rent the tower, how would this impact the proposed conditional use permit?
- How would this application impact the T-mobile tower at 12201 Minnetonka Boulevard and other existing towers?
- Where were the 151 notices sent to?
- Were notices sent to the tenants of the industrial park in addition to the property owners?

Mr. Vierra explained that the site was chosen because the zoning district allows a tower, there is adequate space for a leasing area, and half of the monopole would be disguised by vegetation.

S. Thomas responded to the questions:

- She agreed that there is an open/undeveloped area north of Minnetonka Boulevard. The proposal would cover the gap over the residential areas west of Minnetonka Boulevard.
- Expansion of the industrial park would mean encompassing more properties in the immediate area. Addition of a tower would not be considered expansion of the industrial park, just as more employees added to a site would also not be considered expansion of an industrial park.
- The reference to Excelsior Boulevard in the staff report was an error.
- The ordinance would require a new user to show that there is not an existing structure in the area that the service could use. New users for the area would be directed to this tower.
- She agreed that plantings should be planted to mitigate removed trees. The applicant may work with Natural Resources staff to put together a screening plan as a condition of approval. Engineering staff would review drainage of the site.

- S. Thomas provided drawings of views of the proposed structure to show line of sight.
- She explained that staff feels the monopole structure is the most stealth design. A design with horizontal projections would be allowed in an industrial district.
- S. Thomas interprets “change in character” for a tower to mean a change in height, color, or adding horizontal extensions.

Mr. Lysiak stated that the facilities are not manned. Normal maintenance may occur once a week or month for changing filters or cleaning. It would not create a lot of traffic.

Mr. Lysiak explained that the antennas hold repeaters. All of them act in conjunction with each other. Typically, there is no noise. The only noise there could be is if there would be a temporary back-up generator.

S. Thomas stated that:

- The property on which the tower would be located is 2.4 acres in size. The industrial park is much larger.
- The properties adjacent to the site are all zoned for industrial use.
- The owner of the trail would have been notified. The watershed district is generally not notified for a tower conditional use permit.

Mr. Lysiak stated that the minimum height for the tower to be effective is 150 feet.

S. Thomas continued answering questions:

- Staff agrees that the fenced area would need landscaping. A condition of approval would be a landscape plan approved by staff.
- The city does not have fence-material restrictions in any zoning district.
- S. Thomas suggested the commission add a condition of approval to limit the number of accessory buildings to one.
- Co-locators would expand the existing building.
- City ordinance requires staff to notify property owners within 400 feet. Staff notified property owners and occupants within 1,000 feet. One comment was received from a tenant.

Jim Hendricks, 3809 Williston Road, asked why the tower would not sit on or next to a power pole. He would see the tower from his house. He favored an alternative. He was interested in the landscaping. The industrial park did not do the landscaping he was told would be done.

Mr. Lysiak looked at Xcel lines west of the site. Many of them were excluded because T-Mobile already has antennas on one of the towers; additional antennas in close proximity would cause interference. The gap where antennas could be placed is a tight, little window.

Amy Dresh, of FMHC Corporation in Edina, on behalf of T-Mobile, stated that her company has looked for 1.5 years to find a suitable site to fill the gap in service. She listed where T-Mobile currently has towers in Minnetonka. Another site considered was a church parking lot which would have restricted the tower height due to the residential zoning and make it impossible for any other carrier to collocate on the tower.

In response to Chair Cheleen's request, S. Thomas explained that staff would require mitigation of the removed trees. Landscaping would buffer the fenced-in closure. It would not screen the tower.

Colleran explained that St. Jude's planted over and above the required value of landscaping required by ordinance requirements.

Joyce Hendricks, 3809 Williston Road, reiterated some points:

- The city could get income by leasing the water tower for towers.
- Planes travel over the industrial park.
- Big power-line towers create radiation.
- An ice-skating rink and park is located close by.
- People are on the trail all the time.
- The area has wetlands.
- The watershed district and Hennepin County should be notified.
- There are over 1,000 people in the industrial park.
- She was confused why T-Mobile needs so many towers in such a small area.
- She spent money to have a landscape designer draw a plan that the planning commission approved. There have been trees planted, but that has been the only landscaping done. The idea was to have a variety of shrubbery to modify the effect of the parking lots.

- The character of the industrial park would be changed because the buildings are not taller than two stories.

Chair Cheleen explained that federal law regulates the acceptable level of radiation and the tower on its worst day emits 10 percent to 15 percent of what would be allowable. Radiation travels horizontally. The height of the tower would not require a light on top. Other phone companies have towers in the area also. T-Mobile needs the tower to provide coverage.

S. Thomas clarified that the city does lease space on water towers. The next most desirable location is on an Xcel power line if one would provide coverage for a gap.

Ms. Berkholtz asked if there had been consideration to locate a tower on the public land behind city hall. S. Thomas answered that staff had not considered that site because the city was not approached regarding locating a tower at that location. Staff was not sure if such location would provide coverage for the gap area.

No additional testimony was submitted and the hearing was closed.

Adams lives near the Hedburg tower. He does not notice it anymore. It became invisible after a while. The benefit needs to be taken into consideration for the area. He feels the location is ideal. It would also be located in a grove of trees to shield its view from a considerable distance. He supported staff's recommendation.

Chair Cheleen appreciated the public input. Ms. Berkholtz was very thorough. If the tower has a specific need and meets all city requirements, then the city is required by federal law to allow the proposal.

Lehman moved, second by Adams, to recommend that the city council adopt the resolution on pages A32–A39 of the staff report in accordance with changes provided in the change memo dated February 17, 2011 and an additional condition restricting the number of accessory buildings to one. This resolution approves a conditional use permit for a 150-foot telecommunication tower on the property at 15001 Minnetonka Industrial Road:

Approval is based on the following findings:

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

Approval is subject to the following conditions:

- 1) This resolution approves only the telecommunication facility at 15001 Minnetonka Industrial Boulevard, detailed in associated site plans and elevations date-stamped January 7, 2011.
- 2) The site and facility, including ground mounted equipment, must be developed in substantial conformance with the following plans, unless modified by conditions below:
 - Site Plan date-stamped January 7, 2011
 - Compound Plan date-stamped January 7, 2011
 - Tower Elevation Plan date-stamped January 7, 2011
- 3) Prior to issuance of any required electrical or building permits, complete the following:
 - a. Record this resolution with the county. A copy of the recorded resolution must be returned to the city.
 - b. Submit evidence of a signed lease agreement. If the lease agreement is not with T-Mobile, a radio analysis must be conducted by a city-retained radio or electrical engineer and must demonstrate that the proposed location of the antennas is necessary to meet the coverage and capacity needs of the service providers system and that there is no existing antenna support structure that could adequately serve the area if antennas were placed on it.
 - c. Provide escrow to the city for any outstanding or additional consultant fees associated with radio analysis.
 - d. Submit a revised site plan for review and approval of the city engineer. The plan must locate the tower and equipment pad further to the east, outside of existing and necessary utility easements. There may be no more than one accessory building.
 - e. Submit a final grading and erosion control plan for staff review and approval. Staff may require adjustments to the grading plan to preserve trees south of the proposed enclosure.

- f. Submit a final landscape plan for staff review and approval. The plan must mitigate for significant and high priority trees removed and provide screening to the south and west. Any plantings to the south should be appropriate for planting around overhead utility lines.
 - g. 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).
 - h. 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.
 - i. The applicant must agree to the above conditions in writing.
- 4) 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.
 - 5) No advertising message or identification sign larger than two square-feet may be affixed to the telecommunications facility.
 - 6) The telecommunications facility may not be artificially illuminated unless periodically necessary to facilitate service to ground-mounted equipment.
 - 7) No telecommunication employees are allowed on the site on a permanent basis. Occasional or temporary repair and service activities are allowed.
 - 8) The applicant must obtain appropriate electrical and building permits prior to installation of the antennas.
 - 9) The city council may reasonably add or revise conditions to address any future unforeseen problems.

- 10) 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.

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

Chair Cheleen noted that the item is tentatively scheduled to be reviewed by the city council March 7, 2011.

D. Items concerning construction of 5 new tennis courts at Minnetonka Middle School East, located at 17000 Lake Street Extension

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

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

A. Thomas asked who owns the property west of the site. Scott-Sims confirmed that it is owned by the school district. A. Thomas suggested moving the tennis courts into the parking lot since there are 100 extra parking stalls. Scott-Sims referred the question to the applicant.

A. Thomas asked if the retention pond would hold drainage traveling from north of the site. Scott-Sims answered affirmatively.

Lehman asked for the distance between the building and proposed tennis courts. Scott-Sims responded that the area would be graded and would remain open space. She estimated 15 feet. Lehman wanted to make sure there would be enough room to transport equipment to the field from the parking lot.

Adams noted that the aquatic center addition was not on the illustration. Scott-Sims agreed.

Adams questioned why a second rain garden would be added instead of expanding the existing one. Scott-Sims explained the drainage patterns. She said that expanding the existing water retention pond would be an option.

Chair Cheleen recalled that the new rain garden would have an underground water holding area. Colleran explained the city's infiltration and extraction regulations would require the drainage system as proposed.

Mike Condon, Minnetonka School District Supervisor of Buildings and Grounds, was present. Unfortunately, his engineer was ill and had to leave the meeting. He reviewed the need for tennis courts since 2005. The district has received a grant to help fund the project. The courts would be used for physical education and after-school programs. The district has been renting courts at the Wayzata School District and from the City of Minnetonka. The courts would be available for summer community education use and use by the public. The classes average 30 students. Enrollment has grown from 939 students in 2009 to 1,005 in 2010 and 1,050 expected in 2011. The current courts are not lit and the proposed courts would not be lit. There would be no increase in traffic.

A. Thomas did not question the need for the courts. He referred to the land usage. He asked why part of the north parking lot would not be used for tennis courts. Mr. Condon explained that the length and radius of the parking lot is needed for delivery trucks to maneuver. Locating courts there would limit and obstruct the traffic flow for food service, the boiler room, and delivery areas located in the back of the building. Five courts could not fit in the back parking lot and leave circulation for student drop offs and delivery vehicles in an amicable situation.

Lehman asked if trail users would be deferred to the driveway as opposed to a dedicated trail connection. Mr. Condon agreed. He explained how the access for walkers and bikers would connect to the site. The bike racks would be relocated to an area closer to the buildings.

Lehman asked for the width between the building and tennis courts. Mr. Condon stated that it would remain as wide as it is today.

Lehman asked what happened to talks regarding a skate park. Mr. Condon responded that the skate park was constructed at the high school.

Adams asked for the purpose of the jog in the line east of the courts. Scott-Sims stated that there is a bike rack at that spot now. The blue dotted line indicates an area of impact.

Adams confirmed with Mr. Condon that the courts would be open to the public when not in use. Adams plays tennis and is glad there is a demand.

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

Adams is concerned with the proximity to the wetland, but he has assurance from staff that drainage would be dealt with. The proposal would serve a community need that he was not aware of.

A. Thomas felt the project was good overall. There is a community need. His contention is the increase in the amount of hard surface. Tearing the sidewalk out would easily remedy the situation. The tennis courts are good, but he did not like the land use issue of creating hard surface. He supports the tennis courts, but not the proposal because he thought more could be done to save green space.

Chair Cheleen agreed with trying to minimize impervious surface. In this case, locating the tennis courts where proposed would make sense. He visited the site for a caucus meeting once and is aware that once or twice a month the parking lots are full and vehicles park down Lake Street Extension. It is not a safe place for pedestrians. There are many times during the school year when the current number of parking stalls is not enough.

Lehman noted that the site is far from reaching its impervious surface maximum. The school district has been insightful enough to acquire sufficient land to meet its needs now and into the future. As it chooses to develop the site, as long as it is doing what is permissible, he did not see a way to deny the proposal. It would be one thing to try to influence the project, but he did not think it is in the commission's purview to legislate how the school district uses its property as long as ordinance requirements are met. He saw no justification to deny the proposal.

Adams moved, second by Lehman, to recommend that the city council adopt the resolution approving the request. (See pages A15–A21 of the staff report). This resolution approves a conditional use permit for grading in excess of 1,000 cubic yards and site and building plan review for the construction of 5 new tennis courts at Minnetonka Middle School East at 17000 Lake Street Extension. Approval is based on the following findings:

- 1) The proposal would meet conditional use permit and site and building plan review standards outlined in the zoning ordinance.
- 2) The proposed tennis courts will be required to meet all of the required setback requirements on the site.
- 3) The proposal would meet the city's required parking minimum and would not disturb the site circulation on the site.

Approval of the conditional use permit and site and building plans is subject to the following conditions:

- 1) Subject to staff approval, the site must be developed and maintained in substantial conformance with the following plans, unless modified by the conditions below:
 - Site plan date-stamped December 22, 2010
 - Grading plan date-stamped December 22, 2010
 - Landscaping plan date-stamped December 22, 2010
- 2) A grading permit is required. Unless authorized by appropriate staff, no site work may begin until a complete grading permit application has been submitted, reviewed by staff, and approved.
 - a. The following must be submitted for the grading permit to be considered complete.
 - (1) Final site, grading, drainage, utility and erosion control plans must be submitted for staff approval.
 - (a) Final drainage plan must:
 - The stormwater management BMPs must be sized to account for the 1.44 acres of constructed impervious surface. An updated design for the filtration basin and updated stormwater calculations must be submitted to the city for review.
 - (2) Individual letters of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost to comply with grading permit, landscaping requirements, and to restore the site. The developer may submit one itemized letter of credit, if approved by staff. The city will not release or reduce the letters of credit or cash escrow until work has been completed according to the plans approved by the city.
 - (3) A construction management plan. The plan must be in a city approved format and must outline minimum site management practices and penalties for non-compliance.

- b. Prior to issuance of a grading permit:
 - (1) Submit an electronic PDF copy of the plans and specifications.
 - (2) Submit two full size and three 11x17 sets of construction drawings and three sets of project specifications.
 - (3) Submit all required administration and engineering fees.
 - (4) Submit a SWPPP.
 - (5) Staff must review and approve a wetland delineation of the site. The final plans must meet the wetland setback of 25 feet.
 - (6) Install a temporary rock driveway, erosion control, tree and wetland protection fencing for staff inspection. These items must be maintained throughout the course of construction.
 - (7) Permits may be required from other outside agencies including, but not limited to Hennepin County, the Riley-Purgatory Bluff Creek Watershed District, and the MPCA. It is the applicant's and/or property owner's responsibility to obtain any necessary permits. Copies of all required permits must be submitted to the city.

- 3) Prior to issuance of a building permit:
 - a. Submit the following items for staff review and approval:
 - (1) A construction management plan. This plan must be in a city approved format and outline minimum site management practices and penalties for non-compliance. If the builder is the same entity doing grading work on the site, the construction management plan submitted at the time of grading permit may fulfill this requirement.
 - (2) A landscaping and tree mitigation plan. The plan must meet minimum landscaping and mitigation requirements as outlined in ordinance and must include plantings. However,

at the sole discretion of natural resources staff, mitigation may be decreased based on any of the following: the health of trees removed; the ability to appropriately install trees and other shrubbery given existing vegetation and/or topography.

- (3) Cash escrow in an amount to be determined by city staff. This escrow must be accompanied by a document prepared by the city attorney and signed by the builder and property owner. Through this document the builder and property owner will acknowledge:
 - The property will be brought into compliance within 48 hours of notification of a violation of the construction management plan, other conditions of approval, or city code standards; and
 - If compliance is not achieved, the city will use any or all of the escrow dollars to correct any erosion and/or grading problems.
- (4) An electronic CAD file or certified as-built drawings in microstation or DXF and PDF format.
- (5) A letter of credit or cash escrow for 125% of a bid cost or 150% of an estimated cost of all required landscaping.
- (6) An illumination plan for staff approval.

b. All required hook-up fees.

- 4) The property owner is responsible for replacing any required landscaping that dies.
- 5) All rooftop and ground-mounted mechanical equipment, and exterior trash and recycling storage areas, must be enclosed with materials compatible with the principal structure, subject to staff approval. Low profile, self-contained mechanical units that blend in with the building architecture are exempt from the screening requirement.
- 6) Construction must begin by December 31, 2012, unless the planning commission grants a time extension.

Magney, Adams, Daeges, Lehman, and Cheleen voted yes. A. Thomas voted no. Sjeklocha was absent. Motion carried.

Chair Cheleen noted that the item is tentatively scheduled to be reviewed by the city council March 7, 2011.

9. OTHER BUSINESS

A. Concept plan review for Walden Backyards at 5740-5750 Shady Oak Road

Chair Cheleen introduced the concept plan and called for the staff report.

Gordon provided the staff report. Staff recommends the planning commission provide comments and feedback to assist the applicant with future direction that may lead to the preparation of more detailed development plans.

Chair Cheleen asked what would happen to the planned unit development (PUD) if the Walden development does not reach fruition. Gordon explained that the property would rezone to a planned unit development to deal with specific items the development wants. Gordon agreed with keeping the site guided as medium-density residential for the long term. Changing the comprehensive guide plan to commercial may not be in the best interest at this time until this use runs its course.

Adams asked if the rezoning could be done without revision of the comprehensive guide plan. Gordon leaned toward leaving the guide plan as it is now.

Adams liked things that remind him of the history of the area. He has seen too many landmarks disappear. Creative reuse would be one way to keep the buildings active and visible of what the area use to be. He liked the idea of reuse.

Gordon said because there is an interest in a low-intensity commercial office use with a residential component strictly for the Waldens Backyards idea may not make it necessary to give away the guidance of the property at this time.

Chair Cheleen stated that a PUD could set the conditions for use at the moment for this PUD and keep the guide plan as it is until there is a reason down the road to change. Gordon agreed.

Adams asked if the metropolitan council would be satisfied with the proposal. Chair Cheleen stated that there is no need to change and there is a viable alternative in front of the commission. Using a PUD would accommodate that for now.

Michael Miller, Edina, applicant, explained the history behind the proposal. He wants to preserve the soul of the farm and spiff it up a little bit. The barn is the signature of the property. There would be limited retail and commercial use. The rest would develop premium products for better backyard living. Walden on Shady Oak in Minnetonka would be magic. For the brand to go national would make sense for it to be located in Minnetonka. He pointed out where gathering pits would be located. He would strive to embrace the soul of the farm and use it for the business' purpose to provide a sanctuary in the backyard.

Adams asked how the back of the barn would be utilized. Mr. Miller stated that the first floor would be used for retail, the second floor for office space, and third floor would be used for merchandising and event space. He was looking for an indication of whether to continue negotiations for Walden to purchase the entire property. He imagined a caretaker would live in the residence and keep the grounds looking immaculate.

Adams noted that the house is in pretty rough shape. He asked if it could be improved in accordance with ordinance requirements. Mr. Miller responded probably not, but it would have to in order to maintain the authenticity of the farm. His expert told him to tear down the residence and start over. There is some magic to be done to preserve the house. The house could be emptied, spiffed up, and utilized as showroom space for Walden. It is not habitable right now. It has not been lived in for years. Mr. Miller pictured rocking chairs on the porch overlooking Shady Oak Road.

Adams asked if the company has any revenue at this point. Mr. Miller responded in the negative. He sold a company four years ago and his non-compete clause ran out last year.

Chair Cheleen asked if Music Barn would still be part of the project. Mr. Miller answered that was considered. The Music Barn in the house and Walden in the barn are being considered.

Chair Cheleen liked the idea of keeping the barn and house. He thought that would be neat. Using a PUD would make a lot of sense.

Gordon was looking for thoughts and concerns of the aspects of the use to the neighborhood and the site.

Chair Cheleen knows the owners and how the Music Barn operated. There would be no more than 10 vehicles in the parking lot at one time. He questioned how much parking would be necessary for a retail use. That would be a condition of the PUD. Mr. Miller stated that the parking lot would remain gravel, a pervious surface. He anticipated more traffic, but not a lot. The business plan would be to develop in the back and have a feed store for bird seed and feeders.

Chair Cheleen noted that the item is tentatively scheduled to be reviewed by the city council March 7, 2011.

Adams liked the idea.

Chair Cheleen noted that the property to the north is a cemetery and across the street is commercial. It is a unique property and a unique use. Chair Cheleen would like to see the site stay as it is as much as possible.

10. ADJOURNMENT

Lehman moved, second by Daeges, to adjourn the meeting at 9:30 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary

Minnetonka Planning Commission Meeting

March 3, 2011

Agenda Item 8

Public Hearing: Consent Agenda

No Items

Minnetonka Planning Commission Meeting

March 3, 2011

Agenda Item 9

Public Hearing: Non-Consent Agenda

Minnetonka Planning Commission Meeting

March 3, 2011

Agenda Item 10

Other Items —

**Review of the Planning Commission's
Bylaws and Policies**

**Planning Commission Staff Report
Meeting of March 3, 2011**

Brief Description	Review of the Planning Commission's Bylaws and Policies
Recommendation	Readopt the bylaws and policies

Introduction

The Planning Commission's Bylaws require that the Commission review its bylaws and policies each year. The current bylaws and policies are attached.

Comments

Commissioners will note that the attached bylaws and policies contain several references to variances. Though the city is not currently able to approve variances, staff believes it is appropriate to keep these references within the bylaws and policies. If the Minnesota legislature chooses to amend state statute pertaining to variances, the commission may similarly choose to revisit its bylaws and policies in light of the amendment.

Staff requests that commissioners review the by-laws and policies and advise staff before the meeting of any suggested changes.

Staff Recommendation

Readopt the attached bylaws and policies, with any suggested changes.

Originator: Susan Thomas, AICP, Principal Planner

CITY OF MINNETONKA PLANNING COMMISSION BYLAWS

ARTICLE I - GENERAL

The Minnetonka Planning Commission is established under City Code section 300.04 and Minnesota State Statutes Annotated section 462.354, subdivision 1(2).

ARTICLE II - PURPOSE

The commission is appointed by the City Council to assist and advise the City Council in the administration of the City Zoning Ordinance, Guide Plan and Subdivision Ordinance: to conduct public hearings upon matters as required by the provisions of City Code, section 300, and on any other matters referred by the City Council.

ARTICLE III - MEETINGS

Section I. Regular Meetings

The regular meetings of the commission will be held at the offices of the City of Minnetonka, located at 14600 Minnetonka Boulevard. The meeting schedule will be as designated on the official city calendar. All meetings will be open to the public, except as otherwise provided by law.

The planning commission meeting will convene at 6:30 P.M. and conclude no later than 11:00 P.M. unless a majority of the members present vote to continue the meeting beyond 11:00 P.M. for a single item. Items not covered by 11:00 P.M. will be automatically continued to the next planning commission meeting and given priority placement on the agenda.

Before opening a public hearing, the chair will ask for a presentation from the applicant. The chair will then open the public hearing. At larger public hearings, the chair will request a presentation from any neighborhood representatives. Following that, the chair will ask for comments from any other members of the public. The chair will encourage the applicant and neighborhood representatives to limit their presentations to about fifteen minutes each. The chair will encourage other public speakers to limit their time to about eight minutes, so everyone has time to speak at least once. However, time limits will be at the discretion of the chair. Once everyone has spoken, the chair may allow speakers to return for additional comments. The public hearing will remain open until the chair determines that all information and statements have been heard. The chair may then close the public hearing and limit discussion to members of the commission.

The voting order shall be alphabetical according to the last name of each commissioner. The voting order shall rotate alphabetically at each planning commission meeting. The presiding officer shall always vote last.

Section II. Special Meetings

A special meeting may be held when deemed necessary by four members of the commission or by the request of the city council.

Section III. Quorums

At any duly called meeting of the commission, a majority of the active members shall constitute a quorum.

Section IV. Agendas

An agenda for each meeting shall be prepared by the Planning Department for the City in cooperation with the chair. The agenda shall be delivered to all members of the commission along with supporting data on the Friday before the next regular meeting.

The commission may continue consideration of any scheduled item when supportive material for that item has not been delivered to the members five (5) full business days before the meeting at which it is considered.

The city planner shall add items to the consent agenda that he or she considers to be routine. The planning commission shall hold one public hearing and then approve all such items with one motion. Before voting on the consent agenda, the chair will open the hearing, announce each item and ask if anyone wishes to have a separate discussion or vote on that item. If so, the commission will then remove that item from the consent agenda and hold a separate hearing on it after voting on the consent agenda items. There will be no staff presentation or discussion by the public or commission on the items remaining on the consent agenda. However, the chair may allow informational questions without removing an item from the consent agenda. Items approved under the consent agenda are approved subject to the staff recommendations.

Section V. Voting

Any vote that requires a two-thirds majority shall be based on the current planning commission membership, excluding any vacant positions. Members present must vote on all agenda items, unless disqualified because of a conflict of interest under the City's Code of Ethics or State law.

ARTICLE IV - OFFICERS

Officers of the commission shall consist of the chair and a vice chair. The officers shall be elected for a one-year period at the first meeting in March of every year. If there is no quorum at the first regular meeting in March, the election shall be held at the next regular meeting having a quorum.

A. Chair: The chair shall preside over all meetings of the commission. If the chair and vice chair are absent, the commission members present shall designate one of

themselves to serve as chair.

- B. Vice Chair: The vice chair shall perform all the duties of the chair in the absence of the chair.
- C. Secretary: The Secretary is a non-elected member of the Planning Department staff. The secretary shall keep an accurate account of meetings and proceedings of meetings, send written notices and agendas of all meetings to members, keep a policy file of all commission records and documents, and notify the city council in writing of all commission conclusions and recommendations.

ARTICLE V - CODE OF ETHICS

The planning commission members shall abide by the Code of Ethics established in Section 115 of the Minnetonka Code as amended from time to time. Additionally, no planning commissioner shall act as a representative for someone else for any planning or zoning item that comes before the Minnetonka Commission or Council. A planning commissioner may represent a planning or zoning item for their own property or property in which they have a real interest.

ARTICLE VI - PARLIAMENTARY PROCEDURE

The proceedings of the commission shall be governed by and conducted according to the latest rules of Roberts Rules of Order, as revised.

ARTICLE VII - AMENDMENTS

The commission shall review its bylaws and policies at the first meeting in March of each year. These bylaws may be amended or altered by a majority vote of the members of the commission at any regular or special meeting, having a quorum, provided the amendment was mailed or delivered to the commission members at least five days before the meeting.

CITY OF MINNETONKA PLANNING COMMISSION POLICIES

*****Regarding Variances*****

Prior to June 24, 2010, the city of Minnetonka used the following framework to guide the review of variance requests. A ruling by the Minnesota Supreme Court essentially overturned the commonly accepted interpretation of variance law put into practice by municipalities. This ruling has effectively halted the consideration of all variances. Should the legislature adopt new variance language during 2011, and depending on the specific language, the city's General Policies may need to be revisited. Consequently, the following variance policies are subject to further review.

General Policies regarding specific types of variance requests:

The following policies are not intended to be hard and fast rules, since each variance request is unique unto itself. The policies have evolved from past decisions of the City along with administrative interpretation of the zoning ordinance. The primary purpose of the following sections is to establish a framework whereby reasonable use of single-family residential property is outlined and fair treatment can be applied to all properties.

A. Garages

1. A two-car garage on single-family residential property and a one-car garage on a double dwelling property is generally considered to be a reasonable use. Larger garages may be approved if consistent with neighborhood characteristics and the findings for a variance.
2. Maximum standard two-car garage dimensions are 24' x 24'. Maximum standard one-car garage dimensions are 13' x 24'.
3. Garages that require variances should minimize setback intrusion to the greatest extent possible.
4. Conversion of garage area to living space does not justify a variance for new garage space.
5. Neighborhood characteristics may dictate the size and setbacks of a garage considered to be a reasonable use.
6. Variances are considered in light of mature tree location and preservation opportunities.

B. House Additions

1. Reasonable use of property is considered in light of general City-wide

development standards.

2. Variances to allow setback intrusion are considered in light of reasonable use as long as variances are limited to the greatest extent practicable.
3. Variances are considered in light of providing room additions of functional size with adequate internal circulation.
4. The configuration and position of the existing house is considered when reviewing variance requests.
5. The proposed addition should be designed to conform to development constraints of the property.
6. Variances are considered in light of mature tree location and preservation opportunities.

C. Accessory Attached Structures

1. Decks, screen porches, and bay windows are by definition accessory uses or uses incidental to the principal use.
2. The need for accessory structures primarily results from personal circumstances rather than hardship inherent in the property.
3. Variances are considered in light of the size and configuration of the structure so that variances are limited to the greatest extent possible.
4. Variances are considered in light of impacts to adjoining properties.
5. Neighborhood characteristics may be considered for review of accessory attached structures.
6. Deck variances will be reviewed in light of ordinance provisions that permit encroachment into required setbacks.

D. Accessory Detached Structures Other Than Garages

1. Sheds, barns, utility buildings, and recreational facilities are by definition accessory uses or uses incidental to a principal use.
2. The need for accessory structures primarily results from personal circumstances rather than hardship inherent to the property.
3. In light of the above policy to allow two-car garages, accessory structures are, in most cases, above and beyond the reasonable use of the property.
4. Mitigating circumstances may exist whereby accessory structure variances may be considered. These circumstances primarily relate to unique conditions

resulting from extraordinarily burdensome regulations applied to a property.

5. Where mitigating circumstance exists, neighborhood characteristics can be considered.

E. Undersized Lots

1. Undersized lots of record not meeting the minimum dimensional requirements, may be considered for variances to apply a buildable status.
2. Buildable status will be applied only if a reasonable development opportunity will result.
3. The size of the lot should be consistent with the average neighborhood lot area.
4. Efforts to obtain additional property should be exhausted.
5. The house should be designed to fit the dimensional constraints of the lot and conform to all setback requirements.
6. If the property is and has been assessed and taxed as a buildable lot, strong consideration will be given to dimensional and setback variances.
7. If an undersized lot was in common ownership with an adjacent lot after adoption of the zoning ordinance, then no hardship exists.
8. If an undersized lot was purchased after adoption of the zoning ordinance, then the hardship is self-created.