

**AGENDA
PLANNING COMMISSION MEETING
CITY OF SHOREVIEW**

**DATE: MARCH 28, 2017
TIME: 7:00 PM
PLACE: SHOREVIEW CITY HALL
LOCATION: 4600 NORTH VICTORIA**

**1. CALL TO ORDER
ROLL CALL
APPROVAL OF AGENDA**

2. APPROVAL OF MINUTES
January 24, 2017 and February 28, 2017

3. REPORT ON CITY COUNCIL ACTIONS
*Meeting Date: March 6, 2017 and March 20, 2017
Brief Description of Meeting process- Chair John Doan*

4. NEW BUSINESS

A. COMPREHENSIVE SIGN PLAN*
*FILE NO: 2652-17-05
APPLICANT: Hamilton Sign
LOCATION: 5910 Lexington Ave*

5. MISCELLANEOUS

A. WIRELESS TELECOMMUNICATION ORDINANCE-SMALL CELL SITES

B. BEEKEEPING ORDINANCE

C. WATER TREATMENT PLANT TOUR – APRIL 25TH @ 6:00 PM

D. City Council Meeting Assignments for *April 3, 2017 and April 17, 2017*
Commissioners *Wolf and Peterson*

6. ADJOURNMENT

**These agenda items require City Council review or action. The Planning Commission will hold a hearing, obtain public comment, discuss the application and forward the application to City Council. The City Council will consider these items at their regular meetings which are held on the 1st or 3rd Monday of each month. For confirmation when an item is scheduled at City Council, please check the City's website at www.shoreviewmn.gov or contact the Planning Department at 651-490-4682 or 651-490-4680*

**SHOREVIEW PLANNING COMMISSION
WORKSHOP MINUTES
January 24, 2017**

CALL TO ORDER

Chair Doan called the January 24, 2017 Shoreview Planning Commission workshop to order at 7:00 p.m.

ROLL CALL

Chair Doan and Commissioners Ferrington, Peterson, Solomonson, and Thompson were present.

Commissioners McCool and Wolfe were absent.

Chair Doan with the entire Planning Commission and staff recognized the years and significant contributions given by Commissioner Ferrington whose term expires January 31, 2017.

Chair Doan and Commissioners welcomed newly appointed Commissioner Barb Yarusso who will begin serving her term at the February 28, 2017 meeting. Commissioner Yarusso recently served four years in the Minnesota State House of Representatives. She has a Ph.D. in chemical engineering, has worked as an engineer and as a teacher in engineering. Commissioners and staff introduced themselves.

CHAIR/VICE CHAIR 2017 AND UPDATES

City Planner Castle reported that the City Council reappointed John Doan as Chair and Steve Solomonson as Vice Chair of the Planning Commission with terms expiring January 31, 2018.

Ms. Castle also reported that staff is considering hiring SEH to look at the City's wireless communications ordinance, which has not been updated for some time.

Upcoming workshop discussions will include wireless communications, solar and wind power energy.

Commissioners requested staff to schedule a tour of the new Water Treatment Plant.

BUILDING HEIGHT

Ms. Castle stated that a draft ordinance has been prepared that would establish a tier system with a 10-foot transition zone for additional height when multi-family is adjacent to low density residential. The ordinance addresses structure setbacks and the visual impact of overall building mass. At its last review, the Commission expressed reservations about proposed language and specifically about impacts to low density residential and whether the proposed ordinance does enough to protect neighborhoods.

A map was included with meeting materials of potential development areas that was reviewed. The map shows the minimum building setback in blue; the red shows the transition zone. One option is to increase building setbacks from residential land uses and also decrease setbacks from commercial and institutional land uses. A second option would be to increase the ratio for the setback from the 10-foot transition zone. Currently, the ratio is one foot additional setback for every foot of additional height. That ratio could be increased to two, three, or four feet of additional setback for every additional foot of height, which would increase the width of the transition zone for more protection to adjacent residential properties.

It was the consensus of the Commission is that the ordinance should be stricter with the transition zone adjacent to residential and more flexible if the transition zone is adjacent to commercial. Commissioners discussed increasing the transition zone to 20 feet and increase the setback ratio from 1 additional foot setback for each foot of additional height to 2 additional feet of setback for each foot of additional height.

Ms. Castle suggested that the transition zone would have to be 33% green space to break up building mass. This would encourage added landscaping and more creativity to get away from the big box look. Another option would be to establish a ratio of height to lot area. If 100% of the area is covered, one floor would be allowed; if the lot is 50% covered, the height could be two floors; and if there is 25% coverage, three floors could be allowed. However, it is not clear this approach would address building mass.

The Commission expressed a desire to address topography when one parcel is at a higher elevation and how that would impact height and view. Staff will look at how other communities address this issue. There are situations where homes tower over other homes and whether that is a question to be addressed if there is a towering effect. Staff will look further at how adjacent topography might be addressed and present some options.

Commissioners also discussed the required 40-foot maximum setback and 50 feet from arterial roadways. It was noted that all parcels shown on the map are already on arterials and would have to comply with a 50-foot setback. This could change if someone were to buy a number of residential lots for development.

BEEKEEPING

Ms. Castle reported that there is a link online for Commissioners to be able to review the bee workshop that was held by the Planning Commission. This will be discussed at the Planning Commission workshop in June. She suggested Commissioners watch the video in preparation for that discussion.

The new staff Natural Resources Specialist, Ellen Brenna, brought the matter of beekeeping to the EQC who was also encouraged to watch the video for further discussion.

Commissioners noted that at some point it will be important to provide education on beekeeping to the public.

PARKING

Ms. Castle stated that the intent of the proposed ordinance provision is to focus on parking ratios. One question was whether or not parking isles and stall sizes are consistent with industry standards. Staff has found that Shoreview's requirements are consistent with industry standards. Another factor to work on is green parking. Shared parking is also encouraged.

Commissioners noted that recent development proposals have come in with substantially less parking provided than required.

Ms. Castle reported that staff has contacted developers to discuss this issue and found that across the board parking is generally provided at one stall per bedroom. Staff will look at unit types within complexes and how many stalls are provided to see what is adequate and working within the City. Because there is so little transit available, Commissioners believe more parking should be available. Overflow parking needs also must be considered.

Commissioners generally agreed that the current City ratio of 2.5 stalls per unit with one enclosed appears to be high. Developers note that banks will not lend money unless the site works and that includes parking. Developers believe that one stall per bedroom is adequate, even for visitor parking. Commissioners also agreed that there are differences for senior housing and market rate units like Elevage and Greco. Staff was asked to invite a parking expert to meet with the Commission and provide information on what ratio would be appropriate and show what research shows.

COMPREHENSIVE PLAN

Staff met with the City Council last month to review potential methods to be used for the update of the Comprehensive Plan. Staff is drafting a process for review by the Council

in February. The process will be similar to the 2008 revision that relied on the existing committee and commission structure to review the elements of the plan and make recommendations. Once drafted, there would be a formal review through the Planning Commission and City Council. There will be no overview steering committee. Consultants will be hired to help with technical portions, such as modeling for transportation, sewer and water systems and demographics. It is anticipated that some areas will be of more focus than others, such as infill and redevelopment.

The process will include community engagement through social media to survey residents for feedback and to inform them of more traditional of open house information sessions.

Commissioners discussed the need for more connectivity and circulation within the community with biking and walking. It was noted that transit is not envisioning good service to suburbs. Uber, with self-driving vehicles, will be one of the factors to consider in the future.

TECHNICAL ASSISTANCE

Ms. Castle reported that the City has received a grant from the Urban Land Institute to work out a mixed income housing policy for the City. Technical assistance is being received from Grounded Solutions Network. Existing locations and housing policies will be reviewed. Part of mixed income issues will be to preserve and retain existing affordable units and houses. Information on affordable housing will be incorporated into the Comprehensive Plan. The work of the technical assistance project on mixed income will mainly be done through the EDA, City Council and staff. The Planning Commission will be involved as policies change.

The meeting adjourned.

**SHOREVIEW PLANNING COMMISSION
MEETING MINUTES
February 28, 2017**

CALL TO ORDER

Chair Doan called the February 28, 2017 Shoreview Planning Commission meeting to order at 7:00 p.m.

ROLL CALL

The following Commissioners were present: Chair Doan; Commissioners, McCool, Peterson, Solomonson, Wolfe and Yarusso.

Commissioner Thompson was absent.

APPROVAL OF AGENDA

MOTION: by Commissioner Peterson, seconded by Commissioner McCool to approve the February 28, 2017 Planning Commission meeting agenda as submitted.

[Tape started with approval of minutes so did not hear this motion.]

VOTE: **Ayes - 6** **Nays - 0**

APPROVAL OF MINUTES

MOTION: by Commissioner Solomonson, seconded by Commissioner Peterson to approve the December 13, 2016 Planning Commission meeting minutes as submitted.

VOTE: **Ayes - 5** **Nays - 0** **Abstain - 1 (Yarusso)**

Commissioner Yarusso abstained as she did not attend the December 13th meeting.

REPORT ON CITY COUNCIL ACTIONS

City Planner Kathleen Castle reported that the City Council approved one item, the St. Odilia Church addition, as recommended by the Planning Commission.

NEW BUSINESS

RESIDENTIAL DESIGN REVIEW

FILE NO.: 2648-17-01
APPLICANT: ANCHOR BUILDERS
LOCATION: 414 WEST HORSESHOE DRIVE

Presentation by Economic Development and Planning Associate Niki Hill

The application proposes to demolish the existing lakeside seasonal porch and deck on the south side of the home in order to construct a new living area addition of 448 square feet and a 73 square foot deck with stairs. The existing home and garage would remain.

The property is a substandard riparian lot with 13,946 square feet, a width of 64 feet and a depth of 193 feet. The width and area are substandard as riparian lots are required to have a minimum width of 100 feet and an area of a minimum of 15,000 square feet from the setback to the Ordinary High Water (OHW) line. The property is zoned R1, Detached Residential and is located in the Shoreland Overlay District. A substandard property must comply with design standards adopted by the City.

The proposal reduces lot coverage to 40.3%. The allowed amount is 25%, but the existing lot coverage is 40.9%. The project can maintain 40.9% or reduce it, but cannot increase it. The existing front setback will not change. The building height will remain at 19 feet. Foundation area is less than the allowed 18%. All setbacks are within Code standards.

The applicant has identified two shoreline mitigation practices to reduce the impact of the development on lake quality: 1) Architectural Mass; and 2) a vegetative protective area. A mitigation affidavit is required.

Notices were mailed to nearby homeowners. Two comments were received. One is in support of the proposal. One expressed concern about the setback of the proposed addition.

Staff finds that the proposal is a reasonable use of the property. The new addition complies with the design standards for substantial lake lots. Staff recommends approval with the conditions listed in the staff report.

Commissioner Peterson asked if, with the addition, the house will be closer to the lake. Ms. Hill stated that the addition will be closer. The existing OHW setback is 85.8 feet. The range of setback allowed is 77.85 feet to 95.85 feet.

Commissioner Solomonson noted that the addition will be 3 feet closer to the OHW but within the setback range allowed by the City.

Commissioner McCool asked how impervious surface will be reduced. Ms. Hill stated that a number of areas will be reduced in impervious surface, including removal of part of the retaining wall.

Mr. Tom Oberhausen, Applicant, 414 West Horseshoe Drive, stated that the project is to replace an existing seasonal porch with 4 feet of extended living space. Impervious surface will be reduced with the following: 1) part of the retaining wall on the eastern shoreline will be removed; 2) a paver walkway will be removed from the existing deck to the shore; and 3) the existing driveway will be made more efficient with pervious surface.

Chair Doan opened the discussion to public comment. There were no questions or comments.

MOTION: by Commissioner McCool, seconded by Commissioner Solomonson to approve the Residential Design Review application submitted by Anchor Builders for 414 Horseshoe Drive West, subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Residential Design Review application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. Impervious surface coverage shall not exceed 40.9% of the total lot area as a result of this project. Foundation area shall not exceed 18%.
4. A final site grading plan and an erosion control plan shall be submitted with the building permit application and implemented during construction of the new residence.
5. A Mitigation Affidavit shall be executed prior to the issuance of a building permit.
6. A building permit must be obtained before any construction activity begins.
7. This approval is subject to a 5-day appeal period.

The approval is based on the following finding:

1. The proposal complies with the adopted standards for construction on a substandard riparian lot.

VOTE: **Ayes - 6** **Nays - 0**

RESIDENTIAL DESIGN REVIEW - VARIANCE

FILE NO.: 2651-17-04
APPLICANT: BISMARCK BUILDERS
LOCATION: 4255 SNAIL LAKE BOULEVARD

Presentation by City Planner Kathleen Castle

The proposal is to construct a new home on the subject vacant property. The property is a substandard riparian lot with a lot area of 8,858 square feet and lot depth that ranges from 74 to 88 feet. The lot width is in compliance at 112 feet.

Three variances are requested:

1. To exceed the maximum impervious surface coverage - 25% is permitted; 29.8% is proposed.
2. To exceed the maximum foundation area of 1600 square feet; 1,728 square feet are proposed.
3. To reduce the minimum 50-foot structure setback from the OHW to 42.33 feet.

The property is the former home of the Snail Lake Tavern, which was demolished in 1988. At that time the area was subdivided into Snail Lake Shores. The subject property is one of three that are substandard created by the subdivision. The subject property is substandard in lot depth and lot area. Requirements of the subdivision include maintaining a 50-foot setback from the OHW and providing a 20-foot driveway apron on the private property. The new home to be constructed would be 1.5 stories with an attached two-car garage. The setback to the OHW is measured to the cantilevered deck. The height is in compliance at 34.5 feet. Earth tones will be used for the exterior which satisfies requirements for Architectural Mass under Shoreland Mitigation practices.

The property to the south is developed but is not part of Snail Lake Shores. The home sits on the east side of that property. The property to the north is vacant as that home has been demolished.

The applicant states that practical difficulty exists due to the small lot area and depth. The buildable area is narrow, which creates limitations for a home design and attached garage. Staff agrees with the applicant and finds that practical difficulty is present. The narrow buildable area ranges from 19.5 feet to 33 feet in width. The foundation area of 1728 square feet is 1,199 square feet of dwelling and 529 square feet of garage. Staff believes this is a reasonable size. The home is designed to fit the lot and is similar in size with other homes in the area. The deck and fire pit are considered water oriented structures, which reduces the amount of impervious surface allowed. The applicants plan to use pervious materials as much as possible to mitigate impervious surface coverage.

Two trees are requested to be removed from the boulevard, but staff has indicated that will not be allowed. Seven trees will be planted on the lakeside of the property. Grading will create a space for a rain garden and level surface for the garage and driveway. Shoreland mitigation practices to be used will be Architectural Mass and a rain garden. Staff is recommending approval.

Property owners within 150 feet were notified of the proposal. One letter was received in opposition to the variances requested.

Commissioner McCool asked if the foundation area limit is a function of lot area. Ms. Castle responded that what is allowed is the greater of either 1600 square feet or 18%. The variance requested is for approximately 6 square feet.

Commissioner Solomonson asked if a variance for the OHW setback would be needed if the fire pit were removed. Ms. Castle explained that the deck is considered a water oriented structure because it encroaches on the 50-foot setback.

Commissioner Solomonson asked how the proposed home compares to the adjacent property at 4629. Ms. Castle stated that the adjacent lot is slightly larger. At the time the that home was built, the impervious surface standards of today were not in place. If the home were to be built today, it would require a variance.

Commissioner McCool asked when the OHW was surveyed and the setback established. Ms. Castle responded that the setback has remained the same and has not changed in a long time.

Chair Doan asked if the house at 4269 is of the same scale as the one proposed. Ms. Castle answered, yes, noting that the lot is slightly larger and the house at 4269 is 2 stories—a single story with a walkout, the house proposed is 1.5 stories.

Commissioner Yarusso stated that she is not surprised at the variance requests. There is little building space, and it appears to be a creative application to build a house on the lot.

Mr. Steve Tracy, Bismark Builders, stated the variance on the southern end is to allow a stairway for access to the lakeside. Permeable surface will be used wherever possible to prevent runoff and collect water on site that will percolate through the soil.

Chair Doan opened the meeting to public comment.

Mr. Bill Bush, 4269 Snail Lake Boulevard, stated that he is pleased to see a house being built on this lot. All that has been presented is accurate. His main concern is the deck impact of a 42-foot setback on the adjacent lot when a home is built there. Will the a

variance be needed that is closer than his. It would create a wall to have to look around. He asked if another deck of 250 square feet would be permitted.

Ms. Castle responded that the lot between 4255 and 4269 is the largest of the three and has more depth. An analysis has not been done as to the amount of buildable area. The deck size of 250 square feet is related to the requirement for water oriented structures. With the deck and fire pit, no other water oriented structures would be permitted without going through the variance process with the Commission.

Commissioners expressed their support for a proposal that is creative in fitting a home on a difficult lot.

Commissioner Yarusso noted that without the railing on the rendering of the plans, it is difficult to see what impact it will have. The view will be different from what is presented. However, the key factor with this application is the difficulty in building.

Commissioner McCool stated that he supports this proposal. There is too much house on this lot, but it is a challenging lot, and the proposal is proportionate with neighboring lots.

Commissioner Wolfe stated that he has worked previously with the builder and in order to prevent any semblance of conflict of interest, he will recuse himself from this vote.

Commissioner Peterson suggested amending condition No. 3 to require use of permeable surface materials.

Chair Doan supported this amendment. He further noted that this decision does not set any precedent for development of the adjacent vacant lot.

Commissioner Solomonson stated that he would prefer to not require permeable surface materials in case there is a reason it cannot be used.

Commissioner McCool stated that he supports the amendment because of the larger foundation area, setback variances, and increase of 5% to impervious surface, he would like to see permeable materials be required and does not believe it there will be any problem.

Commissioner Solomonson asked for clarification of the Code regarding allowable impervious surface with a reduced OHW setback. Ms. Castle explained that because both the fire pit and deck encroach on the OHW setback, the maximum impervious surface maximum is reduced to 25%.

Commissioner Yarusso asked if grading would cause a problem with using permeable surface. **Mr. Tracy** stated that he is not certain if there would be a problem. He believes

some amount of permeable surface materials will be possible. He asked if it is required, that means every square foot of hard surface would have to be permeable. Ms. Castle responded that the driveway and sidewalk in front of the home will run off toward Snail Lake Boulevard, not the lake. The main concern is the fire pit on the lakeside of the home.

MOTION: by Commissioner Solomonson, not seconded, to adopt Resolution No. 17-09, approving the variance and the residential design review applications submitted by Bismark Builders, 4255 Snail Lake Boulevard. said approval allows variances for the structure setback from the OHW of Snail Lake and increases in the foundation area and impervious surface coverage for the construction of a single-family home. This approval is subject to the following conditions:

1. The project must be completed in accordance with the plans submitted as part of the Residential Design Review application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. Impervious surface coverage shall not exceed 29.8% of the total lot area as a result of this project. The applicant is encouraged to utilize pervious materials in the driveway, sidewalk and patio (fire pit) areas.
4. The two trees located within the boulevard area must remain. A tree protection plan must be submitted with the building permit application. The protection plan shall include wood chips and protective fencing at the drip line of the retained trees.
5. A final site grading, stormwater management and erosion control plan shall be submitted prior to the issuance of a building permit for the project. This plan is subject to the approval of the City Engineer.
6. Items identified in the memo from the City Engineer dated February 22, 2017 shall be addressed prior to the issuance of a building permit.
7. A permit from the Ramsey Washington Metro Watershed District shall be obtained, if required, prior to the issuance of a building permit.
8. A Mitigation Affidavit shall be executed prior to the issuance of a building permit for the new residence.
9. A building permit must be obtained before any construction activity begins.
10. This approval is subject to a 5-day appeal period.

This approval is based on the following findings:

1. The proposed improvements are consistent with the Land Use and Housing Chapters of the Comprehensive Plan.

2. This substandard lot was created as part of the Snail Lake Shores Plat for single-family residential use.
3. Practical difficulty is present as stated in Resolution 17-09.

The motion failed for lack of a second.

MOTION: by Commissioner McCool, seconded by Commissioner Peterson to adopt Resolution No. 17-09, approving the variance and the residential design review applications submitted by Bismark Builders, 4255 Snail Lake Boulevard. Said approval allows variances for the structure setback from the OHW of Snail Lake and increases in the foundation area and impervious surface coverage for the construction of a single-family home. This approval is subject to the following conditions with modification to condition No. 3, second sentence which would read, “The applicant is encouraged to use pervious materials in the driveway and sidewalk areas and is required to use pervious materials in the patio (fire pit) areas.

1. The project must be completed in accordance with the plans submitted as part of the Residential Design Review application. Any significant changes to these plans, as determined by the City Planner, will require review and approval by the Planning Commission.
2. This approval will expire after one year if a building permit has not been issued and work has not begun on the project.
3. Impervious surface coverage shall not exceed 29.8% of the total lot area as a result of this project. The applicant is encouraged to utilize pervious materials in the driveway, sidewalk and patio (fire pit) areas.
4. The two trees located within the boulevard area must remain. A tree protection plan must be submitted with the building permit application. The protection plan shall include wood chips and protective fencing at the drip line of the retained trees.
5. A final site grading, stormwater management and erosion control plan shall be submitted prior to the issuance of a building permit for the project. This plan is subject to the approval of the City Engineer.
6. Items identified in the memo from the City Engineer dated February 22, 2017 shall be addressed prior to the issuance of a building permit.
7. A permit from the Ramsey Washington Metro Watershed District shall be obtained, if required, prior to the issuance of a building permit.
8. A Mitigation Affidavit shall be executed prior to the issuance of a building permit for the new residence.
9. A building permit must be obtained before any construction activity begins.
10. This approval is subject to a 5-day appeal period.

This approval is based on the following findings:

1. The proposed improvements are consistent with the Land Use and Housing Chapters of the Comprehensive Plan.
2. This substandard lot was created as part of the Snail Lake Shores Plat for single-family residential use.
3. Practical difficulty is present as stated in Resolution 17-09.

VOTE: Ayes - 4 Nays - 1 (Solomonson) Abstain - 1 (Wolfe)

VARIANCE

FILE NO.: 2649-17-02
APPLICANT: KENT AND RITA DUESCHER
LOCATION: 276 JANICE STREET

Presentation by Associate Planner Aaron Sedey

This proposal is for a 3-car garage to replace a 2-car garage using the same footprint. The third stall of the new garage would extend into the side yard setback, and a variance is needed to reduce the minimum 5-foot side setback to 2 feet.

The property is 10,790 square feet with a lot width of 83 feet and lot depth of 130 feet. A two-story single-family home is on the lot with a detached garage, shed and other improvements. The property is on the improved alley of Janice Street with frontage on Wabasso Avenue, which is an unimproved street. The property is zoned R1, Detached Residential.

The applicant states that the existing garage does not have frost footings and cannot be attached to the principal structure. It is more cost effective to demolish the garage and build a new one. The new garage will be attached to the house and use the same footprint as the existing garage. The third stall will extend into the side setback. This project will improve the appearance of the home.

Staff finds that the proposal is consistent with the City’s land use and housing policies. Unique circumstances include the fact that the lot was shortened by a realignment in the 1970s due to improper surveys and placement of utilities. The character of the neighborhood will not be changed. This property is similar to others that have close structures in proximity to lot lines. Three other homes were demolished and rebuilt and granted variances.

Property owners within 150 feet were notified. No comments were received. Staff finds that practical difficulty is present and recommends approval with the conditions listed in the staff report.

Mr. Kent Duescher stated that this would be completion of a project that was started two years ago, but they were unable to finish it at that time.

Chair Doan asked the height of the fence between his and the property next to the garage.

Mr. Duescher answered that the fence is 6 feet height.

Chair Doan opened the discussion for public comment. There were no comments or questions.

Commissioner Solomonson stated that his preference is for compliance to side yard setbacks. This is a unique circumstance, but a setback of 2 feet is a concern.

Commissioner Peterson agreed but noted that it is in the character of the neighborhood.

Commissioner Yarusso noted that the existing driveway is up against the property line but will be moved. The problem is that the lot lines are not square with the house.

Commissioner McCool agreed with the concerns with the 2-foot setback for the reasons stated but will support this project.

MOTION: by Commissioner Solomonson, seconded by Commissioner Wolfe to adopt Resolution 17-08 approving the requested variance submitted by Kent and Rita Duescher, 276 Janice St., to reduce the required 5-foot structure setback from a side property line to 2 feet for a three stall side load garage. Said approval is subject to the following:

1. The project must be completed in accordance with the plans submitted as part of the Variance application.
2. The exterior of the home, including the garage addition, shall be completed within 180 days of the building permit issue date per Code Section 212.020(C)(1).
3. Construction of building must comply with state building code, specifically fire-resistive construction being in the 5 foot setback.
4. Rainwater shall be collected by gutters and distributed away from neighboring properties.
5. This approval will expire after one year if a building permit has not been issued and construction commenced.
6. This approval is subject to a 5-day appeal period.

This approval is based on the following findings of fact:

1. The proposed improvement is consistent with the policies of the Comprehensive Plan, including the Land Use and Housing Chapters.
2. Practical difficulty is present as stated in Resolution 17-08

VOTE: **Ayes - 6** **Nays - 0**

**PUBLIC HEARING - COMPREHENSIVE PLAN AMENDMENT-
PRELIMINARY PLAT-PUD DEVELOPMENT STAGE**

FILE NO.: **2650-17-03**
APPLICANT: **GRECO RIDGE, EAGLE RIDGE PARTNERS LLC**
LOCATION: **1005 GRAMSIE ROAD**

Presentation by City Planner Kathleen Castle

The application proposes a Comprehensive Plan Amendment to change the land use from Business Park to Mixed Use (MU), which also includes business park uses as well as residential. The preliminary plat is submitted showing the parcel divided into 5 parcels. The PUD Development Stage application is also submitted to approve redevelopment.

The building at 1005 Gramsie consists of 160,000 square feet and has been vacant since 2007. The building is structurally substandard and needs substantial renovation or removal. The proposal is to demolish and remove the existing building in order to redevelop the property with 410 market rate apartment units to be constructed in two phases. Two buildings are proposed, each with four stories with underground and surface parking. Access will be from Chatsworth and from Gramsie Road. The buildings will be 50 feet in height. Building materials include brick and fiber board cement siding. A market study has been completed which shows this area is underserved and ideal for apartments.

Adjacent to the subject property is the tower property to the east, commercial to the south and residential to the north and the City of Arden Hills to the west, which has office and business uses. Staff believes the proposed development is compatible with adjoining land uses. The development will interact with adjoining business park uses with common driveways, shared green space and an internal trail system. The green space will also serve as a buffer.

This redevelopment supports goals of the City's Economic Development Authority (EDA). It is also consistent with the Housing Action Plan in providing new rental opportunities.

The preliminary plat replats the property into five parcels with two outlets for storm water ponding. Parking and impervious surface are redistributed on the site. Shared agreements have been executed to permit cross parking and access and will be amended with the preliminary plat.

The PUD is amended to better define permitted uses. The height of the proposed buildings is 50 feet which exceeds the 35 feet maximum permitted. A minimum 30-foot setback from all property lines is required plus one additional foot for every foot of additional height. Flexibility is requested under the PUD for the setbacks which do not meet the required 45 feet from each property line for the added height.

A traffic study has been completed that compared office build-out with the proposed apartment project. Apartments generate more traffic overall, but have less impact on the road system because trip distribution is reversed from that of office. The traffic study shows access off Gramsie and Chatsworth and notes the Lexington Avenue improvements including designated turn lanes and only a right turn off Gramsie. The City and Ramsey County have accepted the traffic study.

The development site is 8.61 acres with proposed density of 47.6 units per acre. The Corporate Center land area is 34.6 acres. MU land use designation allows 45 units per acre. Calculating density using the entire Corporate Center acreage brings the density to 11.84 units per acre. The location of the proposed development is appropriate due to its proximity to arterial streets, I-694, employment and shopping areas.

A total of 564 underground parking stalls are planned. Surface parking will consist of 44 stalls with additional stalls shared with the Corporate Center. The ratio for the development is 1.48 stalls per unit, which is less than the 2.5 per unit parking stalls required by the City. Staff supports the proposed parking because any additional parking will mostly be needed during evening and weekend hours.

Property owners within 350 feet have been notified of the proposal. No public comments have been received. Ramsey County Public Works concurs with the traffic study and requests the developer to work with the City on directional signage. The Lake Johanna Fire Department is reviewing the proposal.

The Environmental Quality Committee (EQC) supports Mixed Use and provided comments regarding storm water runoff, sidewalk connections, re-use/recycling of materials, and energy efficiency.

Staff finds that the proposal supports Comprehensive Plan policies. This redevelopment supports reinvestment in the Corporate Center, provides diversified rental housing and added housing choices that benefit the community and nearby employment areas. Staff is recommending the public hearing and approval to the City Council with the conditions listed in the staff report.

Commissioner Solomonson asked what would happen to Lot 5 if the second phase is not built and the total number of units. Ms. Castle stated that the PUD would be in effect for that building. A change in use in the future would mean a PUD Amendment.

Commissioner Peterson asked if there will be affordable units available. Ms. Castle responded that with TIF, 24 units will be set aside as affordable.

Commissioner Wolfe asked if traffic issues on the northbound turn onto Gramsie will be addressed. Ms. Castle stated that residential use will mean that traffic from the development will be moving in the opposite direction of traffic coming to the site in the morning and vice versa in the evening. Ramsey County has recommended clear directional signage for the area. Commissioner Wolfe responded that the intersection is difficult now and that is something he will be looking for to be improved.

Commissioner Yarusso noted that Ramsey County recommends recycling of building materials. She suggested the developer work closely with Ramsey County regarding pickup of those materials.

Commissioner Solomonson stated that since the development may have to use parking from other buildings, he would like to know if the other buildings have adequate, less than adequate or surplus parking. His concern is that adequate parking is identified for this development. Ms. Castle stated that the Corporate Center as a whole has cooperative agreements for cross parking which will continue. Staff believes parking is adequate because the demand is different. Parking for the apartment complex will be generated at night.

Chair Doan opened the public hearing. The City Attorney stated that proper notice has been given for the public hearing.

Mr. Josh Branson, Greco Development; **Mr. Mike Critch**, BKB Architects; and **Ms. Kristin Meyer**, Eagle Ridge Partners introduced themselves as the development team representing the application at this meeting.

Mr. Branson clarified that there is one parking stall for each bedroom in each unit in the underground garage. There will be 44 surface stalls and 92 stalls along Chatsworth Street for additional guest parking. The peak demand for apartment and office parking use do offset each other. It is anticipated that residents of this complex will work in the Shoreview/Arden Hills area which will lessen any impact to I-694.

Ms. Meyer stated that currently there are approximately 2000 parking stalls in the Corporate Center. Of those, 450 stalls are allocated to the building at 1005 Gramsie. The only parcel being impacted with reduced parking by the lot line shift is 4000 Lexington. A redistribution of parking was done to pick up the stalls required per the leases in those buildings. Chatsworth parking can be a benefit to the building at 4000 Lexington. Land O'Lakes has become more dense as a user. Their demand is pushing 5 stalls per 1000 square feet. Land O'Lakes is planning to move to Arden Hills. The advantage of the

proposed development is the significant reduction of impervious surface, which would be a benefit to the overall park. Plans have been done that meet Watershed District and City requirements for expanded parking, if needed. Hill Rom is only using approximately 2/3 of the parking allocated to their lease, which is based on an employee head count.

Ms. Meyer noted that the building at 1005 Gramsie has been vacant for 10 years. The community is used to not having traffic coming from that site. If the building were leased to an office tenant, the same number of trips would be generated at the same as all the other office traffic in the area. The same number of trips will be generated with residential but not at the same time.

Mr. Branson noted that a higher unit count was anticipated at the beginning of planning for the development, but there are more two-bedroom units now. There are 205 units for each phase. There is significant green space on the site, and there will be a public/private park and a trail that will connect to County Road F. Two pickle ball courts are being considered. The east side of the site will have significant berms to incorporate with the trees along the tower property. Lot 4, the southern site, will be built first. It is anticipated that ground will be broken on August 1, 2017. Once the first phase is 80% occupied, the second phase will begin, probably in 2020. It is anticipated that the project will stabilize at 93% occupancy. A 5-year time frame is projected for total completion of both phases.

Commissioner Solomonson noted 13 surface stalls for Phase 1 and asked if that is sufficient for a development of this size. **Mr. Branson** stated there will be 205 underground stalls per phase, which is 1 stall per bedroom. Thirteen surface stalls is sufficient. A number of projects have been done with about 200 units with 3 to 4 surface stalls. In addition, for this development parking stalls will be available along Chatsworth to supplement if there is need.

Commissioner Solomonson noted that the parking on Chatsworth is only during business hours, not overnight. Ms. Castle stated that if that is a concern, the permit can be changed.

Commissioner Peterson asked how bike parking will be accommodated. **Mr. Branson** stated that each parking stall underground will have a rack at the front of the stall. There will also be bike racks in the location of surface parking. A bike lounge will be available for bike repair.

Commissioner McCool noted that overall, the Corporate Center is 391 parking stalls short. He asked what would happen if a new tenant needed overnight parking that crossed into the apartment complex parking. **Ms. Meyer** stated that a lease would not be considered with a tenant who would stress parking because such a use would also impact retaining existing residential and business tenants.

Commissioner Solomonson noted that the southeast corner of the building on Lot 4 is at a 40-foot setback which is a deviation. He asked the setback range of that side of the building. **Mr. Critch** agreed that the building was deliberately angled away from the street, so that the northern corner of the building would meet the setback requirement. The angle also creates interest and integrates the building with the landscaping. A key component is the trails and connections to the north, the tower property and Lexington. Commissioner Solomonson asked if it will be difficult to keep business traffic from accessing the residential site. **Mr. Critch** stated that there are separate accesses for businesses, but cars are not prohibited from driving through the residential access.

Commissioner Yarusso asked if any units will be accessible. **Mr. Critch** stated that by code all units must be adaptable, and 2% are required by Minnesota Statute to be accessible. Commissioner Yarusso noted that there is a demand in the area for affordable, accessible units.

Chair Doan asked the reason that the apartment buildings were changed from 5 stories to 4 stories. **Mr. Branson** explained that changing from 5 stories to 4 stories puts the building in a different set of codes that will be more cost effective in construction. The footprint was expanded slightly.

Chair Doan noted that with a Mixed Use designation, other retail and restaurant uses would be allowed. He asked if particularly the ground floor level of each building would be designed to accommodate other uses than residential. **Mr. Branson** stated that a true pet spa and pet daycare services are being considered. There will be a dog park on the site. This use will benefit residents and the community. As for other retail, Lexington is the retail corridor in the area. The rent levels are not conducive to including further retail. **Ms. Meyer** noted that the corner of County Road F and Lexington is of interest to retail developers. When the buildings are complete, there may be further consideration for retail at that time. She further noted that it was requested a 5-foot concrete sidewalk be included on the north/south corridor of Chatsworth and the east/west/corridor of Gramsie. A lot of effort has been made with landscaping, trails are already included in those locations of the site. Consideration is being asked for flexibility in materials for the trails, either bituminous or crushed limestone.

Commissioner Yarusso noted that the state is considering extension of the light rail north to this area. The density of this complex will help that decision. It is important to provide safe, accessible walkways that allow wheelchairs and help people to reach employment that is immediate in the area without using cars. She encouraged forward thinking with the use of trail materials such as asphalt and concrete.

Commissioner McCool stated that since there is not an east/west sidewalk on Gramsie, anyone who parks on Chatsworth must walk through the residential site to reach other

business buildings or on Gramsie Road. **Ms. Meyer** showed the access paths on the site. **Mr. Branson** stated there is no east/west path on Gramsie. Ms. Castle explained that the sidewalk recommendations are coming from the Public Works Department. She would hesitate to change the Public Works Director's recommendation without further discussion with him before the City Council meeting.

Commissioner Solomonson stated that it is important for pedestrian access to the business buildings from Chatsworth without having to go through the middle of the residential area or walk in the road on Gramsie.

Chair Doan agreed and stated that he feels strongly that sidewalks along Gramsie and Chatsworth are needed. He asked if the dog run or pickle ball court will be open to other Corporate Park tenants and residents of the community. **Mr. Branson** stated that it is a public/private park and will be open to tenants, residents and the broader community.

City Attorney Kevin Beck stated that all notices are in order for the public hearing. Chair Doan opened the public hearing.

There were no comments or questions from the public.

MOTION: by Commissioner Solomonson, seconded by Commissioner Peterson to close the public hearing at 9:35 p.m.

VOTE:

Ayes - 6

Nays - 0

Commissioner Solomonson stated that he favors the creative use of this site. This plan is a vision for the whole site to function. His two concerns are the sidewalks and the 13 parking stalls that seem inadequate. If possible, he would like to see more parking available when Phase 1 is completed. It is not known if overnight parking on Chatsworth will be allowed. The second phase provides an additional 31 parking stalls. He asked how many of those stalls could be made available in Phase 1. He would like to see the parking addressed without depending on Chatsworth parking.

Commissioner Peterson stated that parking is a concern, but he also appreciates the green space and would not want to see green space reduced for parking. He supports the proposal but would like to hear options for parking from the developer.

Commissioner Wolfe noted that employee parking at Kowalski's is difficult. There will be employees in the office of the residential building who will need parking. The question of where to park is going to be an issue. **Mr. Branson** stated that there will be five employees in each building.

Commissioner McCool agreed that parking is his main concern. He is not convinced that 11 ordinary parking stalls is enough for 205 units. There is some relief on Chatsworth and cross parking opportunities on the site. What happens if other businesses need more parking? He would like to see additional surface parking or smaller buildings that would allow more parking area. For this reason, he cannot support the plan at this time and would like the matter tabled.

Commissioner Yarusso noted that density is too high for the residential site but was calculated with the entire Corporate Center. That carries a limitation for other uses in the future, and it means that residential cannot be developed on other parcels in the Center.

Chair Doan stated that overall, this is a great development for this site. He does not see shared parking as an issue. He compared it to his own work building of 9 stories with multi-family residential near that building that has shared parking. Staff could look further into shared parking in other communities with business buildings and residential. Overnight parking on Chatsworth should be pursued. This is a prime, unique site and one of the few where he believes the building could be higher—5 or 6 stories. Trails have to be connective to Lexington, County Road F and Gramsie. A bike trail is also needed. He would also support tabling until the parking issue can be resolved.

Commissioner Peterson asked to hear options from the developer regarding parking.

Commissioner Solomonson stated he would like to see parking for the overall site addressed without dependence on parking space on Chatsworth.

Mr. Branson stated that parking was reduced in order to enhance green space. He showed where additional surface stalls can be added. There were sidewalks in the original plan and again, in an effort to enhance greens space, they were taken out. He showed where added parallel and front end parking can be added. Also, the dog run can be eliminated or relocated fro added parking. Sidewalks were planned originally but were taken out to enhance the green space.

Ms. Meyer stated that a feasible option would be to add 100 stalls for the Land O'Lakes buildings. It would mean grading and onsite water retention. If Land O'Lakes were to renew their lease, they are seeking five stalls per 1000 square feet. Consideration is being given to having a center atrium with structured parking with a full story below grade and half story above grade. Currently, the parking needs for Land O'Lakes are being met. As parking demands occur, plans will be made to address them, but parking not needed is not built in order to keep the amount of impervious surface down. It seemed more important to increase green space. Proof of parking areas can be identified.

Chair Doan asked the timeline the project. **Mr. Branson** stated that August 1, 2017 is the target date for housing construction start with demolition beginning June 1, 2017.

The approval process needs to be completed by the end of March to keep construction drawings on schedule.

Ms. Meyer added that there is a deadline for the purchase and sale agreement of the property which has been extended once. She does not believe there are further options. She noted that before the second phase is built, all of that space will remain as parking that is significant. It would be prudent to show proof of parking. There is already an area that shows proof of parking for 25 stalls.

Commissioner Solomonson stated that he would support showing the concept of proof of parking.

Commissioner McCool stated that the need for parking is already present. Proof of parking is a valuable tool, but more is needed, but more is needed now. Perhaps building the north side of the driveway and showing proof of parking elsewhere. **Ms. Meyer** noted an area on the south side of the site that could be left as parking until Phase 1 is completed and then put green space in with the second phase. A number of options can be presented to the City Council.

Chair Doan stated that he would not support taking away green space for parking when there is proof of parking. The City should not impose what is needed from this generation when there is evidence of trends of people living without cars and not having the same needs.

Commissioner Peterson suggested that the number of 30 parking stalls should be specified in the motion with added proof of parking.

Chair Doan called a five-minute break and reconvened the meeting at 10:30 p.m.

MOTION: by Commissioner McCool, seconded by Commissioner Solomonson to recommend the City Council approve the Comprehensive Plan Amendment, Preliminary Plat, and PUD – Development Stage applications submitted by Eagle Ridge Partners LLC/Greco Ridge, LLC for the Shoreview Corporate Center. The proposal includes the redevelopment of 1005 Gramsie Road with a 410-unit multi-family apartment complex. Said approvals are subject to the following conditions:

Comprehensive Plan Amendment

1. The amendment changes the land use designation from BPK, Business Park to MU, Mixed Use.
2. Review and approval of the amendment by the Metropolitan Council.

3. The amendment will not be effective until the City grants approval of the Final Plat and PUD - Final Stage requests and the development agreements are executed.

Preliminary Plat

1. A public use dedication fee shall be submitted as required by ordinance prior to release of the final plat by the City.
2. The Final Plat shall be submitted to the City for approval with the Final Stage PUD application.
3. The Declaration of Easements, Restrictions, Covenants and Conditions shall be amended to reflect the changes in land use, parking and impervious surface coverage for each lot within the Plat. This Declaration shall be submitted to the City Attorney for review and approval prior to the release of the Final Plat. Executed and recorded copies of the Declaration shall be submitted to the City.
4. Drainage and Utility Easements shall be dedicated over the stormwater ponding areas. Other drainage and utility easements shall be provided over the proposed stormwater management areas, infiltration basins and as required by the Public Works Director.

Planned Unit Development – Development Stage

1. This approval permits the redevelopment of 1005 Gramsie Road with a multi-family residential apartment complex that will be constructed in two phases. The complex will consist of 2 separate apartment buildings; each 4-stories in height with about 205 apartment units. Parking shall be provided on-site in an underground parking structure and surface parking lot.
2. The items identified in the City Engineer's memo dated February 22nd shall be addressed in the Final PUD submittal.
3. A Phasing Plan shall be submitted with the Final PUD application and shall include the construction schedule and development activities for each phase.
4. Approval of the final grading, drainage, utility, and erosion control plans by the Public Works Director is required, prior to submittal to the issuance of a building permit. Final plans shall identify site construction limits and the treatment of work (i.e. driveways, parking areas, grading, etc.) at the periphery of these construction limits.
5. The developer shall secure a permit from the Rice Creek Watershed District prior to commencing any grading on the property.
6. The Declaration of Easements, Restrictions, Covenants and Conditions shall be amended and identify the permitted land uses and shared parking within the PUD. This Declaration shall be submitted to the City Attorney for review and approval prior to the release of the Final Plat. Executed and recorded copies of the Declaration shall be submitted to the City.
7. The proposed apartment housing structure shall be of a 4-story design and include the architectural enhancements and high-quality building materials as identified as

depicted on the plans submitted with this application. The structure shall not exceed the 50-foot height as identified in this report and on the submitted plans.

8. The applicant is required to enter into agreements related to the subdivision, site development and erosion control. Said agreements shall be executed prior to the issuance of any permits for this project. The agreement shall address:
 - a. Construction management and nuisances that may occur during the construction process, including parking for contractors. No parking is permitted on County Road F or Lexington Avenue.
 - b. Landscape maintenance
 - c. Maintenance of stormwater management facilities
9. This approval shall expire after two months if the Planned Unit Development - Final Stage application has not been submitted for City review and approval, as per Section 203.060 (C)(6).
10. Developers shall modify the PUD Development Stage Plan so as (i) to provide approximately 30 surface parking stalls for Phase 1 and 60 surface parking stalls for Phase 1 and Phase 2 combined and (ii) to identify proof of parking areas in each phase available to provide additional surface parking if deemed necessary by the City. Additionally, the developer shall provide a parking plan for the overall development that demonstrates how future parking demands may be satisfied within the site.

This approval is based on the following findings:

1. The proposed Comprehensive Plan Amendment changing the land use to MU, Mixed Use in order to permit a multi-family residential development within the Corporate Center is consistent with the policies of the Comprehensive Plan related to land use and housing.
2. The proposed change in use for the 1005 Gramsie Road from industrial to residential will not adversely impact the planned land use of the surrounding property.
3. The redevelopment plan supports the City's goals for the reinvestment and upgrade of the Corporate Center to attract and retain business.

Discussion:

Commissioner Peterson agreed with the added condition No. 10. He also favors putting in planned green space first but changed to parking if needed because additional needs for parking will happen gradually as it will be five years before both phases are full. He suggested 44 parking stalls added for both phases with proof of parking.

Commissioner Solomonson stated that there is agreement that 30 stalls are needed for the first phase, and it makes sense then that 60 stalls would be needed for both phases. There is ample parking if all the green space is not put in right away. Parking can be converted to green space. Also, street parking will be competitive for the businesses as well and there will be more parking demand than just employees.

Commissioner McCool stated that he can accept between 44 and 60 stalls.

Chair Doan stated that this is the difference of 16 parking spaces and should not be the basis for postponing a decision. With the proof of parking, 44 is a good starting point. Employees can park on the street which gains 10 more parking spaces.

VOTE: Ayes - 6 Nays - 0

TAX INCREMENT FINANCING PLAN FOR PROPOSED DISTRICT NO. 11

(Commission finding of conformity with Comprehensive Plan (Greco Ridge LLC-1005 Gramsie Road redevelopment project).

Presentation by City Planner Kathleen Castle

State law requires the Planning Commission to find the TIF Plan consistent with the general development plans of the City. TIF District No. 11 would be created to provide gap funding for the developer to feasibly redevelop the 1005 Gramsie Road property with 410 apartment units with 24 affordable units. The City has confirmed through an inspector that the property is substandard and requires HVAC and code improvements. The building has been vacant for 10 years. The proposed project qualifies as a Redevelopment District with a maximum life of 25 years.

The Economic Development Authority (EDA) has reviewed the TIF request and has given preliminary approval for the redevelopment project. The EDA will consider the TIF Plan and TIF Development Agreement at the March 6, 2017 meeting. The City Council will consider the TIF Plan and TIF Development Agreement at a public hearing on March 20, 2017. The project is consistent with the City's adopted Housing Action Plan and with Chapter 6 of the Comprehensive Plan that identifies goals and strategies for targeted redevelopment areas. The proposal is also consistent with the City's life cycle goals for the community. Staff's recommendation is the Planning Commission make a finding that the draft TIF Plan of a new TIF District 11 is in conformance with the City's Comprehensive Plan.

Commissioner McCool asked the amount of TIF assistance being recommended by the EDA. Ms. Castle answered, \$12.8 million.

TO: Planning Commission
FROM: Aaron Sedey, Associate Planner
DATE: March 23, 2017
SUBJECT: File No. 2652-17-05, Hamilton Signs, Willow Creek Center, 5910 Lexington Ave
- Comprehensive Sign Plan

INTRODUCTION

On behalf of the Willow Creek Center, Inc., Hamilton Signs has submitted an application for the Comprehensive Sign Plan for the Willow Creek Center, a multi-tenant retail center located at the SW corner of Lexington Ave and Hamline Ave N. They propose to alter the existing wall signage, by replacing some cabinet signs with channel signs. The proposed signs do not conform to the approved plan, and a new Comprehensive Sign Plan is being requested to encompass the whole property. Only the Wall Signage is being addressed and the content of message center and gas canopy is staying the same but being rolled in the one Comprehensive Sign document for Willow Creek Center.

The application was complete March 2, 2017.

BACKGROUND

Willow Creek Center, 5910 Lexington Avenue North, is located on the southwest corner of Lexington Avenue and Hamline Avenue. The property is in the C-1, Retail Service District, and the existing use conforms to the zoning regulations and previous approvals. The retail center was originally approved in 1987 with a site and building plan review, and a conditional use permit was approved for the fuel station at the same time. In 1996, an amendment to the conditional use permit allowed enlarging the gasoline pump service islands and overhead canopy, and in 2009 a second amendment extended the fuel station's operating hours by allowing "pay at the pump" fuel sales any time the convenience store is closed. Other approvals through site and building plan review have permitted the expansion of the parking lot and retail center, uses that are not subject to the Conditional Use Permit.

In 1998 a Comprehensive Sign Plan was approved allowing a monument sign for the Center, replacing a freestanding pylon sign for the fuel station and retail center. That Sign Plan permitted a reader board, and approved deviations for sign height and area. Since 1998 the regulations for signs have been amended several times, including differentiating between sign area and the copy and graphics area. The monument sign was refaced in 2009 with a Cenex sign panel, a gas price display sign, and retained the changeable copy sign (readerboard) located in the bottom portion of the monument. The plan was amended in 2016 to convert the manual changeable copy sign to an electronic message center sign.

PROJECT DESCRIPTION

Two signs are to be replaced with this Comprehensive Sign Plan, being the Anytime Fitness and State Farm business signage to channel letter signs.

This proposal requires a Comprehensive Sign Plan since the current plan only allows for similar sized cabinet signs that fit the sign band for tenant wall signage.

The sign plan includes provisions addressing:

- Wall Signs:
 - North Fascia sign band (Lexington Ave)
 - Individual letter (channel) style mounted within the sign band (3'6")
 - Maximum 30-inch height
 - Dominate business color and no font restriction
 - Logos are permitted
 - Centered over tenant space with minimum 12-inch clearance on each end of space (to provide separation between fascia signs)
 - Additional cabinet sign is allowed below if it is the smaller of the two signs.
 - East Fascia sign band (Hamline Ave)
 - Individual letter (channel) style mounted within the sign band (3'6")
 - Maximum 30-inch height
 - Maximum 20-foot length
 - Dominate business color and no font restriction
 - Logos are permitted
 - Centered over tenant space with minimum 12-inch clearance on each end of space (to provide separation between fascia signs)
 - Additional cabinet sign is allowed below if it is the smaller of the two signs.
- Message Center Sign
 - No change from 2016 amendment.
- Gas Canopy
 - No change from last update.

DEVELOPMENT CODE REQUIREMENTS

Signs are regulated according to the provisions of Section 208 of the Development Code. Multi-tenant retail centers, such as the Willow Creek Center, are required to have a Comprehensive Sign Plan since more than one wall sign is displayed. For structures less than 50,000 square feet in area, a wall sign is permitted as long as it does not exceed 10% of building elevation to which the sign will be affixed with a minimum of 20 square feet. Also the length of the wall sign shall not exceed 20 percent of the length of the building elevation to which affixed. 208.040(B)(18)(b) and 208 Table 3.

Comprehensive Sign Plan Review

The Comprehensive Sign Plan is intended in part to provide a method to allow flexibility from the sign standards without formal approval of a variance. When deviations from the standards are proposed, the outcome should result in an attractive sign that is compatible with the premises and adjoining development. Findings for the following criteria are necessary to approve a deviation: 203.040(C)(2)(c)

1. *The plan proposes signs consistent in color, illumination, size and materials throughout the site.*
2. *Approving the deviation is necessary to relieve a practical difficulty existing on the property.*
3. *The proposed deviations from the standards of Section 208 result in a more unified sign package and greater aesthetic appeal between signs on the site.*
4. *Approving the deviation will not confer a special privilege on the applicant that would normally be denied under the Ordinance.*
5. *The resulting sign plan is effective, functional, attractive and compatible with community standards.*

STAFF REVIEW

The proposed sign plan was reviewed in accordance with the City's sign standards and previous approvals. The existing signage for the Center includes wall signs for the tenants, the freestanding monument sign, including the readerboard and gas price display, and canopy signs for the fuel station. The proposal has been reviewed in accordance with the standards for message center signs as well as those for the Comprehensive Sign Plan.

Comprehensive Sign Plan Review

The intent of the Comprehensive Sign Plan is to allow flexibility from the sign standards without formal approval of a variance provided it results in an attractive sign that is compatible with the premises and adjoining development. The following findings must be satisfied for the Plan to be approved. These standards are for wall signage only, previous sign requirement for canopy and message sign have no changes occurring to them.

1. *The plan proposes signs consistent in color, illumination, size and materials throughout the site.* Staff has discussed placing a definitive sign period for which all wall signs need to be replaced, however, the applicant expressed concerns regarding such a condition due to the cost of replacement. While staff prefers to have all wall signs consistent in appearance, it is understood that such a condition may be a financial hardship for the small business owners.
2. *Approving the deviation is necessary to relieve a practical difficulty existing on the property.* The Willow Creek Center is a multi-tenant shopping center approximately

14,500 square feet in floor area. With multiple tenants, there is a greater need for larger signage than what is allowed. Per current code a storefront of 19 feet would be allowed a 3' 7 3/16" wide sign and per current Approved Comprehensive Sign Plan it ranges 6'-8' for sign length, which is satisfactory for cabinet signs, but in some cases not enough for the style of channel sign. This is necessary to relieve the practical difficulty present at Willow Creek Center.

3. *The proposed deviations from the standards of Section 208 result in a more unified sign package and greater aesthetic appeal between signs on the site.* Staff believes with the attached conditions approved, it will become a more unified sign package, which in time will have a greater aesthetic appeal for the Center.
4. *Approving the deviation will not confer a special privilege on the applicant that would normally be denied under the Ordinance.* Single tenant buildings have the option for longer signage based on having a typically larger storefront than multitenant buildings, which in this case has narrow storefront and deep office space. An increase in length of sign length is needed to support a channel sign. In order to permit channel signs and length of the sign, a Comprehensive Sign Plan is needed to comply and this allows for deviations from the City Code. Staff does not believe this approval will confer a special privilege on the applicant given the history of past City approvals for signs here.
5. *The resulting sign plan is effective, functional, attractive and compatible with community standards.* Staff believes the sign proposes an effective and functional method to advertise tenants at the center, in a manner compatible with the commercial use. The intent of the signs is to provide an updated look.

REQUEST FOR COMMENT

Property owners within 350 feet were notified of this request. Three comments have been received. There was one comment in favor of new signs, and two comments with concerns about the sign and lighting brightness and landscaping.

RECOMMENDATION

The Staff reviewed the proposal in accordance with the requirements for a Comprehensive Sign Plan. Staff recommends that Commissioners take public comments, review the application, and forward the Comprehensive Sign Plan application to the City Council with a recommendation for approval, subject to the following:

1. The plan should reflect that when tenants replace a sign, or a new tenant, or a tenant moves to larger space must utilize channel signs as their primary sign.
2. Two Spruce Trees to be planted per the 2016 landscape plan that are missing as a buffer between the residential and commercial property. These trees should be at minimum six (6) feet tall and shall be planted prior to issuance of sign permits. In the event said trees

(6) feet tall and shall be planted prior to issuance of sign permits. In the event said trees cannot be planted due to the weather conditions, and escrow in the amount of \$500 shall be submitted prior to the issuance of the sign permit. Landscaping must be maintained and replace if damage, lost or diseased.

3. Future signs shall comply with the plans submitted for the Comprehensive Sign Plan application. Any significant change will require review by the Planning Commission and City Council.
4. The applicant shall obtain a sign permit prior to the installation of any signs on the property.

Attachments

1. Location Map
2. Submitted Plans and Written Statements
3. Comments
4. Proposed Motion

T:/2017pcf/2652-17-05 5910 Lexington Willow Creek Center/pcreport.docx



Legend



- City Halls
- Schools
- Hospitals
- Fire Stations
- Police Stations
- Recreational Centers
- Parcel Points
- Parcel Boundaries

Notes

Comprehensive Sign Plan

600.0 0 300.00 600.0 Feet

NAD_1983_HARN_Adj_MN_Ramsey_Feet
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Willow Creek Center

**5910 Lexington
Shoreview, MN 55126**

Comprehensive Sign Plan

&

Tenant Sign Criteria

3/22/17

V.3

Section I Intent and Purposes

Willow Creek Center sign criteria are intended to provide guidelines for tenant identification that will present an attractive image and compliment the architectural integrity and continuity of the business center. These criteria are intended to reduce clutter and provide strong, clear identification of businesses. Willow Creek Center shall have a consistent sign criteria governing the framework of sign plans used by each tenant to identify clearly and consistently them as a part of the overall development.

Section II Sign Approval

A. Landlord

Design, content and details must be approved by the landlord and the city of Shoreview prior to fabrication and erection of the signs. Although previous signing practiced by the tenant will be considered, they will not necessarily govern the signage to be installed in the business center.

1. Tenant's sign contractor must submit drawings and specifications to the landlord for all proposed sign work. Drawings shall show dimensions of the signage area and proposed signs along with the location of each sign on the fascia of each elevation and Monument. They must include graphics, colors, and construction.
2. All costs incurred in furnishing and installation of a sign shall be the full responsibility of the tenant. Sign construction shall be completed in compliance with the instructions specified within these criteria.
3. Tenants are required to identify their premise with a sign specified in this plan.
4. All tenant's signs must be approved by landlord prior to being submitted for city approval.

B. City of Shoreview

A licensed sign contractor shall be responsible for obtaining all city sign permits. City approval does not imply or supersede the landlord's approval. Both approvals are required.

Section III Allocated Sign Areas

A. Exterior Major identification

1. Each Tenant must identify lease space with a sign. Exterior signage shall consist of store name. Copy shall be restricted to tenant's proper name. Corporate logos, emblems, shields and similar identifying items shall be permitted.
2. All signs shall be located in the designated sign areas as shown on elevation.
3. All sign letters must be constructed of aluminum and must be U.L. approved. Any plastic letters must be pre-approved. The use of existing cabinet signs is approved.
4. All signs for each tenant will be furnished, paid for, and maintained by tenant.

B. Exterior Rear Sign

1. The only signs allowed on the rear of the building is a company Identification and or hours of operation on the rear door in vinyl.

C. Windows and Doors

1. Tenant is allowed vinyl graphics of tenant identification, mounted on the front doors. All door lettering must be approved by landlord. Lettering should consist of days, hours of operation and a logo if desired.
2. Window open sign and Vinyl Identification is allowed in the windows. Incidental signs may not exceed three square feet and conform to 208.040(2)(h)

A. Exterior Sign Criteria**Building**

1. Signs will be placed as shown on elevation and shall be limited to Business name, and Corporate logo as permitted by landlord.
2. ID Signs on Building may consist of Illuminated Channel Letters, Illuminated Cabinets and Plastic letters.
3. Tenant major Identification signs must fit within the individual sign band on building, per store front. If any occupant has multiple storefront space, they are allowed the use of that additional space for their sign needs. These sign bands are 3'6" high and vary from 8'-18' Wide, depending upon leased space. All signs must fit within the sign band and must not exceed 30" High. All signs must be 12" from tenant horizontal boarders.
4. All letters and logos must be internally lit with exception of plastic letters, approved by landlord, in accordance with logo that may be too small to illuminate. Channel Letters and Cabinet signs will be illuminated with L.E.D. or Fluorescent lighting. Signs may be internally lit, Front lit or back lit halo style or similar. Any lit channel letters with polycarbonate faces must be mounted to an aluminum raceway. Raceway must be painted to match building color.
5. Handicap signs are allowed and will be placed on columns as needed in front of businesses.
6. Any existing cabinet sign is grandfathered. Any new tenant may use existing cabinet sign and replace the face to state tenant name and logo.
7. Any existing tenant expanding leased space must use channel letters for their Identification. An Additional cabinet sign may be used below the channel letters if desired as long as it fits within the sign band and is the smaller of the two signs.

Entrance

1. One existing double face illuminated welcome sign located at East entrance location,
Size: 52" high x 8'1" long two pole structure with an illuminated cabinet 18" H x 8'1" L.

Monument

One double faced internally lit Monument sign, no larger than 130 square feet will identify the Willow Creek Center. A double face electronic message center will be allowed on the Monument sign to be used at the landlord's discretion for tenant information under the operational guidelines of the city of Shoreview. The monument sign also includes an illuminated ID sign and a L.E.D. gas price sign.

1. The sign shall comply with the plans submitted for the Comprehensive Sign Plan application. Any significant change will require review by the Planning Commission and City Council.
2. The applicant shall obtain a sign permit prior to the installation of any signs on the property.
3. The message center sign shall:
 - a. Display text shall be use a minimum 6-inch character height to be readable by passing motorists without distraction.
 - b. Messages shall be displayed in their entirety to allow passing motorists to read the entire copy.
 - c. Messages shall not include telephone numbers, email addresses or internet urls.
 - d. Messages shall be displayed for a minimum of 8 seconds, and shall change instantaneously.
 - e. Messages be presented in a static display, and shall not scroll, flash, blink or fade.
 - f. Advertisement is limited to the goods and services offered on-site. Text shall be the dominant feature of the display.
 - g. The message center sign shall not be operated between the hours of 11:00 pm and 6:00 am.
 - h. Said sign shall comply with the City's standards regarding brightness and dimmer control.

4. Temporary business signs, with the exception of window signs, sandwich board/T-frame signs placed adjacent to the building, and incidental displays in accordance with the Sign Code standards, shall not be displayed on the property.
5. The applicant shall prepare a landscape plan to address screening along the west side lot line. The plan is subject to approval of the City Planner. A landscape surety in the amount of \$2,500.00 shall be submitted to insure installation of the trees if the sign is installed before the landscaping work has been complete.

Walkway

6. Each Tenant may have the existing exterior sign hung at a right angle in the center walkway above their door, listing their store name in one color on white acrylic. Maximum Size: 12" H x 72" W.

Gas Station

7. The east end cap of the building has a sign band 3'6" H x 50' L. that is occupied by the Gas station. They have an existing illuminated sign in that sign band 30' H x 20'L that will be grandfathered in. Future signs are only allowed 20 linear feet Maximum and not allowed to run the full length of the sign band.
8. The gas station canopy has branded logos on two sides of the canopy and branding logos are allowed on the canopy and the monuments sign.

Temporary

9. "Temporary Signage is allowed for "Coming Soon", for two weeks prior to opening with permit. With a sign permit, business name signage may stay up for four weeks with documentation that signage has been ordered and paid for, submitted to the City. Banner signage must be securely fixed to building. Must conform to sign band location.

Exterior signs prohibited

1. Moving, Rotating or flashing signs.
2. Signs, letters, symbols or identification of any nature, painted directly onto the exterior surfaces of the premise.
3. Cloth, wood, paper or cardboard signs, stickers or painted signs on or around exterior surfaces of the premises.
4. Individual free standing sign identifying the tenant's business.
5. Rooftop signs.
6. Signs employing noisemaking devices and components.
7. Signs employing un-edged or uncapped plastic letters or letters with no returns and exposed edges.

Section V Sign Construction Specifications

A. Illuminated Signs

1. Dimensions – All channel letters and logo signs must be approved by landlord. Maximum height not to exceed sign area as shown on elevation. Depth to be no more than 5 inches. All letters will have painted aluminum trim and returns and will be U.L. Listed.

I have read this sign criteria for the Willow Creek Center at 5910 Lexington Ave Shoreview, MN 55126. I believe it represents my requirements and those of the city of Shoreview for building and exterior tenant signage at Willow Creek Center.

Landlord Name _____

Signature _____ **Date** _____

Approved by Signature: _____

Approved by Name: _____

Title: _____ **Date** _____

West end of Willow Creek Center



Terry Anderson bought six trees in 2016 for \$1900.00 as required by the city and to satisfy his bond. One has since died but will be replaced in 2017.

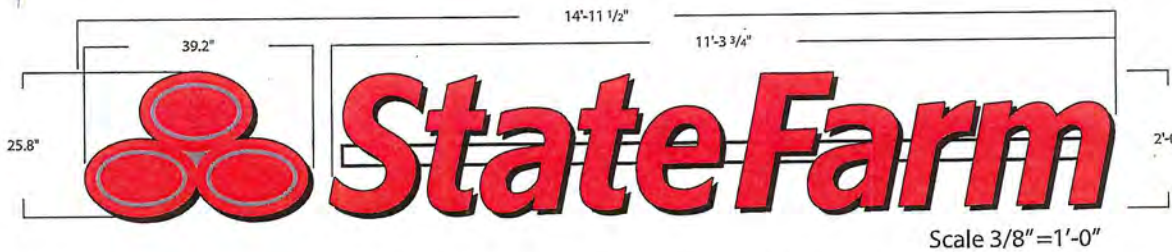
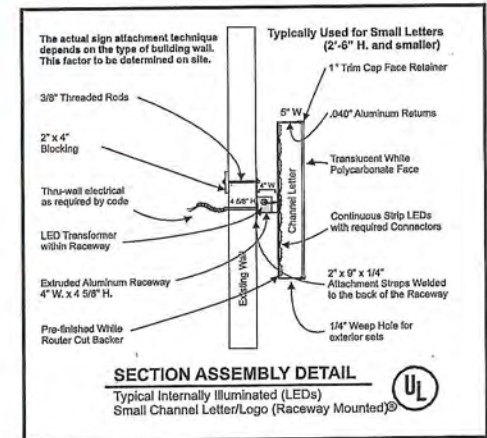
Building Front showing sign band. All signs to be centered between the sign band per leased space. No Signs can be placed on the peak.





Scale 1/8" = 1'-0"

34' x 18' = 612 sq ft



Specifications

24" Channel LED letters /
 3-oval symbol is 25.8" high x 39.2" wide;
 (14' - 11.5" overall length) CL24 Red. (32.5 sq. ft.)
 Total 32.5 sq. ft.

Sign Face

Face from 1/8" min. non-glare, clear acrylic
 Trim Cap on edges to match face color
 2nd surface applied vinyl to maintain matte finish on the face:
 Red Logo - 3M Trans Red #3630-033 or Arlon #2500-33
 White Logo - Trans White: 3M #3630-20 or Arlon #2500-20
 Do not use more than one layer of vinyl on the second surface
 Dark Gray inner vinyl rings are: Arlon 2100-52
 Raceway: painted to match wall bldg background

Construction

Returns: 4" nominal depth painted: Special Dark Gray Metallic - Pantone® 432u on exterior, white on interior for reflectivity aluminum returns on exterior .050" min. back is .090 min. aluminum
 Inside triangle passes through entire can.

Illumination

Use US LEDs per shop drawings
 Use modules with 3 LED emitters
 Use Right Light Series LED lights for red letters
 Use Saver Series 6300K LEDs for white letters
 Waterproof On/off switch located on power supply enclosure.

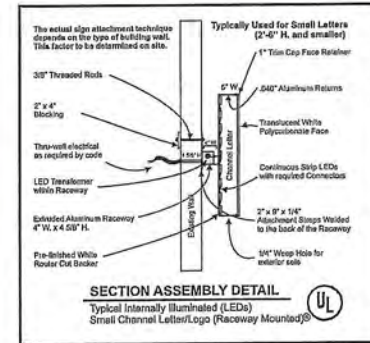
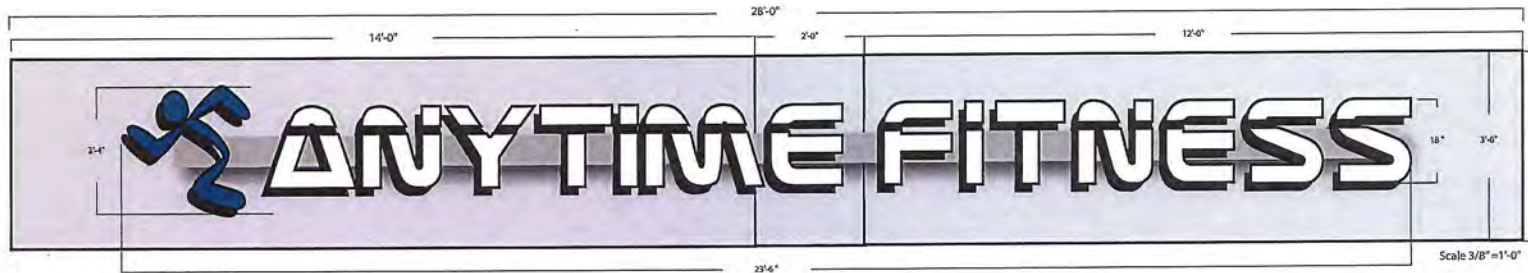


Client: State Farm insurance
 Location: 5932 Lexington Ave
 Description: Shoreview, MN 55126

Date: 2-27-17
 Revision: v.1
 Drawn By: ___MTC___

Description
 CHANNEL LETTERS & LOGO ON RACEWAY

P.O. Box 148
 Rosemount, MN 55068
 651-247-8224
 651-322-7936 Fax
 sales@hamiltonsign.com



COLORS:


- Running man Color: Translucent Plum Purple (230-128)
- Lettering Color: Translucent White
- Line Through Lettering: Opaque Black (220-12)
- Raceway-paint to match background TBD

*The exterior sign vinyl brand is 3M, This brand and color must be specified. Color matches or substitutions are prohibited.

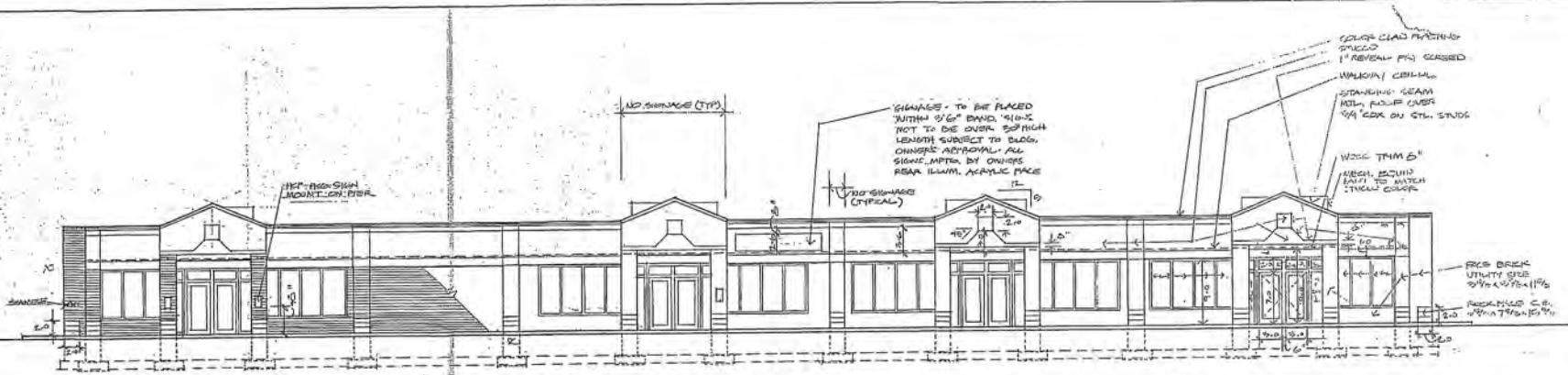
SPECIFICATIONS

Channel LED 18" letters / 28" logo / White Polycarbonate lens
 Black trim / Black returns / Black opaque band thru letters
 Purple running man / Black trim and return / Head attached.
 54 SQ.FT.
 Scale 3/8" = 1'-0"

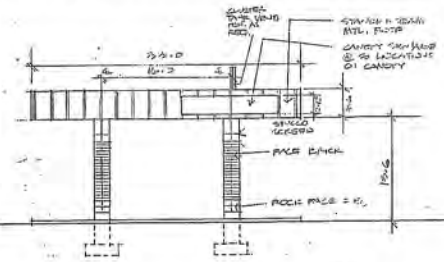
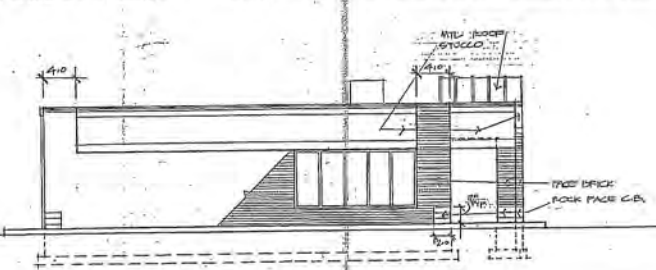
ANYTIME FITNESS STORE FRONT 18' H x 82' L = 1476 sq ft (4 total storefronts)

 <p>HAMILTON SIGN A Hamilton LLC Company</p>	<p>Anytime Fitness</p>	<p>Date: 2-27-17</p>	<p>Description</p> <p>CHANNEL LETTERS & LOGO ON RACEWAY</p>	<p>P.O. Box 148 Rosemount, MN 55068 651-247-8224 651-322-7936 Fax sales@hamiltonsign.com</p>
	<p>Location 5910 Lexington Ave</p>	<p>Revision: v.1</p>		
<p>Description Shoreview, MN 55126</p>				

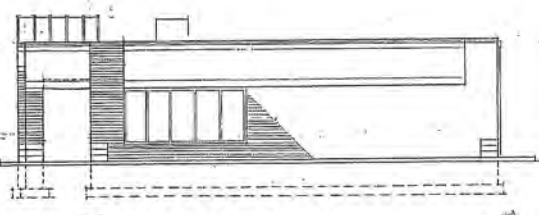
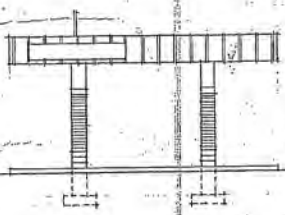
north
1/6" = 1'-0"



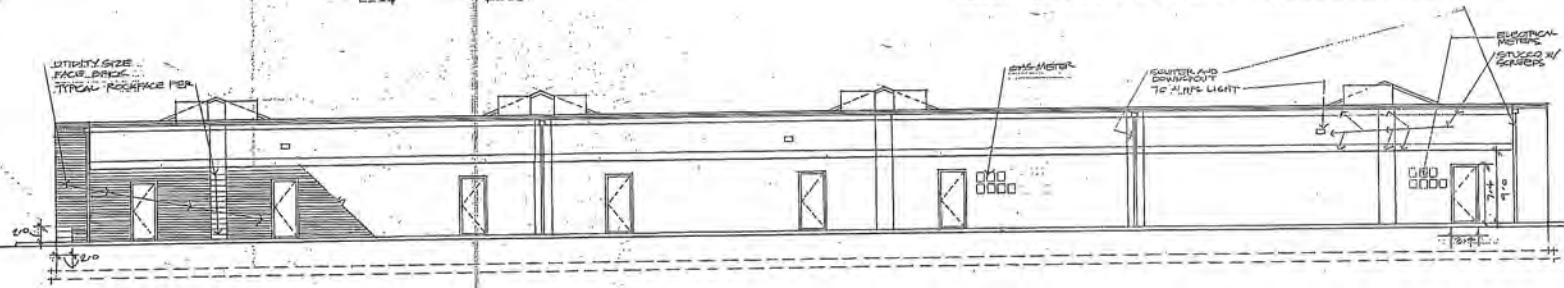
east



west

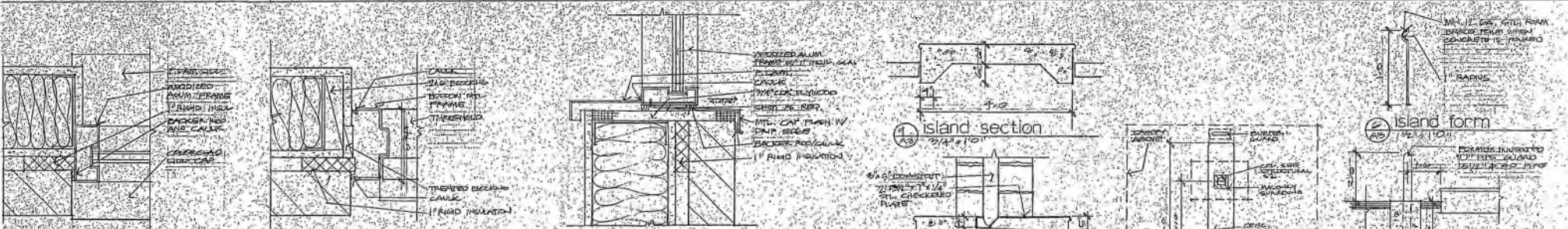


south



I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

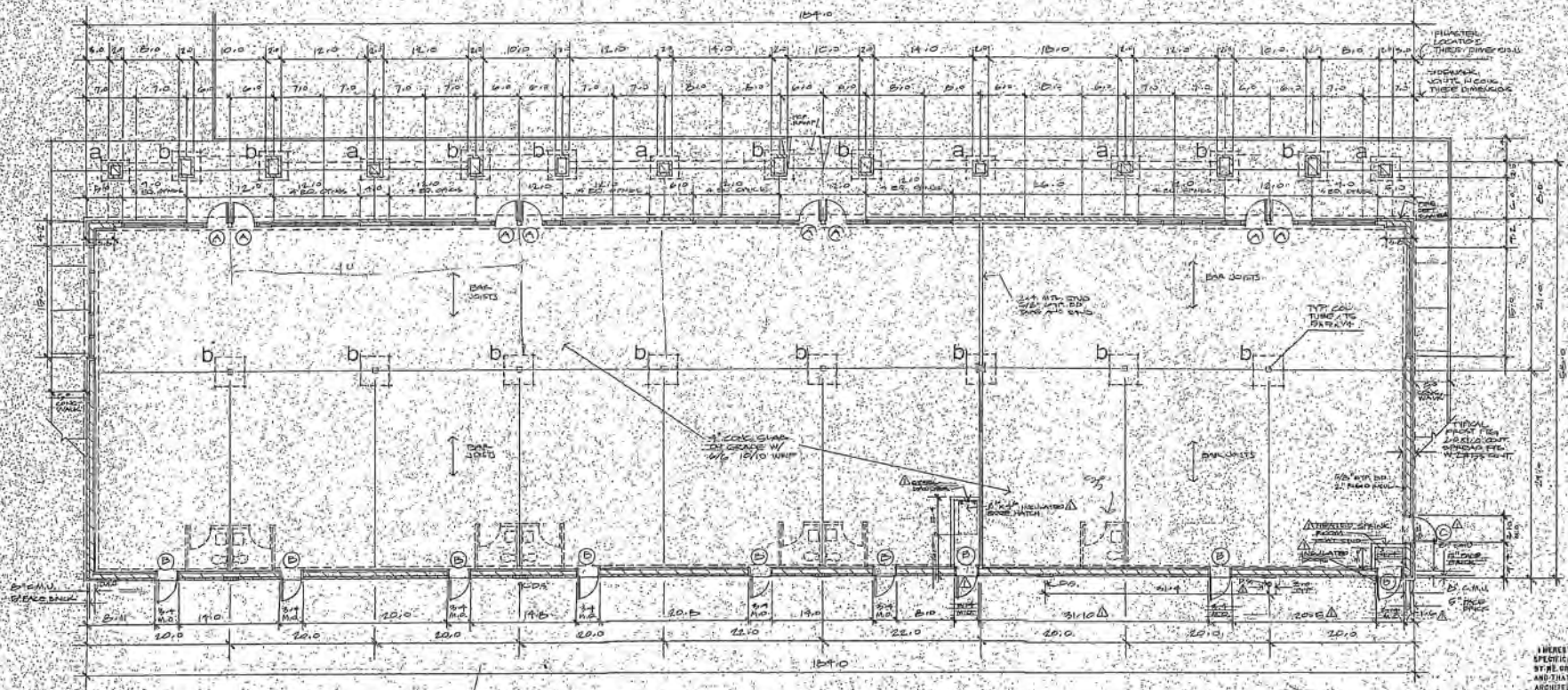
[Signature]
DATE: 12/15/11 REGISTRATION # 10200



wdw jamb detail 2' x 10" (A-A)
 ext door jamb 2' x 10" (B-B)
 wdw sill 2' x 10" (A-A)
 Island section 2' x 10" (A-A)
 downspout detail 2' x 10" (A-A)
 downspout detail 2' x 10" (A-A)
 Island form 1/2' x 10" (A-A)
 bumper guard detail 1/2' x 10" (A-A)

footing schedule

- a. 25# x 12" W/3 #5's x 2'6" EA. WAY
 - b. 45# x 12" W/4 #5's x 3'6" EA. WAY
- NOTE: ALL FEET TO HAVE 10"x10" CORNER PILL. MASONRY CORES W/ 2 #5'S VERT. TYP.



FLOOR PLAN (A-A)

ARCHITECT CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY CLOSE SUPERVISION AND THAT I AM A duly REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.
 DATE 12/12/17 REGISTRATION #10000

**PROVISION FOR
WILLOW CREEK CENTER
EK CENTER**

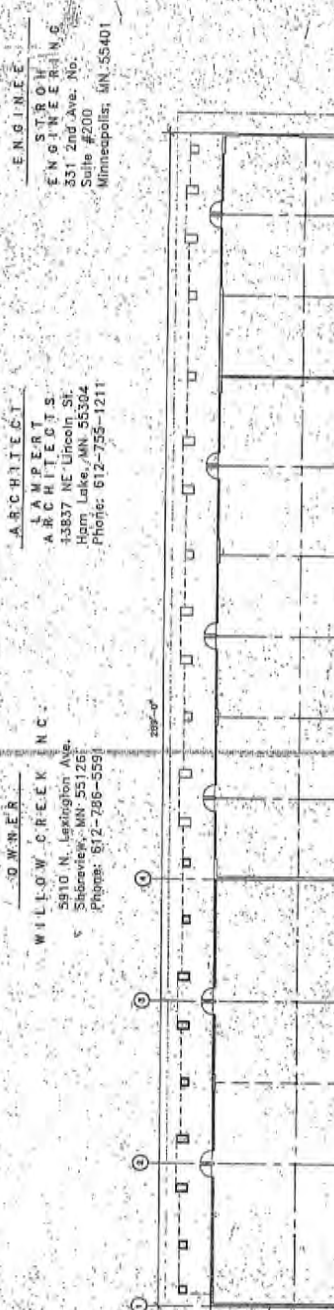
OWNER:
WILLOW CREEK CENTER
5910 N. Lehigh Ave.
Shoreview, MN 55126
Phone: 912-756-5591

ARCHITECT:
JAMPERT
ARCHITECTS
13837 NE Lincoln St.
Room Lake, MN 55304
Phone: 612-756-1211

ENGINEER:
STROHMEIER
ENGINEERING
331 2nd Ave. No.
Suite #200
Minneapolis, MN 55401

**COMMERCIAL PLAN REVIEW
FOR CODE COMPLIANCE**

- GENERAL INFORMATION
- APPLICABLE CODES
- OCCUPANT GROUP
- TYPE OF CONSTRUCTION
- BUILDING AREA/HEIGHT
- ALLOWABLE HEIGHT AND BUILDING AREA
- RATINGS AND LOCATION OF OCCUPANCY SEPARATION (IBC 902)
- FREESTANDING RATINGS (IBC TABLE 6A)
- OCCUPANCY LOAD (IBC TABLE 10-A)
- EXITING
- OTHER
- PLUMBING FIXTURES - INCLUDING ACCESSIBLE
- PAVEMENT DESIGN



1. OVERALL FLOOR PLAN
SCALE: 1/4" = 1'-0" (IBC 304)



NORTH

SEE 6/AS FOR ENLARGED 6/AS PLANS

REMOVE AND BLOCK IN EXISTING WINDOW

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

**Proposed Addition For
WILLOW CREEK CENTER**

DATE: 01/10/01	BY: [Signature]
PROJECT: [Project Name]	CHECKED: [Signature]
SCALE: AS SHOWN	DATE: 01/10/01
SHEET NO: 101	TOTAL SHEETS: 101

R.C. [Signature]

Sheet 101 of 101

101



NORTH

REMOVE AND BLOCK IN EXISTING WINDOW

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

101



NORTH

REMOVE AND BLOCK IN EXISTING WINDOW

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

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EDGE OF SIDEWALK

101



NORTH

REMOVE AND BLOCK IN EXISTING WINDOW

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

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EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK

EDGE OF SIDEWALK



WELCOME
WILLOW CREEK CENTER

STOP

ve

mach



East end cap



Comments:

We are in favor of the change in signage

Name: Garrett & Diane Lysick

Address: 5844 Hamline Ave N
Shoreview, MN 55126



Aaron Sedey <asedey@shoreviewmn.gov>

Signage at Willow Creek Center

3 messages

Kevin Dunlevy [REDACTED]
To: "asedey@shoreviewmn.gov" <asedey@shoreviewmn.gov>

Tue, Mar 14, 2017 at 9:02 AM

Dear City of Shoreview,

Attached is a photo of Willow Creek Center I took on March 12, 2017 at 4:14 AM, from my house at 5901 Ridge Creek Road, Shoreview. The house is about 600 feet northwest of Willow Creek Center, across Lexington, so the camera is facing southeast. Also attached for comparison is the Shoreview water tower, which is about 2000 feet east of my house. The water tower is remarkably unobtrusive compared to Willow Creek Center.

The photo of Willow Creek Center shows light glaring from the strip mall. Both photos were taken with a GPS enabled pocket camera on a tripod, with automatic film speed, f-stop and exposure time. (You can view the GPS and exposure data by opening the photos with Windows Photo Viewer and selecting Properties from the File menu.) The light is even more glaring during the Christmas season when holiday lights are added. The lights from the pediments above the doors are especially bright. The street lights above the parking lot are bright and the reflections of the pediments and street lights from the parking lot are also bright. The lights from the canopy have improved with the Cenex canopy, which now project their light straight down, instead of down and 360 degrees around the canopy like the former lights. However, the pediments, street lights, gasoline price sign and reflections are all still very bright. How bright will the new signage be? Does the city limit the number of lumens projected horizontally from commercial property into residential property?

I request that any new signage not add to the glare from the shopping mall into the neighboring residences, and that the city require a reduction of the glare from the pediments and parking lot lights as a condition of approval of any variance from existing sign standards. KD

Kevin Dunlevy

5901 Ridge Creek Road

Shoreview MN 55126

Kevin J. Dunlevy
[REDACTED]



2017/3/12 4:14



2017/3/12 4:16

Comments:

OUR PROPERTY BORDERS THE SOUTH SIDE OF THE WILLOW CREEK CENTER. ALL OF THE LARGE VEGETATION AND TREES WERE REMOVED LAST YEAR, SO THERE IS CURRENTLY NO BUFFER BETWEEN WILLOW CREEK CENTER AND OUR YARD. THIS HAS RESULTED IN A SIGNIFICANT INCREASE IN THE AMOUNT OF LIGHT POLLUTION FROM THE COMMERCIAL PROPERTY, PARTLY BECAUSE THE GAS PUMP CANOPY IS QUITE A BIT HIGHER THAN THE ROOF OF THE BUILDING. I WOULD HOPE THAT THE NEW SIGNAGE DOES NOT SIT HIGHER THAN THE ROOF LINE, AND IS NOT ANY BRIGHTER THAN THE EXISTING LIGHTING.

Name: GEOFFREY PAGE

Address: 1355 RICE CREEK TRAIL
SHOREVIEW



MOTION
TO APPROVE A COMPREHENSIVE SIGN PLAN
WILLOW CREEK CENTER
5910 LEXINGTON AVENUE

MOVED BY COMMISSION MEMBER: _____

SECONDED BY COMMISSION MEMBER: _____

To recommend the City Council approve the Comprehensive Sign Plan submitted by Hamilton Sign, subject to the following conditions:

1. The plan should reflect that when tenants replace a sign, or a new tenant, or a tenant moves to larger space must utilize channel signs as their primary sign.
2. Two Spruce Trees to be planted per the 2016 landscape plan that are missing as a buffer between the residential and commercial property. These trees should be at minimum six (6) feet tall and shall be planted prior to issuance of sign permits. In the event said trees cannot be planted due to the weather conditions, and escrow in the amount of \$500 shall be submitted prior to the issuance of the sign permit. Landscaping must be maintained and replace if damage, lost or diseased.
3. Future signs shall comply with the plans submitted for the Comprehensive Sign Plan application. Any significant change will require review by the Planning Commission and City Council.
4. The applicant shall obtain a sign permit prior to the installation of any signs on the property.

Approval is based on the following findings:

1. *The plan proposes signs consistent in color, illumination, size and materials throughout the site.* Staff has discussed placing a definitive sign period for which all wall signs need to be replaced, however, the applicant expressed concerns regarding such a condition due to the cost of replacement. While staff prefers to have all wall signs consistent in appearance, it is understood that such a condition may be a financial hardship for the small business owners.
2. *Approving the deviation is necessary to relieve a practical difficulty existing on the property.* The Willow Creek Center is a multi-tenant shopping center approximately 14,500 square feet in floor area. With multiple tenants, there is a greater need for larger signage than what is allowed. Per current code a storefront of 19 feet would be allowed a 3' 7 3/16" wide sign and per current Approved Comprehensive Sign Plan it ranges 6'-8' for sign length, which is satisfactory for cabinet signs, but in some cases not enough for the style of channel sign. This is necessary to relieve the practical difficulty present at Willow Creek Center.

3. *The proposed deviations from the standards of Section 208 result in a more unified sign package and greater aesthetic appeal between signs on the site.* Staff believes with the attached conditions approved, it will become a more unified sign package, which in time will have a greater aesthetic appeal for the Center.
4. *Approving the deviation will not confer a special privilege on the applicant that would normally be denied under the Ordinance.* Single tenant buildings have the option for longer signage based on having a typically larger storefront than multitenant buildings, which in this case has narrow storefront and deep office space. An increase in length of sign length is needed to support a channel sign. In order to permit channel signs and length of the sign, a Comprehensive Sign Plan is needed to comply and this allows for deviations from the City Code. Staff does not believe this approval will confer a special privilege on the applicant given the history of past City approvals for signs here.
5. *The resulting sign plan is effective, functional, attractive and compatible with community standards.* Staff believes the sign proposes an effective and functional method to advertise tenants at the center, in a manner compatible with the commercial use. The intent of the signs is to provide an updated look.

VOTE:

AYES:

NAYS:

Regular Planning Commission Meeting – March 28, 2017

TO: Planning Commission

FROM: Kathleen Castle, City Planner
Aaron Sedey, Associate Planner

DATE: March 24, 2017

SUBJECT: Wireless Telecommunications Ordinance – Small Cell Sites

Introduction

The wireless telecommunications industry is constantly evolving with technology advancements. These advancements have primarily been in the form of new technology antennas, remote radio heads and fiber-optic components at existing macro sites (water towers and monopoles) to improve telecommunications speed and capacity.

Wireless cell providers are also expressing interest in developing small cell sites which are designed to support cellular coverage within a macro site cell area that has high coverage needs or poor site coverage. Small cell site technology consists of a small radio unit and antenna that is directly linked to local macro sites by fiber optics and infrastructure located in public rights-of-ways.

Wireless telecommunications facilities, including small cell sites, are permitted on parcels that fall within the City's Telecommunications Overlay Districts. They are not permitted in public rights-of-ways. Some organizations in the industry, however, cite that these facilities are considered a utility and thereby permitted.

When wireless applications or improvements are proposed in the City, the City utilizes SEH, Inc. to assist with the plan review and construction management. SEH, Inc. has extensive experience working with telecommunications and is able to bring forth the expertise needed in managing these projects on behalf of the City. Because of the growing concerns related to small cell sites and overall changes in the wireless industry, the City hired SEH, Inc. to assist with the development of an updated communications ordinance that addresses these facilities.

Draft Ordinance

SEH, Inc. Staff have drafted an ordinance that allows small cell sites in the City, including local rights-of-way provided a permit is received and standards are met. The following summarizes key provisions of the draft ordinance (see attached).

- 1) Consolidating wireless telecommunications zoning definitions and regulations into one section, with the exception of those located in the rights-of-way which will be placed in Section 405, Right-of-Way Management.
- 2) Establishing permit requirements for small cell sites.
- 3) Identifying standards for small cell sites that are either building or pole mounted or placed on a public utility structure.

- 4) Creating standards for those small cell sites and distributed antenna systems located in TOD districts and the public right-of-way.

In addition to meeting the requirements set forth in Chapter 200, a right-of-way permit will also be required. Work in the City rights-of-way is permitted in accordance with Municipal Code Section 405, Right-of-Way management.

Recommendation

Wireless telecommunication facilities are complex as are the industry regulations, including those needed on the local level. Due to the unique nature of these facilities, it is Staff's opinion that an ordinance revision is needed to address the installation of small cell site in the community and specifically in public right-of-way. Staff is recommending the Commission discuss the information presented and provide feedback regarding the draft ordinance. There is an immediate need in adopting small cell site regulations due to pressure being placed upon government agencies for these types of sites.

Attachments

- 1) Draft Ordinance
- 2) Telecommunications Overlay District map
- 3) League of Minnesota Cities Information Memo – Cell Towers, Small Cell Technology & Distributed Antenna Systems

T:/ordrevisions/wirelesstelecommunications/2017pcreport.doc

Text Underlined is proposed for Addition

Text Stricken is proposed for Deletion

SECTION 2XX – WIRELESS TELECOMMUNICATIONS FACILITIES

2XX.010 Purpose and Findings

(A) In order to accommodate the communication needs of the residents, business and industry while protecting the health, safety and general welfare of the City, the following regulations are imposed in order to:

- (1) Facilitate the use of wireless communication services, for residents, business and industry of the City;
- (2) Minimize adverse effects of towers or colocations on buildings or poles through careful design and site standards;
- (3) To regulate access to and ongoing use of public rights-of-way and facilities, such as water tanks, building roof tops, utility poles, lighting masts and other structures by telecommunications providers for their telecommunications facilities

2XX.020 Definitions

Accessory Equipment refers to any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

Aesthetics also known as “Architecture”, “Camouflage”, “Conceal” or “Concealment” or “Stealth Design”) refers to state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the negative aesthetic impacts (to be further defined in the review process). Examples of aesthetic design techniques include architecturally screening roof mounted antennas and accessory equipment; integrating Telecommunications Facilities into architectural elements; nestling Telecommunications Facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the Telecommunications Facilities; and designing Towers to appear other than as Towers, such as light poles, power poles, flag poles, and trees..

Applicant is any person or entity who files an application for any permit or is party to any lease agreement required by this Ordinance for the construction, replacement, installation, or alteration of wireless communication facility or any component thereof.

Text Underlined is proposed for Addition

~~Text Stricken is proposed for Deletion~~

Antenna is any exterior transmitting or receiving device mounted on a Tower, Monopole, building, or other structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies(excluding radar signals), wireless telecommunications signals or other communications signals. “Antenna” does not include a lightning rod or a dish antenna.

~~Antenna. Any device or equipment designed for transmitting or receiving light, sound or electronic signals, which is located on the exterior of, or outside of, a building or structure and which is or could be attached to a tower.~~

Antenna Support Structure is any new or existing Tower, building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity that can be used for the location of Antennas without increasing the height or mass of the existing structure.

Camouflaged. Using shape, color, and texture to cause an object to appear to become part of something else. Camouflage does not mean invisible but rather appearing as part of another structure, such as a building, wall, or roof. Includes wireless telecommunication facilities disguised to appear as another structure such as a building, clock tower, chimney, church steeple, flag pole, light pole, sign, tree, or utility pole.

City shall mean the City of Shoreview, Minnesota. For purposes of Section 207.41, City means its elected officials, officers, employees and agents.

Co-location is the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

Commercial Antenna or Tower. An antenna or other device and/or an associated tower designed for use for commercial purposes or to provide a telecommunications service with the intent to make a profit.

Concealed. Fully hidden from view. Refers to a wireless telecommunication facility that is not evident and is hidden or integrated into a structure such as a building, wall, or roof.

Dish Antenna” means a parabolic-shaped antenna (including all supporting apparatus) which is used for transmitting or receiving telecommunication, television or radio signals, which is located on the exterior of, or outside of, any building or structure.

Distributed Antenna System (DAS)” is a network of spatially or geographically separated antenna nodes that are connected to a common source through a transport or communication medium in order to provide wireless communication service in a specific locality or building. A DAS can be deployed indoors (iDAS) to provide network or cellular connectivity throughout a building or outdoors (oDAS) in areas where regular wireless coverage does not reach.

Text Underlined is proposed for Addition

~~Text Stricken is proposed for Deletion~~

DAS Hub Ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere.

Easement is a legal interest in real property that transfers a partial property right to the holder of the easement authorizing a person or party to use the land or property of another for a particular purpose.

Engineer refers to but is not limited to a radio, electrical, structural, or mechanical engineer licensed by the State of Minnesota

Equipment Enclosure. A structure, shelter, cabinet, box, or vault designed for and used to house and protect the electronic equipment necessary and/or desirable for processing wireless telecommunication signals and data, including any provisions for mechanical cooling equipment, air conditions, ventilation, and/or auxiliary electric generators.

Equipment Lease Area or Equipment Compound is an specified area at the at the base of or near a Telecommunication Facility, Tower, or Antenna that can contain an enclosed structure or open platform within which are housed, among other things, batteries, generators, air conditioning units, wireless communications or electrical equipment, or other Accessory Equipment, which may be connected to the Telecommunications Facility, Tower or Antenna by cable

Height, Antenna or Tower. The distance measured to the highest point of the antenna or tower from the mean ground level measured at the base of a free-standing facility or the projected base as determined by extending the antenna or tower base down vertically to the ground. For building mounted antennas, height is measured to the highest point of the equipment enclosure from the top of the cornice of a flat roof, from the top line of a mansard roof, from a point on the roof directly above the highest wall of a shed roof, from the uppermost point on a round or other arch-type roof, or from the highest gable on a pitched or hip roof

Inventory of Small Cell/DAS Sites refers to an accurate and current inventory of all Small Cell/DAS Sites approved by Permittee pursuant to this Lease Agreement, including sites that become inactive for any reason.

Landline Broadband Backhaul Transport Service refers to a fiber or other high-speed landline communications transport service contracted by Permittee from a third-party provider that interconnects with the Base Station Equipment at the Point-of-Demarcation and provides transport service back to Permittee's network.

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Landlord is the owner of an asset that is leased under an agreement to the Permittee. The lease agreement is binding on both the lessor and the Permittee, and spells out the rights and obligations of both parties.

Maintenance means to repair unscheduled and scheduled deficiencies in telecommunications equipment or performing routine actions which keep the equipment in working order (known as scheduled maintenance) or prevent trouble from arising (preventive maintenance).

Monopole is a structure composed of a single spire used to support telecommunications equipment having no guy wires or ground anchors.

Permit Holder a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.

Point of Demarcation is the point of where the Transmission Media of Small Cell/DAS Equipment terminates and interconnects with broadband backhaul transmission facilities, whether provided by landline or wireless communications infrastructure.

Private Antenna or Tower. An antenna or other device and/or associated tower designed for the private use and enjoyment of the property owner that will not be used to provide a telecommunications service with the intent to make a profit. These devices include, but are not limited to, devices designed for reception of television broadcast signals, multi-channel multipoint distribution service, direct broadcast satellite services, AM/FM radio, telephone, internet, or any facility designed to transmit or receive amateur radio or citizen band radio.

Public Utility Structure” is a structure which is owned by a governmental agency or utility company and which may be/can be used to support illumination devices or lines and other equipment carrying electricity or communications.

Radio Propagation Study” the propagation of radio waves is described through the modeling of the different physical mechanisms (free-space attenuation, atmospheric attenuation, vegetation and hydrometer attenuation, attenuation by diffraction, building penetration loss, etc). This modeling is necessary for the conception of telecommunications systems and, once they have been designed, for their actual field deployment. Propagation models are implemented in engineering tools for the prediction different parameters useful for the field deployment of systems, for the study of the radio coverage (selection of the emission sites, frequency allocation, powers evaluation, antenna gains, polarization) and for the definition of the interferences occurring between distant transmitters.

Residential Accessory Communication Devices” are any satellite dishes, television Antennas, radio Antennas, amateur radio Antennas, and similar communication transmission/reception

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devices and associated Accessory Equipment that are a permitted accessory use within a residential district.

Right-of-Way (ROW) means the surface and space above and below a public roadway, highway, street, cartway, bicycle lane and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City.

Rooftop Mounted Wireless Telecommunications Facility means a wireless telecommunication facility with antennas located on the roof of a building or on top of a structure and consisting of antennas, support structures and accessory equipment, but are adequately screened so as not to appear as stand-alone devices above the top of the roof line.

Small Cell Equipment refers to Wireless Facilities and Transmission Media attached, mounted, or installed on a proprietary or leased utility pole, street light, building or other structure and used to provide Personal Communications Service.

Small Cell Site is defined as a low-power radio access facility, together with associated antennas, mounting and mechanical equipment, which provides and extends wireless communications systems' service coverage and increases network capacity.

Street Light is defined as a raised source of light usually mounted on a pole and constituting one of a series spaced at intervals along a public street or highway used to illuminate a public area, usually urban. Also referred to as a streetlamp.

Telecommunications Equipment refers to Antennas, Accessory Equipment, or Towers.

Telecommunications Facilities are the structures and equipment which make up a telecommunications network. Telecommunications facilities are defined by Federal Standard 1037C as the following:

- a) A fixed, mobile, or transportable structure, including (1) all installed electrical and electronic wiring, cabling, and equipment and (2) all supporting structures, such as utility, ground network, and electrical supporting structures.
- b) A network provided service to users or the network operating administration.
- c) A transmission pathway and associated equipment.
- d) In a protocol applicable to a data unit, such as a block or frame, an additional item of information or a constraint encoded within the protocol to provide the required control.
- e) A real property entity consisting of one or more of the following: a building, a structure, a utility system, pavement, and underlying land.

Telecommunication Rights-of-Way User means a person owning or controlling a facility in the public right-of-way, or seeking to own or control a facility in the public right-of-way, that is used or is intended to be used for transporting telecommunication or other voice or data information.

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For purposes of this Chapter, a cable communication system defined and regulated under Minn. Stat. Chap. 238, and telecommunication activities related to providing natural gas or electric energy services are not telecommunications right-of-way users.

Permittee is the party who rents land or property from a Landlord. The Permittee makes one-time or periodic payments to the landlord in return for the use of the asset and must uphold specific obligations as defined in the lease agreement and by law.

Tower is any of the following: a ground or roof mounted pole; spire; free standing, self-supporting lattice or monopole structure; or combination thereof taller than fifteen (15) feet, including but not limited to supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an Antenna, meteorological device, or similar apparatus above grade (except amateur radio Antennas). A tower does not include building mounted Wireless Telecommunications Facilities (WTF).

Traffic Light/Traffic Signal System are electrically operated colored signaling devices positioned at road intersections, pedestrian crossings, and other locations to control conflicting flows of traffic.

Transmission Media is all of the Permittee's radios, antennas, transmitters, wires, fiber optic cables, and other wireless transmission devices that are part of the Small Cell/DAS Equipment.

~~Tower. Any self-supporting pole, spire, or structure, or any combination, that is constructed primarily for the purpose of supporting one or more antennas and all supporting lines, cables, wires, bracing and linkage systems designed. This definition includes, but is not limited to, lattice towers, guy towers and monopole towers. A tower does not include building-mounted Wireless Telecommunications Facilities (WTF).~~

Upgrade or Capital Improvement is the construction, installation, or assembly of new telecommunications equipment or the alteration, expansion, or extension of an existing equipment to accommodate a change of function or unmet programmatic needs, or to incorporate new technology.

Utilities. Underground or overhead gas, electrical, steam or water transmission or distribution systems; collection, communication (excluding wireless telecommunication facilities), supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants or other similar equipment and accessories in conjunction therewith; but not including buildings.

Utility Pole is a structure that is: (1) owned or operated by: (a) a public utility; (b) a communications service provider; (c) a municipality; (d) an electric membership corporation; or (e) a rural electric cooperative; and (2) designed and used to: (a) carry lines, cables, or wires for telephone, cable television, or electricity; or (b) provide lighting.

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Wireless Communications refers to any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless Telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

Wireless Telecommunication Facility. Equipment, including commercial antennas, commercial telecommunication towers, small cell sites/DAS and equipment enclosures, designed for the transmission and reception of all types of data, including, but not limited to, writing, signs, signals, pictures, and sounds of all kinds without the aid of wire, cable, or other like connections between the points of origin and reception of such transmission, including all instrumentalities and apparatus incidental to such transmission. As used in the Shoreview Municipal Code, the term "wireless telecommunication facility" shall not include amateur radio antenna or towers; mobile transmitting devices, such as vehicle or handheld radios/telephones and their associated transmitting antennas; satellite earth stations; or broadcast towers.

2XX.030 Tower/Antenna Permits.

(A) Private Antenna/Tower Permit.

- (1) Purpose. The City's private antenna/tower permit regulations are adopted to:
 - (a) Provide the minimum practical regulation to address the aesthetic, health, safety, and welfare concerns associated with private antennas and towers.
 - (b) Reasonably accommodate private antennas and towers.
- (2) Permit Required. Private antenna/tower permits shall be required in accordance with Section 2XX.040(A).
- (3) Application. An application for a private antenna/tower permit shall be made on forms provided by the City Manager and shall be submitted with the required information.
 - (a) A site plan drawn to scale showing the proposed location of the antenna/tower and the dimensions relative to property lines, structures on the site, and structures on adjacent properties. The City Planner may require that this site plan be prepared by a licensed and registered surveyor to ensure its accuracy.

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- (4) Review Process. Applications for private antenna/tower permits shall be reviewed in accordance with Section 203.020(B) (Planning Commission/City Council Review).
- (5) Review Criteria. The Planning Commission and City Council shall review the application for conformance to the standards in Section 2XX.040(A) (Private Antennas/Towers) as well as the following:
 - (a) The reasonable necessity for the private antenna/tower.
 - (b) The appropriateness of the facility design.
 - (c) If the request is for an amateur radio facility greater than 55 feet in height, the recommended hours of operation for those times when the facility will be extended to more than 55 feet above grade.
 - (d) The appropriateness of construction materials and assembly.
 - (e) Maintenance requirements.
 - (f) The distance of the private antenna/tower from adjoining property lines.
 - (g) Other conditions as necessary to prevent the private antenna/tower or its use from becoming a nuisance to surrounding property owners.
- (6) Agreement. The Permittee shall be required to enter into a Private Antenna/Tower Agreement in accordance with Section 2XX.050(A).
- (7) Review and Revocation. The City Manager shall periodically inspect the property for compliance with the provisions of the private antenna/tower agreement. If the Permittee is not in compliance with the terms of the agreement, a hearing shall be scheduled before the City Council for the purpose of determining whether to terminate the agreement. The hearing shall be preceded by ten (10) days mailed notice to property owners of record within 350 feet of the property on which the private antenna/tower is located.
- (8) Removal. Use of the private antenna/tower shall be discontinued upon termination of the private antenna/tower agreement and prior to the transfer of title for the property on which the facility is located. The property owner shall, at his or her cost, disassemble and remove the private antenna/tower within thirty (30) days of termination of the private antenna/tower agreement, or the purchaser of the property shall apply for a new permit within thirty (30) days of transfer of title.

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(B) Broadcast Tower Permit. Broadcast towers are allowed in the (T) Tower District only and must obtain a Conditional Use Permit pursuant to Section 203.032.

(1) Required Documentation. The following shall be submitted at the time of application for a Conditional Use Permit pursuant hereto:

(a) Site Plan. A plan or plans drawn to scale and acceptable to the City Manager including the following information and detail:

(i) A boundary survey of the property.

(ii) A two-foot contour map of the property.

(iii) Locations of existing and proposed public utilities and easements, each Broadcast Tower, Accessory Equipment and Structures, Broadcast Buildings, Related Broadcast Uses and Other Uses.

(iv) Ground elevations for Broadcast Towers and/or Accessory Equipment and Structures.

(b) Tower Diagram. A detailed drawing of the Broadcast Tower structure clearly describing the height of the structure and all equipment located on the structure drawn to a scale acceptable to the City Manager.

(c) Structural Integrity Report. A report prepared by a registered engineer stating that the configuration of the tower structure complies with applicable Federal or State of Minnesota safety regulations, or, in the case of the addition or replacement of a Broadcast Tower and a tower 1200 feet or less in height AMSL as such towers are described in the original Conditional Use Permit issued hereunder to the property owner, a report prepared by a registered engineer stating that the design and proposed method of constructing such added or replaced tower complies with applicable Federal and State of Minnesota safety regulations.

(d) Health Study. A report of an independent consultant acceptable to the City and the property owner indicating that Broadcast Tower operations of the applicant together with operations or reasonably foreseeable operations of all other Broadcast Towers shall not violate any Federal or State of Minnesota health standards established for radio frequency transmission and shall not result in any known risk to public health.

(e) Operating Agreement. An agreement with the City and each property owner which shall describe the property owners' obligation with respect to (a) control of ice build-up on a Broadcast Tower and Accessory

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Equipment and Structures; (b) responding to complaints by individuals residing within the City regarding interference to consumer electronic equipment; (c) designation of an operator representative to deal with complaints associated with operation of a Broadcast Tower; (d) lighting of a Broadcast Tower; (e) financial consideration; and (f) cooperation with a citizens committee regarding matters relating to the conditional uses.

(C) Wireless Telecommunication Facility (WTF) Permit.

(1) Purpose. The City's WTF permit regulations are adopted to:

- (a) Minimize negative impacts of WTFs through careful siting and design standards.
- (b) Protect the public health and welfare through appropriate safety standards.
- (c) Ensure development of these facilities at a scale compatible with and proportionate to existing development.
- (d) Facilitate the provision of wireless telecommunication services to residents and businesses of the City.

(2) Permit Required. No person shall install a new WTF without first obtaining a WTF permit. Small Cell Sites and DAS Hubs are subject to the permitting requirements of Section 2XX.030 (D).

~~(3) Preapplication Conference. The applicant shall present a sketch and basic supporting data of the proposed WTF to the City Manager who shall review the sketch and the City's WTF standards with the applicant at a preapplication conference. The City Manager may, at his or her discretion, forward the sketch to the Planning Commission, the City Council, another appropriate citizen committee or commission, or to neighboring property owners for review and comment.~~

(4) Application. Applications for a WTF Permit shall be made on forms provided by the City Manager and shall be submitted with all of the required information. A completed application shall include an application fee and escrow deposit in an amount prescribed by City Council, and a signed WTF Escrow Deposit Agreement (see Section 2XX.050(C)).

(5) Complete Application. The City Manager shall review the submitted application form and other materials specified in Section 2XX.030 (C)(4) to determine whether the application is complete. The City Manager may waive, in writing, certain application requirements when determined unnecessary for

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review of the application. All items deemed necessary by the City Manager must be submitted for the WTF application to be complete and for review of the application to proceed. Applications found to contain material errors shall not be deemed complete until such errors are corrected.

(6) Review Process.

(a) Planning Commission/City Council Review. In accordance with Section 203.020 (B), applications for a WTF permit shall be reviewed by the Planning Commission and City Council.

(i) Planning Commission Review. Upon receipt of a completed application, the City Manager shall schedule a hearing before the Planning Commission which shall be preceded by ten days mailed notice to the property owners of record located within 350 feet of the parcel on which the WTF will be located. The Planning Commission shall make findings based upon the standards in Section 2XX.040(B)(3) and shall submit its recommendations to the City Council.

(ii) City Council Review. Upon receipt of the Planning Commission recommendation, the City Council shall review the application. The City Council may approve the application subject to conditions, table its review until a date certain, or deny the application for a WTF permit. The decision of the City Council shall be based the WTF standards specified in Section 207.040(B)(3) and on the information provided in the written record. Notice of the Council's decision shall be provided to the applicant in writing. If the application is approved by the City Council, a WTF Permit shall be issued upon the execution of a WTF Agreement in accordance with Section 203.080(E), compliance with the conditions of approval, and demonstration that the WTF complies with all applicable building, fire, and safety codes.

(7) Recovery of City Costs. At the time of application for a WTF permit, an escrow deposit shall be posted in an amount determined by the City Council. The City may charge against this deposit to recover its costs for reviewing the WTF application. These costs may include, but are not limited to, City staff time over and above that covered by the application fee, consultant fees, and fees for third-party review. If a WTF permit is approved, as a condition of approval, deposit of additional escrow funds may be required. The City will charge against this deposit to offset the City's costs to monitor construction and ensure compliance with the conditions of approval and standards in this ordinance. These charges may include, but are not limited to, City staff time, consultant fees, and fees for third-party review, monitoring, and inspection.

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Once construction has been completed and the Permittee has complied with all conditions of approval, any remaining deposit funds shall be refunded to the party or entity that posted the escrow deposit. Refund of the deposit shall not be construed to limit the City's ability to recover future costs associated with review or monitoring on-going operation of the WTF or future modifications, amendments, or transfer of the facility.

- (8) Review and Revocation. The City Manager shall periodically inspect the WTF and the property where it is located for compliance with the provisions of the WTF agreement. If the Permittee is not in compliance with the terms of the agreement, a hearing shall be scheduled before the City Council for the purpose of determining whether to terminate the agreement.
- (9) Criteria for Review. The WTF Permit may be granted provided the proposed use is listed as a permitted use for the district in which it is located and upon showing that the standards and criteria of the Development Ordinance will be satisfied and that the use is in harmony with the general purposes and intent of the Development Ordinance and the Comprehensive Guide Plan.
- (10) Length of Approval. Any use permitted under the terms of the WTF Permit approval shall be established and conducted in conformity to the terms of such permit and any conditions designated in connection therewith. The approval shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from acting or amending the Development Ordinance that changes the status of an approved WTP to a legal non-confirming use.
- (11) Agreement. If the City Council approves the application, a WTF Permit may be issued upon the execution of a Wireless Telecommunication Tower/Antenna Agreement. The agreement or a summary of the agreement approved by the City Manager in recordable form, shall be signed by the applicant and property owner and the terms of the agreement shall include those identified in Section 203.080(E).

(D) Small Cell and DAS (Distributed Antenna System) Permits

- (1) Small Cell/DAS located within a Right-of-Way is subject to Section 405, Right-of-Way Management
- (2) Small Cell/DAS Site Plan located outside of a Right-of-Way.
 - (a) Permit Required. No person shall install Small Cell and DAS facilities without first obtaining a permit.

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- (b) Application. Applications for a Permit shall be made on forms provided by the City Manager and shall be submitted with all of the required information. A completed application shall include an application fee and escrow deposit in an amount prescribed by City Council, and a signed Escrow Deposit Agreement (see Section 2XX.080).
- (c) Complete Application. The City Manager shall review the submitted application form and other materials specified in this Section to determine whether the application is complete. The City Manager may waive, in writing, certain application requirements when determined unnecessary for review of the application. All items deemed necessary by the City Manager must be submitted for the application to be complete and for review of the application to proceed. Applications found to contain material errors shall not be deemed complete until such errors are corrected.
- (d) Review Process Applications for Small Cell Sites/DAS Hub permits shall be reviewed in accordance with Section 203.020(D) (Administrative Review).
- (e) Recovery of City Costs. At the time of application for a permit, an escrow deposit shall be posted in an amount determined by the City Council. The City may charge against this deposit to recover its costs for reviewing the application. These costs may include, but are not limited to, City staff time over and above that covered by the application fee, consultant fees, and fees for third-party review. If a permit is approved, as a condition of approval, deposit of additional escrow funds may be required. The City will charge against this deposit to offset the City's costs to monitor construction and ensure compliance with the conditions of approval and standards in this ordinance. These charges may include, but are not limited to, City staff time, consultant fees, and fees for third-party review, monitoring, and inspection. Once construction has been completed and the Permittee has complied with all conditions of approval, any remaining deposit funds shall be refunded to the party or entity that posted the escrow deposit. Refund of the deposit shall not be construed to limit the City's ability to recover future costs associated with review or monitoring on-going operation of the facility or future modifications, amendments, or transfer of the facility.
- (f) Review and Revocation. The City Manager shall periodically inspect the small cell/DAS equipment and the property where it is located for compliance with the provisions of the permit. If the Permit Holder is not in compliance with the terms of the agreement, a hearing shall be scheduled before the City Council for the purpose of determining whether to terminate the permit.

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- (g) Review Criteria. The application, site plan and placement of the communication Small Cell/DAS shall be approved only if the following minimum standards are met:
- i. The communication Small Cells/DAS shall be substantially concealed from view as outlined in section 2XX.040 (B)(3)(b).
 - ii. Electrical power and battery backup cabinets shall comply with the standards in section 2XX.040(B)(4) and to the extent practicable, be roof-mounted or otherwise located so as not to be visible from a public street or, where not practicable as determined by the City, such equipment shall be appropriately screened by landscaping or other means minimizing visibility from a public street as outlined in section 2XX.040 (B)(3)(b).
 - iii. The antenna meets the requirements of this ordinance, and after submittal and approval of all permits, applications, fees and information as outlined in Sections 2XX.030 and 2XX.040. Small Cell/DAS antennas on a public structure or existing structures are allowed in all Telecommunication Overlay Districts (TODs) as outlined in section 205.180(C). All antenna installations must comply with the requirements of this ordinance and with the standards in section 2XX.040.
 - iv. Special requirements based on whether communication Small Cell Sites/DAS Hub is affixed to a building or pole:
 - (a) Building Mounted:
 - i. The communication Small Cell may be attached to any building and shall comply with the standards in section 2XX.040 (D);
 - (b) Pole-mounted:
 - i. The communication Small Cell shall be mounted on a pole that supports an athletic field or parking lot light or utility power line. Such pole shall be at least fifteen (15) feet in height as measured from the ground level. **Note:** all existing street light poles in the City of Shoreview including fiberglass, aluminum will not support Small Cell and are prohibited. They must be replaced with a pole that matches the existing design and have the structural capacity to support the proposed equipment and any existing equipment and/or street lights. Poles for traffic lights or traffic signal systems, acorn or decorative light poles are also prohibited for the mounting of any antennas or telecommunications equipment;
 - ii. Height Restrictions. All Small Cell Equipment installations shall be in compliance with height restrictions applicable to poles and other structures for TOD districts as outlined in section 2XX.040(B)(3)(h).

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- iii. Horizontal projection. Antennas must not project out from the side of the antenna support structure or tower, unless it is physically impossible to locate the antennas within the structure or tower, in which case they must not project out by more than three feet by more than three feet;
 - iv. There shall be no more than one (1) communication Small Cell per pole with the exception of a monopole or pole structure designed to accommodate multiple carriers;
 - v. Security - construction for Small Cell sites on existing utility poles must be installed in a manner that will not allow the public to come into physical contact with the equipment or create injury as outlined in section 2XX.040(B)(3)(i). Equipment must be mounted securely and include electrical surge protection, safety cable connector locks, no sharp edges, or any other potential hazards.
- (c) DAS Hub Development Standards.
- i. Setbacks for DAS hubs outside of the right-of-way shall meet the setback standards of as outlined in Sections, 205.180 and 2XX.040.
 - ii. DAS hub. Equipment shelters or cabinets shall be consistent with the general character of the neighborhood and shall be substantially concealed from view as outlined in section 2XX.40 (B)(3)(b).
- (h) Length of Approval. Any use permitted under the terms of the WTF Permit approval shall be established and conducted in conformity to the terms of such permit and any conditions designated in connection therewith. The approval shall remain in effect for so long as the conditions agreed upon are observed, provided that nothing in this section shall prevent the City Council from acting or amending the Development Ordinance that changes the status of an approved WTP to a legal non-confirming use.
- (i) Agreement. If the City Council approves the application, a WTF Permit may be issued upon the execution of a Wireless Telecommunication Tower/Antenna Agreement. The agreement or a summary of the agreement approved by the City Manager in recordable form, shall be signed by the applicant and property owner and the terms of the agreement shall include those identified in Section 2XX.050(C).

2XX.040 USE STANDARDS

(A) Private Antennas.

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(1) Permit Requirements. A private antenna/tower permit is required for:

- (a) Any antennas more than 10 feet in height attached to an existing structure except those antennas exempted from local zoning authority by federal regulations.
- (b) Any antenna attached to a free-standing tower of any height.
- (c) Any dish antenna greater than one meter in diameter that does not meet the standards in the following Section 207.040(A)(2).

(2) Standards.

- (a) All antennas or other devices used for transmitting or receiving signals must comply with Federal Communication Commission procedures to resolve any complaints relating to interference allegedly caused by a private antenna/tower.
- (b) Antennas, except antennas used for amateur or citizen band radio communication:
 - (i) The height is no greater than 10 feet above the roof or more than 40 feet above mean ground level.
 - (ii) A building permit is obtained prior to installation to verify compliance with applicable building, fire, and safety codes.
 - (iii) The ground-level view of the device is screened from contiguous properties and adjacent streets.
- (c) For amateur and citizen band radio facilities.
 - (i) Height. The maximum height for amateur or citizen band radio antennas and/or towers shall not exceed 75 feet. In addition, that portion of any antenna or tower over 55 feet must be retractable to a height no greater than 55 feet.
 - (ii) Lowering Device. All amateur radio facilities capable of a maximum extended height of more than 55 feet shall be equipped with a mechanical device capable of lowering the facility to the maximum permitted height when not in operation.
 - (iii) Number Permitted. One amateur radio facility is permitted per property.
 - (iv) Siting/Setbacks. All amateur radio facilities shall be located in a manner that minimizes the visibility of the facility from nearby properties and adjacent streets. No portion of facility shall be located within a required principal structure setback or in a yard abutting a public right-of-way. In

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addition, any free-standing tower must be set back at least one foot from adjacent residential units for each foot in height or provide documentation acceptable to the City Planner that all adjacent residential units are outside the tower's fall zone.

(v) Color/Screening. The color of the amateur radio facilities shall blend with the surrounding environment and must be screened with trees and landscaping to the extent possible.

(vi) Deviation from Standards. Deviation from the height and setback standards may be allowed if the applicant can demonstrate that compliance with these standards would unreasonably limit or prevent reception or transmission of signals and a conditional use permit is obtained in addition to the private antenna/tower permit.

(B) Commercial Antennas and Towers.

(1) Permit Requirements.

- (a) If the proposed antenna/tower is to be used for wireless telecommunications, a wireless telecommunications facility permit must be obtained in accordance with Section 203.044.
- (b) A building permit is required for any installation, expansion, or modification of a wireless telecommunications facility and for any commercial tower. A building permit is required for commercial antennas other than wireless telecommunication antennas if required by the Building Code.
- (c) A conditional use permit may be required for certain commercial antennas or towers as required by the zoning district.

(2) Commercial Antenna Standards.

- (a) The antennas must be located on or attached to an existing structure.
- (b) The height shall not exceed 6 feet above the roof.
- (c) The antennas, to the extent possible, use materials, colors, textures, screening, and landscaping to blend in with the surrounding natural setting and built environment.
- (d) Wireless telecommunication antennas shall also comply with the standards in Section 207.040(B)(3).

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(3) Wireless Telecommunication Facility Standards (WTFs).

- (a) Siting. New WTFs shall only be located on parcels that fall within the Telecommunications Overlay District. WTFs, with the exception of Small Cell Sites/DAS, are not permitted in public rights-of-way.
- (b) Color, Camouflage and Architecture. All WTFs shall be camouflaged and use architectural design, materials, colors, textures, screening, and landscaping to blend in with the surrounding natural setting and built environment. If a WTF is proposed on any part of a building or structure, it must blend with the building or structure's design, architecture and color, including exterior finish. All WTFs shall utilize color, architecture and camouflage to minimize the visual impact and, in the sole discretion of the City Council, so appear compatible with the surroundings:
- (i) Color. The WTF shall use colors to minimize the visual impact when viewed from adjacent public streets and nearby property, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
- (ii) Camouflage. The WTF shall, to the extent practicable, simulate objects that typically occur in landscapes similar to the proposed location, except for billboards, electrical transmission facilities or telecommunications towers, and similar constructions. Examples of camouflage designs include flagpoles, sport field lighting poles, trees, monuments, and on buildings, steeples, parapets and rooftop penthouses.
- a. Utility cabinets shall be placed in underground vaults or integrated within existing structures, unless the City determines an above-grade installation is appropriate for the site.
- b. Freestanding, above grade equipment cabinets shall be heavily screened from view with landscape materials.
- (iii) Architecture. The WTF shall be designed to blend in with the surrounding natural setting and build environment.
- a. Towers shall use antennas, antenna mounts, equipment enclosures and monopoles that provide minimal visual profile and silhouette, in order to reduce visual clutter. For example, underground cable routing is less visually intrusive than using overhead cables with metal bridging for ice-fall protection; cylindrical unicell antenna arrays are preferred over davit arms or other types of mounting

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brackets extending out from the monopole; platform mounted antennas are generally discouraged.

- b. Building mounted wireless telecommunications facilities shall be screened from view or camouflaged in a manner to generally comply with the Architectural and Site Design Standards specified in Chapter 206.050.
- (c) Landscaping. Except in the TOD-3, WTFs shall be landscaped with a buffer of plant materials as determined appropriate for the site by the City. Existing mature trees and other vegetation at the site shall be preserved to the maximum extent possible.
- (d) Signs. The use of any portion of a WTF for signs or advertising other than warning or small equipment and emergency contact information signs is prohibited.
- (e) Lighting. Wireless telecommunication antennas or towers shall not be illuminated by artificial means and shall not display lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority. When incorporated into the approved design of the WTF, light fixtures used to illuminate sport fields, parking lots or similar areas may be attached to the tower.
- (f) Monopole. New wireless telecommunication towers shall be of a monopole design unless the applicant demonstrates to the satisfaction of the City Council that an alternative design would better blend into the surrounding environment.
- (g) Tower Setbacks. Wireless telecommunications towers shall comply with the principal structure setbacks of the underlying zoning district and the following additional standards:
 - (i) The tower is set back from all residential dwellings units at least one foot for each foot in height.
 - (ii) Tower shall not co-occupy any easements unless permission is obtained from the underlying property owner and holder of the easement.
 - (iii) Tower shall not be located between a principal structure and a public street.

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- (iv) The required tower setbacks may be reduced or the location in relation to a public street modified, at the sole discretion of the City, when the WTF is integrated into an existing or proposed structure such as a building, light or utility pole.

(h) Height.

- (i) The height of any commercial telecommunications tower shall not exceed 60 feet in the TOD-1 district and 75 feet in the TOD-2 district.
- (ii) Antennas located in the TOD-1 and TOD-2 on an existing structure which exceeds the maximum telecommunications tower height for the District in which the existing structure is located may extend up to 5 feet above the height of the structure.
- (iii) In the event substantial obstacles to RF signal propagation are present within 1000 feet of the proposed WTF, the telecommunications tower height may be increased an additional 20% above the maximum height permitted in the TOD. No such increase in height will be permitted unless the applicant's proposed design utilizes color, architecture and camouflage to minimize the visual impact and, in the sole discretion of the City Council, so appear in context on the landscape.
- (iv) WTFs mounted on an existing building in the TOD-3 shall:
 - a. Roof mounted WTF are preferred near the center of the building in a location that minimizes visibility from the surrounding area.
 - b. Roof mounted WTF shall extend a maximum of 10 feet above the height of the building to which they are attached, and be setback from the building façade a minimum of 2 feet for each foot of height the WTF extends above the building roof, with a minimum setback of 5 feet.
 - c. Wall mounted WTF shall not extend above the building parapet, and shall be incorporated into design elements of the building to maintain architectural integrity.
 - d. Deviations from the height and façade setback requirements may be approved when, in the sole discretion of the City Council, the WTF is fully concealed in an aesthetically integrated building component, for example a steeple, parapet extension, chimney, penthouse or similar architectural feature.

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- e. Roof mounted WTFs shall be exempt from the building height regulations for the underlying zoning district, subject to the approval of the Lake Johanna Fire Department.
- (i) Safety/Environmental Standards.
 - (i) Unauthorized Climbing. WTFs shall be designed to prevent unauthorized climbing or entry.
 - (ii) Noise. If the proposed WTF includes a back-up generator or otherwise results in significant increased sound levels, sound buffers may be required including, but not limited to, baffling, barriers, enclosures, walls, and plantings, so that the WTF is operated in compliance with the requirements specified in Section 209.020, *Noise*.
 - (iii) Radio Frequency (RF) Emissions and Interference. WTFs shall comply with Federal Communication Commission standards for RF emissions and interference. WTFs shall be tested for compliance with FCC RF emissions standards after the WTF has been installed.
 - (v) Maintenance. All commercial towers or WTFs shall at all times be kept and maintained in good condition, appearance, order, and repair so that the same shall not menace or endanger the life or property of any person.
 - (vi) Occupational Safety. WTFs shall comply with applicable State of Minnesota and Federal regulations for occupational exposure to non-ionizing radiation.
- (j) Location and Collocation Requirements. Except as herein and after provided, WTFs within the City shall comply with the following collocation requirements:
 - (i) Locations are preferred by the City in the following priority:
 - a. Collocation on existing wireless telecommunications towers;
 - b. Location on City property in the TOD-1 and TOD-2;
 - c. Location on existing buildings in the TOD-3;
 - d. Location on other property in the TOD-1 and TOD-2.
 - (ii) All proposed WTFs must be located on an existing structure 55 feet or greater in height located within ½ mile of the site being considered by the applicant.

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- (iii) All wireless telecommunication providers shall cooperate with each other in collocating WTFs and shall exercise good faith in collocating with other licensed carriers and in the sharing of sites, including the sharing of technical information to evaluate the cost and feasibility of collocation. In the event that a dispute arises as to a collocation issue, the City may require a third-party technical study to evaluate the feasibility or cost of collocating at the expense of either or both wireless telecommunication providers.
- (iv) All new and replacement wireless telecommunications towers and any pre-existing towers owned by a wireless telecommunication provider shall be made available for use by the owner or initial user thereof, together with as many other licensed carriers as can be technically located thereon.
- (v) All new or replacement wireless telecommunication towers shall be designed, structurally, electrically, and in all other respects, to accommodate both the applicant's antennas and comparable antennas for at least one additional user, except when the applicant demonstrates that a monopole with conforming height is technologically unsuitable for the facilities of a second provider.
- (k) Exceptions to Location Requirements. The City may waive any or all of the collocation requirements if it is determined that:
 - (i) The planned WTF would exceed the structural capacity of the existing or approved structure, as documented by a qualified and licensed professional engineer, and the existing or approved structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment.
 - (ii) The planned WTF would cause interference materially impacting the usability of other existing or planned WTFs at the structure as documented by a qualified radio frequency engineer selected by the City and the interference cannot be prevented.
 - (iii) Existing structures within the applicant's search radius cannot or will not accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer selected by the City.
- (4) Equipment Enclosures. Equipment enclosures accessory to a commercial antenna or WTF shall comply with the following standards:

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- (a) Equipment enclosures shall be of the smallest size necessary.
 - (b) In the TOD-1 and TOD-2:
 - (i) Equipment enclosures shall be located in underground vaults, integrated within existing nearby structures, or where existing trees, structures, and/or other site features screen them from view.
 - (ii) All equipment enclosures shall be screened from view by suitable vegetation, except where non-vegetative screening (e.g., a decorative wall) better reflects and complements the character of the neighborhood.
 - (c) In the TOD-3, building mounted WTF equipment enclosures shall be integrated with the building architecture as specified in Section 207.040(B)(3)(b).
- (5) Installation Requirements on City Water Towers. Installation of commercial antennas or WTFs on City water towers will be permitted when the City is fully satisfied that the following requirements are met:
- (a) The commercial antenna or WTF or maintenance thereof will not increase the risks of contamination to the City's water supply, or risk to the water tower facilities.
 - (b) There is sufficient room on the structure and/or grounds to accommodate the proposed commercial antenna or WTF.
 - (c) The presence of the commercial antenna or WTF will not increase the water tower maintenance or operational costs to the City.
 - (d) The presence of the commercial antenna or WTF will not be harmful to the health of workers maintaining the water tower.
 - (e) All state and federal regulations pertaining to non-ionizing radiation and other health hazards has been satisfied.

(D) Small Cell and DAS (Distributed Antenna System) Sites

- (1) Communication Small Cell and DAS hubs shall comply with the Wireless Telecommunication standards in Section 2XX.030 (B)(3).
- (2) Placement. The following Standards shall apply for the placement of Small Cell/DAS in the TOD Districts.

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- (a) In determining whether to allow the installation of a Small Cell/DAS Technology Wireless Support Structure, the City shall consider the following factors and make a determination if it is appropriate:
 - (a) Demonstrated need for the Small Cell/DAS Technologies within the geographic area requested by a radio propagation study in order to deliver adequate service;
 - (b) Proof that all co-location sites in the area of need are/were pursued and have been denied; or that there does not exist the ability to co-locate using existing structures. The Applicant must demonstrate all actions taken to achieve colocation.
 - (c) The character of the area in which the Small Cell/DAS Technology Wireless Support Structure is requested, including evidence of surrounding properties and uses;
 - (d) Concealment design as outlined in section 2XX.40 (B)(3)(b).
 - (e) Proof that the proposed Small Cell/DAS Technology Wireless Support Structure is the minimal physical installation that will achieve the Applicant's goals.
 - (f) The safety and aesthetic impact of any proposed Small Cell/DAS Technology Wireless Support Structure, related accessory Pole Mounted Small Cell Sites
- (b) Ownership of the Pole. The Permit Holder will determine the ownership of the pole identified for installation of Small Cell/DAS Equipment and provide evidence that the pole has adequate structural capacity to support the existing and proposed loads.
- (c) Structural Capacity. For any proposed installation on an existing pole, the applicant must provide evidence that the pole has adequate structural capacity to carry the additional loading from the proposed installation. Structural analysis will need to include wind load calculations that also accounts for ice.
- (d) The City may retain the services of an independent technical expert at the applicant's expense to review, evaluate, and provide an opinion regarding the applicant's structural documentation.
- (3) Electrical Supply. Permit Holder shall be responsible for obtaining any required electrical power service to the Small Cell/DAS equipment. The City shall not be liable to the Permit Holder for any stoppages or shortages of electrical power furnished to the equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other Permit Holder of the structure, or for any other cause beyond the control of the City. Permit Holder shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.
- (4) Fiber Connection. Permit Holder shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities or equipment.

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- (5) All Small Cell/DAS Site Applications requesting access to a pole must include a load bearing study to determine whether the attachment of Small Cell/DAS Equipment may proceed without pole modification or whether the installation will require pole re-enforcement or replacement. Note, modifications to existing poles are prohibited; only replacement of the pole will be considered.
- (6) If pole replacement is necessary, applicant shall provide engineering design and specification drawings for the proposed pole. Engineering documents will be reviewed to determine:
 - (a) Replacement pole must match the existing design and have the structural capacity to support the proposed equipment and any existing equipment and/or lights.
 - (b) compliance with contractual requirements under this Lease Agreement;
 - (c) no interference with City public safety radio system, traffic signal light system, or other communications components;
 - (d) inclusion of appropriate design of stealth components necessary to comply with historic preservation requirements or aesthetic design elements for downtown attachments; and
 - (e) Compliance with City pole attachment regulations for street light poles, including replacement of Utility electric meter with dual meters.
- (7) Determine Compliance with any other Applicable Requirements. As appropriate, the City or their designee shall require Permit Holder to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in an incomplete Small Cell/DAS Site Application, which may not be processed under this Lease Agreement.
- (8) Removal of Non-Compliant Installations. The City shall have the authority at any time to order and require Permit Holder to remove and abate any Small Cell/DAS Equipment or other structure that is in violation of the City Municipal Code. In case Permit Holder, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of the Permit Holder, all without compensation or liability for damages to the Permit Holder.

2XX.050 Agreements.

- (A) Private Antenna/Tower Agreement. Upon approval of a private antenna/tower permit and before installation of any improvements, the Permittee shall enter into a Private Antenna/Tower Agreement. The agreement shall be signed by the applicant and the terms of the agreement shall include the following:
 - (1) A list of the conditions of approval of the private antenna/tower permit.
 - (2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the private antenna and/or tower.

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- (3) A statement indicating that the expenses incurred by the City to enforce the provisions of the private antenna/tower agreement shall be reimbursed by the applicant.
 - (4) A statement which requires the applicant to utilize the procedures established by the FCC to resolve any complaints received relating to interference allegedly caused by the private antenna/tower.
 - (5) A statement indicating that the private antenna/tower shall be valid during the term of the private antenna/tower agreement and only while the applicant resides on the property. The applicant shall agree to notify the City if he/she no longer resides on the property or of a transfer of title.
- (B) Wireless Telecommunication Facility (WTF) and Small Cell Sites/(DAS) Agreement. Upon approval of a WTF or Small Cell Site/DAS permit and prior to installation of any improvements, the Permittee shall enter into a WTF or Small Cell Site/DAS agreement. The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:
- (1) A list of the conditions of approval to the WTF or Small Cell Site/DAS Permit.
 - (2) A statement indicating that failure to comply with the conditions of approval shall result in the revocation of the permit and removal of the facility.
 - (3) A statement indicating that the expenses incurred by the City to enforce the provisions of the WTF or Small Cell Site/DAS agreement shall be reimbursed by the applicant.
 - (4) A statement which requires the applicant to utilize the procedures established by the FCC to resolve any complaints received relating to interference allegedly caused by the facility.
 - (5) A statement indicating the Permittee will cooperate in good faith and fair dealing in collocating wireless telecommunication facilities.
 - (6) A statement indicating that the WTF or Small Cell Site/DAS shall be maintained in good and safe condition and to preserve its original appearance and concealment, disguise or camouflage elements incorporated into the design at the time of approval. Such maintenance shall include, but is not limited to, painting, repair of equipment, and maintenance of landscaping.

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- (7) A statement authorizing the City to enter the property for the purpose of periodic inspections to determine that the site complies with conditions of approval and all safety and building codes. This statement shall give the City the right to conduct such inspections at any time upon reasonable notice to the property owner(s), and that all expenses related to such inspection shall be borne by the Permittee.
 - (8) A statement indicating that a WTF or Small Cell Site/DAS which has not been used for twelve (12) successive months shall be deemed abandoned and may, at the sole discretion of the City, be required to be removed in the same manner and pursuant to the same procedures as for dangerous or unsafe structures established by Minnesota State Statutes, Section 463.16.
 - (9) A statement indicating that the removal of any unused or abandoned tower or portions of towers shall be the responsibility of the property owner.
 - (10) A statement requiring the Permittee to notify the City that the WTF or Small Cell Site/DAS continues to be in operation. The notice of continuing operation shall be sent to the City Planner annually by certified mail during the last two weeks of the month of December.
- (F) Escrow Deposit Agreement. At the time of application for a WTF or Small Cell Site/DAS permit, the applicant shall enter into a WTF or Small Cell Site/DAS Escrow Deposit Agreement with the City. The applicant shall submit a deposit in an amount determined from time to time by resolution of the City Council. The agreement shall indicate that the funds deposited may be utilized by the City to offset its costs from review of the WTF or Small Cell Site/DAS permit application and, if the application is approved, to monitor construction and ensure compliance with conditions of approval. Interest shall not accrue on these funds. Any funds not so utilized by the City shall be returned to the applicant after the installation of the WTF or Small Cell Site/DAS has been completed and the City has determined compliance with the conditions of approval and the standards in the Development Ordinance. This escrow deposit shall be in addition to any other required financial guarantees.

Section 405 – RIGHT OF WAY MANAGEMENT

405.65 Small Cell/DAS Hubs

- (A) Public Utility Structure: A new Antenna may be attached to an existing public utility structure or utility pole within a right-of-way if:

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- (1) The Antenna does not extend above the top of the existing utility structure and the height of the existing utility structure is not increased to accommodate the telecommunication facility.
 - (2) The Antenna is no larger than three (3) cubic feet and has no individual surface larger than four (4) feet.
 - (3) The Antenna extends outward from the utility structure no more than three (3) feet.
 - (4) Any replacement utility structure does not exceed the height of the existing utility structure, including the telecommunication facility, and does not exceed the diameter of the existing utility structure by more than 50 percent.
 - (5) The telecommunication facility uses stealth design as much as possible as outlined in section 2XX.40 (B)(3)(b).
 - (6) There is no ground mounted equipment.
 - (7) There is no interference with public safety communications or with the original use of the public utility structure as outlined in section 207.040. In the event that Permittee's Small Cell/DAS Equipment interferes with the City's traffic light signal system, public safety radio system, or other City communications infrastructure operating on spectrum where the City is legally authorized to operate, Permittee will respond to the City's request to address the source of the interference as soon as practicable, but in no event later than twenty-four (24) hours of receiving notice.
 - (8) The Applicant agrees that the Antenna must be removed and relocated, at Applicant's expense, when the City or utility requires the removal and relocation of the public utility structure.
 - (9) The Wireless Telecommunication Application and all necessary agreements permitting the use of public property are approved.
 - (10) Its inclusion/attachment does not exceed the facilities structural capacity.
 - (11) No equipment will be allowed on existing street light poles, fiberglass light poles, poles for traffic lights or traffic signal systems, acorn or decorative light poles.
- (B) Placement. The following Standards shall apply for the placement of Small Cell/DAS Technology in the public right-of-way, or on a public road, City easement or any other City property.
- (a) The City will determine whether the location (and any existing pole) identified by the applicant as a Small Cell/DAS Site is within the City Right-of-Way.
 - (b) All Small Cell/DAS installations in the Right-of-Way shall comply with the standards as outlined in section 405, Right-of-Way Management.

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- (c) In determining whether to allow the installation of a Small Cell/DAS Technology Wireless Support Structure within the right-of-way, the City shall consider the following factors and make a determination if it is appropriate:
 - (a) Demonstrated need for the Small Cell/DAS Technologies within the geographic area requested by a radio propagation study in order to deliver adequate service;
 - (b) Proof that all co-location sites in the area of need are/were pursued and have been denied; or that there does not exist the ability to co-locate using existing structures. The Applicant must demonstrate all actions taken to achieve colocation.
 - (c) The character of the area in which the Small Cell/DAS Technology Wireless Support Structure is requested, including evidence of surrounding properties and uses;
 - (d) Concealment design as outlined in section 207.40 (B)(3)(b).
 - (e) Proof that the proposed Small Cell/DAS Technology Wireless Support Structure is the minimal physical installation that will achieve the Applicant's goals.
 - (f) The safety and aesthetic impact of any proposed Small Cell/DAS Technology Wireless Support Structure, related accessory equipment, and/or Equipment Compound.
- (d) The City will determine whether the location (and any existing pole) identified by the applicant as a Small Cell/DAS Site is within the City Right-of-Way.
- (e) Ownership of the Pole. The Permittee will determine the ownership of the pole identified for installation of Small Cell/DAS Equipment and provide evidence that the pole has adequate structural capacity to support the existing and proposed loads.
- (f) Site Eligibility. Permittee shall determine whether a requested City pole or the location for the installation for a new pole is eligible as a Small Cell/DAS Site based on space availability or other considerations. In addition, Permittee must determine whether public safety considerations prevent eligibility of an existing pole as a Small Cell/DAS Site. Concerning a request to install a new pole, Permittee shall determine whether City policies and availability of Right-of-Way prevent the pole installation at the requested location.
- (g) Structural Capacity.
 - (a) For any proposed installation on an existing pole, the applicant must provide evidence that the pole has adequate structural capacity to carry the additional loading from the proposed installation. Structural analysis will need to include wind load calculations that also accounts for ice.
 - (b) For any proposed installation on a new pole, the applicant must provide evidence that the pole has adequate structural capacity to carry the proposed loads and include soil boring reports to verify soil conditions and

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- concrete test results. Structural analysis will need to include wind load calculations that also accounts for ice.
- (c) The City may retain the services of an independent technical expert at the applicant's expense to review, evaluate, and provide an opinion regarding the applicant's structural documentation.
- (h) Electrical Supply. Permittee shall be responsible for obtaining any required electrical power service to the Small Cell/DAS equipment. The City shall not be liable to the Permittee for any stoppages or shortages of electrical power furnished to the equipment, including without limitation, stoppages or shortages caused by any act, omission, or requirement of the public utility serving the structure or the act or omission of any other Permittee of the structure, or for any other cause beyond the control of the City. Permittee shall not be entitled to any abatement of the Rental Fee for any such stoppage or shortage of electrical power.
- (9) Fiber Connection. Permittee shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Wireless Facilities or equipment.
- (10) All Small Cell/DAS Site Applications requesting access to a City pole must include a load bearing study to determine whether the attachment of Small Cell/DAS Equipment may proceed without pole modification or whether the installation will require pole re-enforcement or replacement. Note, modifications to existing poles are prohibited, only replacement of the pole will be considered.
- (11) Replacement Poles: If pole replacement is necessary, applicant shall provide engineering design and specification drawings for the proposed pole. Engineering documents will be reviewed to determine:
- (a) Replacement pole must match the existing design and have the structural capacity to support the proposed equipment and any existing equipment and/or lights.
 - (b) compliance with contractual requirements under this Lease Agreement;
 - (c) no interference with City public safety radio system, traffic signal light system, or other communications components;
 - (d) inclusion of appropriate design of stealth components necessary to comply with historic preservation requirements or aesthetic design elements for downtown attachments; and
 - (e) Compliance with City pole attachment regulations for street light poles, including replacement of Utility electric meter with dual meters.
- (12) Determine Compliance with any other Applicable Requirements. As appropriate, the City or their designee shall require Permittee to make design modifications in order to comply with applicable contractual, regulatory, or legal requirements. Failure to make the requested design modifications shall result in an incomplete Small Cell/DAS Site Application, which may not be processed under this Lease Agreement.

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- (13) Repair of Public Right-of-Way. Repairs to the Right-of-Way shall be completed as outlined in section 405.120 and 405.170.
- (14) Maintenance and Modifications of Small Cells/DAS.
- (a) Coordination of Maintenance and Equipment Upgrade Activities - Prior to Permittee engaging in planned or routine maintenance activities, or equipment upgrades concerning Small Cell/DAS Equipment attached to a City, County, or Utility owned pole, Permittee shall provide twenty (20) days advance notice to the City of Shoreview in order to coordinate such maintenance activities or other public safety functions. Permittee shall obtain a ROW Permit prior to engaging in any maintenance or equipment upgrade activities in the Right-of-Way regardless of pole ownership. Such twenty (20) day advance notice shall not be required in the case of an emergency.
- (b) Prior to making any future modifications to the Small Cell/DAS Site described in Section 1 above, other than maintenance and repair of site specific Small Cell/DAS Equipment as provided in the Lease Agreement, Permittee shall file a Small Cell/DAS Site Application with the City of Shoreview describing the proposed modifications. The City shall review the Small Cell/DAS Site Application pursuant to the terms and conditions in the Lease Agreement, and if approved such Small Cell/DAS Site Application shall be attached as an Exhibit and made a part hereto. Any additional site modifications shall be incorporated hereto in the same manner.
- (15) Removal of Non-Compliant Installations. The City shall have the authority at any time to order and require Permittee to remove and abate any Small Cell/DAS Equipment or other structure that is in violation of the City Municipal Code. In case Permittee, after receipt of written notice and thirty (30) days opportunity to cure, fails or refuses to comply, the City shall have the authority to remove the same at the expense of the Permittee, all without compensation or liability for damages to the Permittee.

405. RIGHT OF WAY

405.0201 Definitions

Distributed Antenna System (DAS)” is a network of spatially or geographically separated antenna nodes that are connected to a common source through a transport or communication medium in order to provide wireless communication service in a specific locality or building. A DAS can be deployed indoors (iDAS) to provide network or cellular connectivity throughout a building or outdoors (oDAS) in areas where regular wireless coverage does not reach.

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DAS Hub Ancillary equipment usually contained in a shelter or other enclosure which does not have any wireless transmission or receive equipment contained therein but is utilized in the deployment and operation of wireless DAS receive/transmit infrastructure that is located elsewhere

Small Cell Equipment refers to Wireless Facilities and Transmission Media attached, mounted, or installed on a proprietary or leased utility pole, street light, building or other structure and used to provide Personal Communications Service.

Small Cell Site is defined as a low-power radio access facility, together with associated antennas, mounting and mechanical equipment, which provides and extends wireless communications systems' service coverage and increases network capacity.



INFORMATION MEMO

Cell Towers, Small Cell Technologies & Distributed Antenna Systems

Learn about large and small cell tower deployment and siting requests for small cell and distributed antenna systems ("DAS") technology. Better understand the trend of the addition of DAS or small cell equipment on existing utility equipment. Be aware of common gaps in city zoning, impact of federal law, and some best practices for dealing with large and small cell towers, as well as with DAS.

RELEVANT LINKS:

47 U.S.C. § 253 (commonly known as Section 253 of Telecommunications Act).

47 U.S.C. § 332 (commonly known as Section 332 of Telecommunications Act).

FCC Website.



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47 U.S.C. § 253 (commonly known as Section 253 of Telecommunications Act).

47 U.S.C. § 332 (commonly known as Section 332 of Telecommunications Act).

FCC website interpreting Telecommunications Act of 1996.

I. Deployment of large cell towers or antennas

A cell site or cell tower creates a "cell" in a cellular network and typically supports antennae plus other equipment, such as one or more sets of transceivers, digital signal processors, control electronics, GPS equipment, primary and backup electrical power and sheltering. Only a finite number of calls or data can go through these facilities at once and the working range of the cell site varies based on any number of factors, including height of the antenna. The FCC has stated that cellular or personal communications services (PCS) towers typically range anywhere from 50 to 200 feet high.

The emergence of personal communications services, the increased number of cell providers and the growing demand for better coverage have spurred requests for new cell towers and small cell equipment nationwide. As a result, some cellular carriers, telecommunications wholesalers or tower companies, have attempted to quickly deploy telecommunications systems or personal wireless service facilities, and, in doing so, often claim federal law requires cities to allow construction or placement of towers, equipment or antennas in rights-of-way. Such claims generally have no basis. Although not completely unfettered, cities can feel assured that, in general, federal law preserves local zoning and land use authority.

A. The Telecommunications Act and the FCC

The Telecommunications Act of 1996 (TCA) represented America's first successful attempt to reform regulations on telecommunications in more than 60 years; and, also, was the first piece of legislation to address internet access. Congress enacted the TCA to promote competition and higher quality in American telecommunications services and to encourage rapid deployment of new telecommunications technologies.

The Federal Communication Commission (FCC) is the federal agency charged with creating rules and policies under the TCA and other telecommunications laws.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

47 U.S.C. § 253 (Section 253 of Telecommunications Act).

47 U.S.C. § 332(c)(7).

FCC 09-99, Declaratory Ruling (Nov. 18, 2009).

47 U.S.C. § 253(c)(e) (Section 253 of Telecommunications Act).

47 U.S.C. § 332(c)(7).

FCC 09-99, Declaratory Ruling (Nov. 18, 2009).

Sprint Spectrum v. Mills, 283 F.3d 404 (2nd Cir. 2002).

USCOC of Greater Missouri v. Vill. Of Marlborough, 618 F.Supp.2d 1055 (E.D. Mo. 2009).

FCC 09-99, Declaratory Ruling (Nov. 18, 2009).

The FCC also manages and licenses commercial users (like cell providers, telecommunications wholesalers and tower companies), as well as non-commercial users (like local governments). As a result, both the TCA and FCC rulings impact interactions between the cell industry and local government.

The significant changes in the wireless industry and its related shared wireless infrastructures, along with consumer demand for fast and reliable service on mobile devices, have fueled a frenzy of requests for large and small cell/DAS site development and/or deployment. As a part of this, cities find themselves facing cell industry arguments that federal law requires cities to approve tower siting requests.

Companies making these claims most often cite to Section 253 or Section 332 of the TCA as support. Section 253 states “no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service”. Section 332 has a similar provision ensuring the entry of commercial mobile services into desired geographic markets to establish of personal wireless service facilities.

These provision should not, however, be read out of context. When reading the relevant sections in their entirety, it becomes clear that federal law does not pre-empt local municipal regulations and land use controls. Specifically, the law states “[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way ...” and that “nothing in this chapter shall limit or affect the authority of ...local government ... over decisions regarding the placement, construction, and modification of personal wireless service facilities”.

Courts consistently have agreed that local governments retain their regulatory authority and, when faced with making decisions on placement of towers, antenna or *new* telecommunication service equipment on city facilities, they have the same rights that private individuals have to deny or permit placement of a cellular tower on their property. This means cities can regulate and permit placement of towers and other personal wireless service facilities, including controlling height, exterior materials, accessory buildings and even location. Cities should be careful to make sure that local regulations don't have the effect of completely banning all cell towers or personal wireless service facilities. Such regulation could run afoul of federal law.

RELEVANT LINKS:

Vertical Broadcasting v. Town of Southampton, 84 F. Supp.2d 379 (E.D.N.Y. 2000).

Paging v. Bd. of Zoning Appeals for Montgomery Cty., 957 F.Supp 805 (W.D. Va. 1997).

Letter from Minnesota Department of Commerce to Mobilitie.

Minn. Stat. §237.162
Minn. Stat. §237.163 .

Minnesota Public Utilities Commission, Meeting Agenda (Nov. 3, 2016).

USCOC of Greater Missouri v. Vill. Of Marlborough, 618 F.Supp.2d 1055 (E.D. Mo. 2009).

Minnesota Towers Inc. v. City of Dubuq, 474 F.3d 1052 (8th Cir. 2007).

NE Colorado Cellular, Inc. v. City of North Platte, 764 F.3d 929 (8th Cir. 2014) (denial of CUP for tower must be "in writing" but need not be a separate finding from the reasons in the denial).

Some cellular companies try to gain access by claiming they are utilities. The basis for such a claim usually follows one of two themes – either that, as a utility, federal law entitles them to entry; or, in the alternative, under the city's ordinances, they get the same treatment as other utilities. Courts consistently have rejected the first argument of entitlement, citing to the specific directive that local municipalities retain traditional zoning discretion.

B. State law

In the alternative, the argument that a city's local ordinances include towers as a utility has, on occasion and in different states, carried more weight with a court. To avoid any such arguments, cities can specifically exclude towers, antenna, small cell, and DAS equipment from their ordinance's definition of utilities. The Minnesota Department of Commerce, in a letter to a wireless infrastructure provider, cautioned the company that its certificate of authority to provide a local niche service did not authorize it to claim an exemption from local zoning. The Minnesota Department of Commerce additionally requested that the offending company cease from making those assertions. Some confusion has arisen regarding what types of entities represent telecommunications right-of-way users under state law. If an entity qualifies as a telecommunications right-of-way user, a specific state statutory provision applies which allows local government, through an ordinance, to further manage its rights of way and recover its rights-of-way management costs (subject to certain restrictions). Cities should work with city attorneys on reviewing or updating its ordinances.

C. Limitations on cities' authority

Although federal law expressly preserves local governmental regulatory authority, it does place several substantive and procedural limits on that authority. Specifically, a city:

- cannot unreasonably discriminate among providers of functionally equivalent services,
- cannot regulate those providers in a manner that prohibits or has the effect of prohibiting the provision of telecommunications services or personal wireless services,
- must act on applications within a reasonable time (easily met by compliance with Minnesota's 60 day rule), and

RELEVANT LINKS:

Minn. Stat. § 15.99. See LMC information memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

Smith Comm. V. Washington Cty, Ark., 785 F.3d 1253 (8th Cir. 2015) (substantial evidence' analysis involves whether the local zoning authority's decision is consistent with the applicable local zoning requirements and can include aesthetic reasons).

FCC 09-09, Declaratory Ruling, Nov. 18, 2009.

Tower and Antenna Siting FAQ sheet from FCC.

T-Mobile West V. Crow, No. CV08-1337 (D. AZ. Dec. 16, 2009).

Minn. Stat. §237.162
Minn. Stat. §237.163

Minnesota Towers Inc. v. City of Duluth, 474 F.3d 1052 (8th Cir. 2007).

Smith Comm. V. Washington Cty, Ark., 785 F.3d 1253 (8th Cir. 2015).

- must document denial of an application in writing supported by “substantial evidence”.

Proof that the local zoning authority's decision furthers the applicable local zoning requirements satisfies the substantial evidence test. Municipalities cannot cite environmental concerns as a reason for denial, however, when the antennas comply with FCC rules on radio emissions. In the alternative, cities can request proof of compliance with the FCC rules.

Bringing an action in federal court represents the recourse available to the cellular industry if challenging the denial of a siting request under federal law. Based on the limitations set forth in the federal law on local land use and zoning authority, most often, when cities deny siting requests, the challenges to those denials claim:

- the municipal action has the effect of “prohibiting the provision of personal wireless service”; or
- the municipal action unreasonably discriminates among providers of functionally equivalent services (i.e. cell providers claiming to be a type of utility so they can get same treatment as utility under city ordinance).

Although this memo primarily focuses on the federal law applicable to siting requests, cities should remember to consult state law as well. In addition to mirroring the federal law including recognizing the local government's authority to manage its public rights-of-way, state law permits cities, by ordinance, to further regulate “telecommunications right-of-way users”. Cities should consult their city attorneys when drafting its ordinance or consulting state law.

D. Court decisions

The Eighth Circuit (controlling law for Minnesota) recognizes that cities do indeed retain local authority over decisions regarding the placement and construction of towers and personal wireless service facilities.

RELEVANT LINKS:

Voicestream PCSII Corp. v. City of St. Louis, No. 4:04CV732 (E.D. Mo. August 3, 2005) (city interpretation of city ordinance treats communication facility as a utility).

USCOC of Greater Missouri v. Vill. Of Marlborough, 618 F.Supp2d 1055 (E.D. Mo. 2009).

LMC information memo, *Regulating City Rights of Way*, and model right of way ordinance.

See Appendix, Sample Ordinances and Agreements.

See Appendix, Sample Ordinances and Agreements.

The Eighth Circuit also has heard cases where a carrier or other telecommunications company argue they are a utility and should be treated as such under local ordinances. Usually the companies that provide wholesale telecommunication services to licensed carriers (most often occurring in the Distributed Antenna System or DAS, systems discussed in Section II below) make this argument. Absent a local ordinance that includes this type of equipment within its definition of utilities, courts do not necessarily deem cell towers or other personal communications services equipment functionally equivalent to utilities. Additionally, courts have found that the federal law anticipates some disparate application of the law, even among those deemed functionally equivalent. For example, courts determined it reasonable to consider the location of a cell tower when deciding whether to approve tower construction (finding it okay to treat different locations differently), as long as cities do not allow one company to build a tower at a particular location at the exclusion of other providers.

E. City Approaches

Regulation of placement of cell towers and personal wireless services can occur in a variety of different ways, including zoning ordinances, rights-of-way (ROW) management ordinances or adopting a specific cell tower/telecommunication ordinance. Minnesota law provides cities with comprehensive authority to manage their ROWs. With the unique application of federal law to telecommunications, coupled by siting requests that may request siting both in and out of rights-of-way, many cities find that having a separate telecommunications ordinance (in addition to a ROW ordinance) allows cities to better regulate towers and other telecommunications equipment, including addressing location, design, height, lighting, finish or accessory buildings. Some cities also have modified the definitions in their ordinances to exclude cell towers, telecommunications, wireless systems, DAS, small cell equipment and more from utilities to counter the cell industry's requests for equal treatment or more lenient zoning under the city's zoning ordinances.

In addition to adopting specific regulations, many city zoning ordinances recognize these structures as conditional uses requiring a permit (many of these regulations include a provision for variances, if needed). With the emergence of small cell technologies, like DAS systems described in a later part of this memo, cities have started to amend their zoning and cell tower/telecommunications ordinances to account for more expedited decisions on small cell/DAS siting requests, including establishing a separate administrative approval process for these less burdensome requests to add technologies onto existing structures, like poles or water towers.

RELEVANT LINKS:



See Appendix, Sample Ordinances and Agreements.

See Appendix, Sample Ordinances and Agreements.

Also, because these new technologies attach to existing structures, cities often need additional documents for managing these relationships including Master Licensing Agreements, License Supplement (or Lease); Pole Attachment Application (if city's ordinance so requires in its permit process); and Bill of Sale (for sale of pole from carrier to city).

II. Deployment of small cell technologies and DAS

Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower and often are installed at sites that support cell coverage either within a large cell area that has high coverage needs or, in the alternative, at sites within large geographic areas that have poor cell coverage overall.

Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing, large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower. Cities sometimes are asked to provide the power needed for the radios, which the city can negotiate into the leasing agreement with the cell provider.

A. Additional zoning and permitting needs

Currently many cities' zoning ordinances address large cell sites, but not small cell towers or DAS. Cities should review their ordinances to establish an efficient way to review and process small cell/DAS requests, particularly in light of federal law. As discussed earlier in this memo, one common approach includes setting up an administrative approval process to more quickly review requests for these small cell/DAS technologies.

Since the placement of small cell technology or DAS on existing structures oftentimes can result in cities renting space on city owned structures, like poles or water towers, cities should also consult city attorneys to get assistance with drafting master licensing agreements, license supplement (or lease); pole attachment application (if city's ordinance so requires in its permit process); and bill of sale (for sale of pole from carrier to city).

RELEVANT LINKS:

47 U.S.C. §332 (commonly known as Section 332 of Telecommunications Act).

FCC 09-99, Declaratory Ruling (Nov. 18, 2009).

FCC 14-153, Report & Order (October 21, 2014).

See, "Small Cells and distributed antenna systems," Best, Best and Krieger Law (Sept. 2014).

Generally, the terms of the Master License Agreement should include provisions regarding:

- licensing scheme
- definitions of scope of permitted uses
- establishment of ROW rental fee
- protection of city resources
- provision of contract term
- specification of each installation subject to sublicense or lease
- establishment of application approval process
- statement of general provisions

Cities also should be aware that new DAS or new small cell technologies are subject to the same restrictions under federal law that apply to large of towers. Specifically,

- a city may not unreasonably discriminate among providers of functionally equivalent services,
- may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services,
- must act on applications within a reasonable time and
- must make any denial of an application in writing supported by substantial evidence in a written record.

The below questions may help guide cities when reviewing current ordinances:

- Does the city's zoning ordinance apply to smaller facilities in the rights-of-way?
- Will the city's regulatory process allow it to review a request to place a number of facilities at multiple sites in a timely way?
- Can the city ensure that small facilities, once approved, will not expand into harmful facilities later?
- Does the DAS provider have wireless customers, or is it only placing facilities with the hope of obtaining them?
- Has the city developed an approach to leasing government-owned property for new wireless uses that protects the community and maximizes the value of its assets?
- Does the city's rights of way management ordinance exclude these small facilities from the definition of utilities?

RELEVANT LINKS:

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. § 1455.

FCC Public Notice AD 12-2047 (January 25, 2013).

FCC 14-153, Report & Order (October 21, 2014).

FCC Public Notice AD 12-2047 (January 25, 2013).

FCC Public Notice AD 12-2047 (January 25, 2013).

City of Arlington Texas, et al. v. FCC, et al., 133 S.Ct. 1863, 1867 (2013) (90 days to process collocation application and 150 days to process all other applications, relying on §332(c)(7)(B)(ii)).

Minn. Stat. § 15.99.

This model ordinance and other information can be found at National Association of Counties Website.

B. Modifications of existing telecommunication structures

Cities should know that, if a siting requests proposes *a modifications to and/or collocations of wireless transmission equipment on existing FCC regulated towers or base stations*, then federal law further limits local municipal control. Specifically, the law requires cities to grant requests for modifications or collocation to existing FCC regulated structures when that modification would not “substantially change” the physical dimensions of the tower or base station. The FCC has established guidelines on what “substantially change the physical dimensions” means and what constitutes a “wireless tower or base station”.

Once small cell equipment or antennae gets placed on that pole, then the pole became a telecommunication structure subject to federal law and FCC regulations. Accordingly, the city now must comply with the more restrictive federal laws which allow modifications to these structures that do not substantially change the physical dimensions of the pole, like having equipment from the other cell carriers.

Under this law, it appears cities cannot ask an applicant who is requesting modification for documentation information other how the modification impacts the physical dimensions of the structure. Accordingly, documentation illustrating the need for such wireless facilities or justifying the business decision likely cannot be requested. Of course, as with the other siting requests, state and local zoning authorities must take prompt action on these siting applications for wireless facilities (which Minnesota’s 60 day shot clock rule satisfies).

Two wireless industry associations, the WIA (formerly known as the PCIA) and CTIA, collaborated with the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors to: (1) develop a model ordinance and application for reviewing eligible small cell/DAS facilities requests under federal law (2) discuss and distribute wireless siting best practices; (3) create a checklist that local government officials can use to help streamline the review process; and (4) hold webinars regarding the application process.

III. Moratoriums

The cellular industry often challenge moratoriums used to stall placement of cell towers, as well as small cell/DAS technology, until cities can address regulation of these structures. Generally, these providers argue that these moratoriums:

RELEVANT LINKS:

APT Minneapolis, Inc. v. Stillwater Township, Civil No 00-2500 (D. Minn. June 22, 2001) (unpublished).

Sprint Spectrum v. City of Medina, 924 F.Supp. 1036 (W.D.Wash.1996).

Sprint Spectrum v. Town of W. Seneca, 659 N. Y. S.2d 687 (N. Y. Sup. Ct. 1997).

Sprint Spectrum v. Jefferson County, 968 F.Supp. 1457 (N. D. Ala. 1997).

Telecommunications Advisors v. Bd. of Selectmen of the Town of W. Stockbridge, 27 F.Supp.2d 284 (D. Mass. 1998).

- prohibit or have the effect of prohibiting the provision of personal wireless services; or
- violate federal law by failing to act on an application within a reasonable time.

Courts agree that the legality of moratoria related to cell tower or personal wireless service deployment requires a case by case analysis and turns on the facts of each situation. Review of these moratoriums oftentimes depend upon:

- whether the city already had a cell tower ordinance in effect at the time of application or if the city passed the moratorium because they had no relevant zoning in place);
- how much time had passed since the passing of the federal law, indicating whether this moratorium was not in response to recent legislation;
- whether the city continued to accept applications during the moratorium, even if final decisions became delayed; and
- the length of time for the moratorium.

IV. Conclusion

With the greater use of calls and data associated with mobile technology, cities are likely to see more new cell towers, as well as small cell technology/DAS requests. As a consequence, it would make sense to proactively review city regulations to ensure they are consistent with federal law, while still retaining control over the deployment of structures and in and uses of rights of way.

Appendix A: Sample Ordinances and Sample Agreements

Many cities address cell towers in their ordinances already. For information purposes only, the links below reference just a few of these telecommunications facilities ordinances in Minnesota:

Sample Telecommunications Ordinances

City of Edina

Ordinance: ([Chapter 34 Telecommunications](#))

City of Greenwood

Ordinance ([Page 98. Telecommunications Facilities](#))

City of Minneapolis

Ordinance: ([Amendment to Ordinance to accommodate Small Cell/DAS equipment](#))

City of Minnetonka

Ordinance: ([Section 300.34 Telecommunications Facilities](#))

Sample Master License Agreement for DAS/Small Call

[Texas City Attorney Association](#)

Addendum to Local Gov. Code, Chapter 283

[San Antonio, Texas](#)

[Boston, Massachusetts](#)

[San Francisco, California:](#)

Sample Ordinances approving Master License Agreement for DAS/Small Cell

[Houston, Texas](#)

[San Antonio, Texas](#)

Cooperation Agreement with Verizon

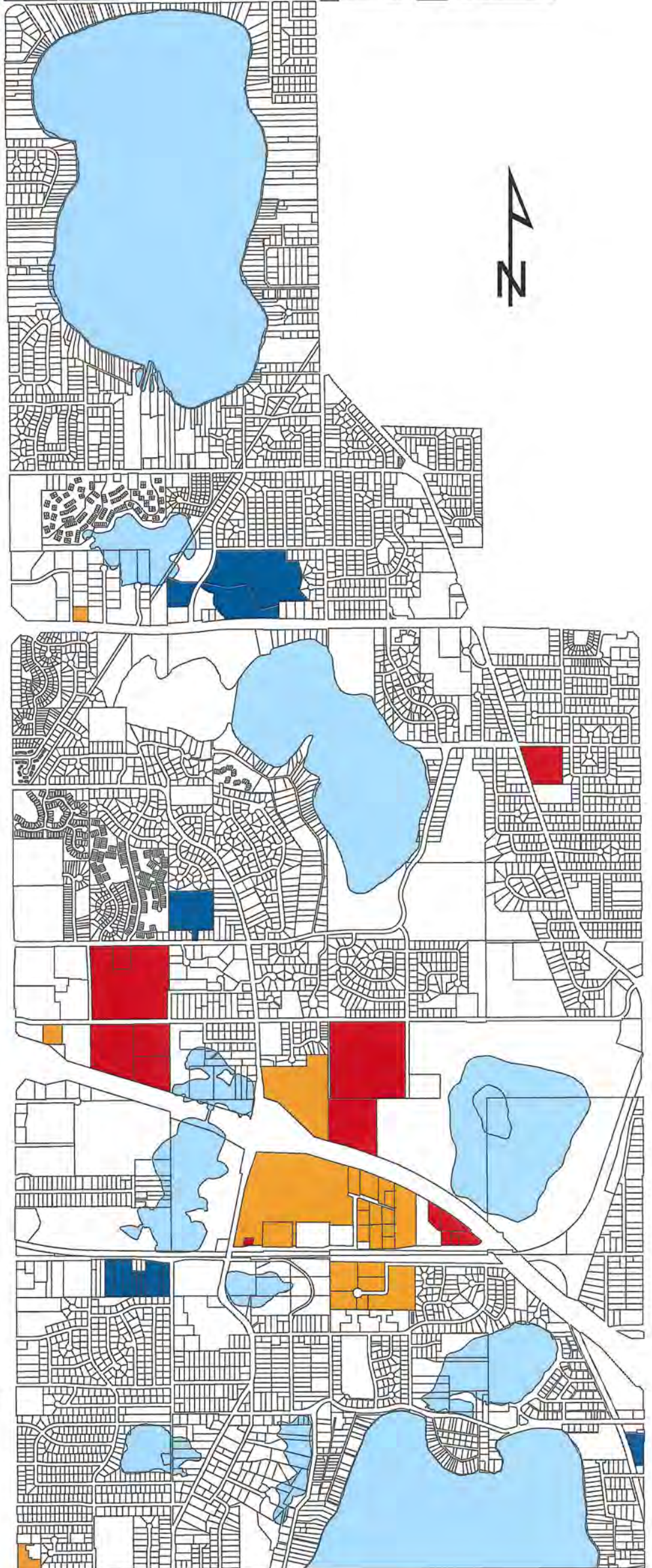
[Boston, Massachusetts](#)

Telecommunications Overlay District



Legend

-  TOD - 1
-  TOD - 2
-  TOD - 3



Approved July, 5, 2011

TO: Planning Commission
FROM: Niki Hill, AICP, Economic Development and Planning Associate
DATE: March 23, 2017
SUBJECT: **Text Amendment – Beekeeping**

Introduction

City Staff has been asked to develop regulations permitting beekeeping in residential zoning districts. The City has received a number of inquiries from residents who are interested in producing honey and/or addressing the decline in the bee population by establishing back-yard bee hives. In recent years, several other suburban communities have revised local ordinances to permit beekeeping in residential areas.

Existing Development Code

In the R1, Detached Residential District, the keeping of non-domestic animals is permitted on property containing two or more acres. Bees are defined as a non-domestic animal. The City Council may require the owner of non-domestic animals to apply for a Conditional Use Permit if the Council determines that it is in the best interest of the public's health, safety and general welfare. The ordinance does provide an exemption for chickens provided a license is obtained.

Ordinance Considerations

Staff has taken into account the numerous discussions that have occurred in the past year, reviewed information from the Minnesota Hobby Beekeeper's Association Model Beekeeping Ordinance and requirements from other communities. Majority of the changes that are being proposed are in Section 601 of the Development Code - Animal Licensing and Control. The City Council has the authority on these text amendments to this section but there will still be minor modifications to Section 205 of the zoning code. Staff is still seeking recommendations on all the proposed changes from the Planning Commission. The following topics were addressed in the creation of the draft ordinance allowing the keeping of bees within the City.

License Requirement. The City requires a license for dogs, cats, chickens and wild animals. The Staff is proposing that a bi-annual license be required for beekeeping in order to track the location of beekeeping activity in the community and monitor for compliance. This is consistent with the licensing required for the keeping of chickens. The Conditional Use Permit requirement for properties would be exempted much the same as for a chicken license. A neighborhood notification requirement would be included after the issuance of a license.

Definitions. Definitions are needed to define terms used within the proposed ordinance, including but not limited to colony, hive, apiary and beekeeper have been included.

Location of Apiary/Setback Requirements. The apiary (hive and honey comb) should be kept from public view and located in the rear or side yards. Apiaries should also maintain a minimum setback from a property line and adjoining residential dwelling unit. Staff is recommending that the location be in the rear or side yards, with a 10 minimum setback from the lot line and 25 feet from any adjoining residential structure.

Colony Density. Colony density refers to the number of hives permitted. Staff has chosen to write the regulation with a 4 tier system of lot sizes establishing the number of hives allowed.

Neighbor Notification. A number of communities require notification of nearby neighbors as part of the registration, permitting or licensing process. In some cases, notification is a courtesy while other communities require consent. For some permits, the City is required to notify nearby property owners after the permit is issued. This intent is to inform nearby property owners that the proposed activity or use has been reviewed by the City and complies with the Code requirements. When consent of nearby property owners is required, in Staffs opinion, the review becomes less objective because it is no longer based on the performance standards cited in the Code. Staff is recommending that we are consistent with permits that require a neighborhood notification- which includes a notification radius of 150' informing property owners of the permit that has been issued.

Other. Other standards found in ordinances relate to education/training requirements, sale of honey/home occupation, need for a water source, inspections and compliance/enforcement. Staff has incorporated all of these in the draft ordinance.

Recommendation

A draft copy of the beekeeping ordinance is attached for your review. A copy of the model ordinance from the MHBA and Attachment C, which compares regulations adopted by other metropolitan area communities are also included. Information regarding the draft ordinance is being presented to the Planning Commission and Environmental Quality Committee for review and discussion.

Attachments

- 1) Draft Ordinance
- 2) Attachment A - Ordinance Comparison
- 3) MHBA Model Ordinance

Section 205.082(B)(4) Detached Residential, Permitted Uses

Rev.Date
5/3/10
Ord. #868

- (4) The keeping of non-domestic animals is permitted on property containing two (2) or more acres. The City Council may require the owner of non-domestic animals to apply for a Conditional Use Permit if the Council determines that it is in the best interest of the public's health, safety or general welfare; ~~provided, however, that the raising and keeping of not more than four (4) hen chickens or pullets is permitted on property less than two (2) acres provided a license is obtained in accordance with Section 601.020(D) except the following:~~
- a) ~~the raising and keeping of not more than four (4) hen chickens or pullets is permitted on property less than two (2) acres provided a license is obtained in accordance with Section 601.020(D)~~
 - b) ~~the raising and keeping of honeybee colonies is permitted on properties less than two (2) acres provided a license is obtained in accordance with Section 601.020(E).~~

601 Animal Licensing and Control

601.010 **Definitions.** As used in this Chapter, except as otherwise provided, the following terms shall have the respective meanings ascribed to them:

- (1) Animal. Any non-human mammal, reptile, amphibian, or bird.
- (2) Animal Control Officer. An individual or employee of a business retained by the City for purposes of enforcing the provisions of Sections 601; or a member of the City's law enforcement agency.
- (3) Animal, Domestic. Animals kept within the home as pets, such as fish, dogs, cats, household bird, and similar animals.
- (4) Animal, Non-Domestic. Animals which are kept outside the home for purposes of food or pleasure such as cattle, hogs, horses, bees, sheep, llamas, goats, chickens (*Gallus gallus domesticus*), birds, such as emus and pigeons, and similar animals.
- (5) Animal, Wild. Any animal, reptile or amphibian which is of a species not usually domesticated; or of a species which, due to size, wild nature or other characteristics, may be dangerous to humans; or would ordinarily be confined in a zoo or found in the wild. The term includes but is not limited to:
 - (a) Animals and birds, the keeping of which is licensed by the state or federal government, such as wolves, pheasants, and raptors such as eagles, falcons, hawks, and owls.

Affected Sections with the Beekeeping Ordinance with proposed Draft Changes in Red

- (b) Weasels, wild ferrets, badgers, deer and bison.
 - (c) Crossbreeds of wild animals and domesticated animals such as the cross between dogs and coyotes and dogs and wolves.
 - (d) All members of the Felidae family including, but not limited to, lions, tigers, cougars, leopards, ocelots, cheetahs, and servals, but not including domestic cats or cats recognized as a domestic breed, registered as a domestic breed, and shown as a domestic breed by a national or international multibreed cat registry association.
 - (e) Any member of the Canidae family, such as wolves, foxes, coyotes, dingoes, and jackals, except domesticated dogs.
 - (f) Any poisonous animal such as a rattlesnake, coral snake, water moccasin, puff adder, cobra, Gila monster or golden frog.
 - (g) Any snake or reptile which by its size, vicious nature or other characteristic may be dangerous to human beings.
 - (h) Any skunk, raccoon or fox whether captured in the wild, domestically raised, descended or not descended, vaccinated against rabies or not vaccinated against rabies.
 - (i) Bears.
 - (j) All nonhuman primates, including but not limited to, lemurs, monkeys, chimpanzees, gorillas, orangutans, marmosets, lorises, and tamarins.
 - (k) Any other animal, bird, or reptile which is commonly considered wild.
- (6) At Large. An unattended animal on public property; or an unattended animal on private property without the consent of the property owner.
- (7) Beekeeper. A person who owns bees.
- (8) Cat. Any domesticated feline animal, male or female, whole or neutered.
- (9) Colony: An aggregate of bees consisting principally of works, but having, when perfect, one queen, drones, brood, combs and honey.
- (10) Dangerous Animal. Any animal that has committed any of the acts set forth below:

Affected Sections with the Beekeeping Ordinance with proposed Draft Changes in Red

Without provocation, inflicted substantial bodily harm on a human being on public or private property;

Killed a domestic animal without provocation; or

A potentially dangerous animal which aggressively bites, attacks or endangers the safety of humans or domestic animals.

- (11) Dog. Any canine animal, male or female, whole or neutered.
- (12) Honeybee. All life stages of the common domestic honey bee, *apis mellifera* (African subspecies and Africanized hybrids are not allowed).
- (13) Hive. The receptacle inhabited by a colony that is manufactured for that purpose.

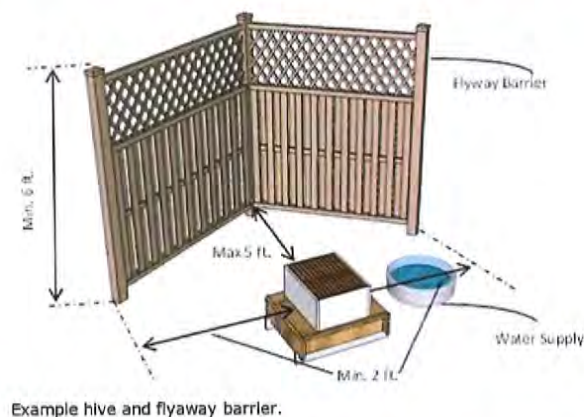
601.020 Licenses Required. The following animal licenses shall be required within the City of Shoreview.

(E) Beekeeping

- (1) Bee hives may be kept in the City limits on residential properties located in the RE, Residential Estate Zoning District and the R1, Detached Residential District, subject to the following conditions:
 - (a) Colony Density (number of hives) based on property size:
 - 2 Acres or larger: 8
 - 1 acre – $\frac{3}{4}$ Acre: 6
 - $\frac{3}{4}$ Acre to $\frac{1}{2}$ Acre: 4
 - $\frac{1}{2}$ acre or less: 2
 - (b) Honey Bee colonies shall be kept in hives with removable frames, which shall be kept in sound and usable condition. The hives must be removed within 30 days if no longer occupied by a colony. It shall be a violation of this section for unused equipment to attract a swarm, even if the beekeeper is not intentionally keeping honey bees.
 - (c) Each beekeeper shall ensure that a convenient source of water is available within 10 feet of the hives at all times that the colonies remain active outside of the hive.
 - (d) Each beekeeper shall ensure that no wax comb or other material that might encourage robbing by other bees are left exposed outdoors. Such materials must be stored in sealed insect-proof containers, or place within a building.

Affected Sections with the Beekeeping Ordinance with proposed Draft Changes in **Red**

- (e) No selling of honey permitted within an approved home occupation permit.
- (f) Hives must be set back at least 10 feet from all property lines and at least 25 feet from a principal dwelling unit on an abutting lot. Hives may not be located in a front yard.
- (g) A 6 foot tall flyway barrier is required in each instance where a hive is kept less than 25 feet from a property line, as measured from the nearest point on the hive to the property line. The flyway barrier may consist of a wall, fence, dense vegetation or a combination there of, such that bees will fly over rather than through the material to reach the colony.



- (2) License. No person shall keep or maintain beehives on property located within the City of Shoreview unless a license is obtained pursuant to the provisions stated herein. Application shall be made on a form provided by the City Manager. The City Council shall from time to time set a fee by ordinance for the initial license and the bi-annual renewals.
- (3) License requirements. Prior to issuance of a license the applicant shall complete a training course by either:
 - i) Providing a certification of completion from a honeybee keeping course from either the University of Minnesota, Century College or the Three Rivers Park District.
 - ii) Requesting consideration and submit documentation for having completed a comparable course from another institution or instructor.
- (4) Inspection. The City Animal Control Officer will conduct an inspection of the property to determine compliance with the license and ordinance standards.
- (5) License Fee. The license fee must be submitted with the application. The fee will be established by City Council ordinance.
- (6) Duration of License. A license shall be issued for a period of two years.

Affected Sections with the Beekeeping Ordinance with proposed Draft Changes in Red

- (7) Issuance of License. Upon completion of the application form, certification of training and receipt of the license fee, the City Manager shall cause a license to be issued to the applicant.
- (8) Notice. The City Manager shall provide written notification to property owners within 150 feet of the subject property upon issuance of the license. Failure to give a mailed notice or defects in the notice shall not invalidate the review process provided that a bona fide attempt has been made to contact the property owners.
- (9) Change of Address. An applicant who has obtained a license shall notify the City Manager of the applicant's address changes within the corporate limits of the City within ten (10) days of an address change.

MODEL BEEKEEPING ORDINANCE

prepared by the
Minnesota Hobby Beekeepers Association

This model ordinance is not intended to be adopted without legal review by counsel representing the jurisdiction considering it. Like any proposed ordinance, it must be reconciled with existing ordinances and may be revised to fit community standards and needs. Our purpose in advancing the model ordinance is to offer a document with the apicultural framework we believe will enable hobbyist and sideliner beekeepers to safely and successfully pursue this pleasurable and economically, culturally and agriculturally critical activity in urban and suburban areas.

WHEREAS, honey bees (*apis mellifera*) are of benefit to mankind, and to Minnesota in particular, by providing agriculture, fruit and garden pollination services and by furnishing honey, and other useful products; and

WHEREAS, Minnesota is among the leading states in honey production and agricultural by products associated with beekeeping throughout the United States; and

WHEREAS, domestic strains of honey bees have been selectively bred for desirable traits, including gentleness, honey production, tendency not to swarm and non-aggressive behavior, characteristics which are desirable to foster and maintain; and

WHEREAS, gentle strains of honey bees can be maintained within populated areas in reasonable densities without causing a nuisance if the bees are properly located and carefully managed;

NOW THEREFORE, be it ordained and enacted by _____:

Section 1. Preamble Adopted.

That the findings contained in the preamble of this ordinance are hereby adopted as a part of this ordinance.

Section 2. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed in this section unless the context of their usage indicates another usage.

- 2.1 "Apiary" means the assembly of one or more colonies of bees at a single location.
- 2.2 "Beekeeper" means a person who owns or has charge of one or more colonies of bees.
- 2.3 "Beekeeping equipment" means anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors.

- 2.4 "Colony" means an aggregate of bees consisting principally of workers, but having, when perfect, one queen and at times drones, brood, combs, and honey.
- 2.5 "Hive" means the receptacle inhabited by a colony that is manufactured for that purpose.
- 2.6 "Honey bee" means all life stages of the common domestic honey bee, *apis mellifera* species.
- 2.7 "Lot" means a contiguous parcel of land under common ownership.
- 2.8 "Nucleus colony" means a small quantity of bees with a queen housed in a smaller than usual hive box designed for a particular purpose.
- 2.9 "Undeveloped property" means any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school or governmental facilities or other structures or improvements intended for human occupancy and the grounds maintained in associations therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

Section 3. Purpose of Ordinance.

- 3.1 The purpose of this ordinance is to establish certain requirements for beekeeping within the City, to avoid issues which might otherwise be associated with beekeeping in populated areas.
- 3.2 Compliance with this ordinance shall not be a defense to a proceeding alleging that a given colony constitutes a nuisance, but such compliance may be offered as evidence of the beekeeper's efforts to abate any proven nuisance.
- 3.3 Compliance with this ordinance shall not be a defense to a proceeding alleging that a given colony violates applicable ordinances regarding public health, but such compliance may be offered as evidence of the beekeeper's compliance with acceptable standards of practice among hobby beekeepers in the State of Minnesota.

Section 4. Standards of Practice.

- 4.1 Honey bee colonies shall be kept in hives with removable frames, which shall be kept in sound and usable condition.
- 4.2 Each beekeeper shall ensure that a convenient source of water is available to the colony so long as colonies remain active outside of the hive.
- 4.3 Each beekeeper shall ensure that no wax comb or other material that might encourage robbing by other bees are left upon the grounds of the apiary lot. Such materials once removed from the site shall be handled and stored in sealed containers, or placed within a building or other insect-proof container.
- 4.4 For each colony permitted to be maintained under this ordinance, there may also be maintained upon the same apiary lot, one nucleus colony in a

hive structure not to exceed one standard 9-5/8 inch depth 10-frame hive body with no supers.

- 4.5 Each beekeeper shall maintain his beekeeping equipment in good condition, including keeping the hives painted if they have been painted but are peeling or flaking, and securing unused equipment from weather, potential theft or vandalism and occupancy by swarms. It shall not be a defense to this ordinance that a beekeeper's unused equipment attracted a swarm and that the beekeeper is not intentionally keeping bees.

Section 5 Colony Density.

- 5.1 Except as otherwise provided in this ordinance, in each instance where a colony is kept less than 25 feet from a property line of the lot upon which the apiary is located, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least 6 feet in height. The flyway barrier may consist of a wall, fence, dense vegetation or a combination there of, such that bees will fly over rather than through the material to reach the colony. If a flyway barrier of dense vegetation is used, the initial planting may be 4 feet in height, so long as the vegetation normally reaches 6 feet in height or higher. The flyway barrier must continue parallel to the apiary lot line for 10 feet in either direction from the hive, or contain the hive or hives in an enclosure at least 6 feet in height. A flyway barrier is not required if the property adjoining the apiary lot line (1) is undeveloped, or (2) is zoned agricultural, industrial or is outside of the City limits, or (3) is a wildlife management area or naturalistic park land with no horse or foot trails located within 25 feet of the apiary lot line.
- 5.2 No person is permitted to keep more than the following numbers of colonies on any lot within the City, based upon the size or configuration of the apiary lot:

a. One half acre or smaller lot	2 colonies
b. Larger than 1/2 acre but smaller than 3/4 acre lot	4 colonies
c. Larger than 3/4 acre lot but smaller than 1 acre lot	6 colonies
d. One acre but smaller than 5 acres	8 colonies
e. Larger than 5 acres	no restriction
- 5.3 Regardless of lot size, so long as all lots within a radius of at least 200 feet from any hive, measured from any point on the front of the hive, remain undeveloped, there shall be no limit to the number of colonies. No grandfathering rights shall accrue under this subsection.
- 5.4 If the beekeeper serves the community by removing a swarm or swarms of honey bees from locations where they are not desired, the beekeeper shall not be considered in violation the portion of this ordinance limiting the number of colonies if he temporarily houses the swarm on the apiary lot in compliance with the standards of practice set out in this ordinance for no more than 30 days from the date acquired.

Section 6. Inspection.

A designated City official shall have the right to inspect any apiary for the purpose of ensuring compliance with this ordinance between 8 a.m. and 5 p.m. once annually upon prior notice to the owner of the apiary property, and more often upon complaint without prior notice.

Section 7. Presumed Colony/Hive Value.

For the purpose of enforcing City ordinances against destruction of property, each colony/hive shall be presumed to have a value of \$275.

Section 8. Compliance.

8.1 Upon receipt of credible information that any colony located within the City is not being kept in compliance with this ordinance, [the designated City official] shall cause an investigation to be conducted. If the investigation shows that a violation may exist and will continue, [the designated City official] shall cause a written notice of hearing to be issued to the beekeeper, which notice shall set forth:

- a. The date, the time and the place that the hearing will be held, which date shall be not less than 30 days' from the date of the notice;
- b. The violation alleged;
- c. That the beekeeper may appear in person or through counsel, present evidence, cross examine witnesses and request a court reporter, and
- d. That if [the designated City official] finds that they have been kept in violation of this ordinance, and if the violation is not remediated within the time allowed, the bees may be ordered removed and/or destroyed.

Notices shall be given by certified US Mail return receipt requested or personal delivery. However, if the beekeeper cannot be located, then notice may be given by publication in a legal newspaper for the county in which the apiary property is located, at least seven days before the hearing.

8.2 The hearing shall be conducted by [the designated City official]. The burden shall be on the City to demonstrate by a preponderance of evidence that the colony or colonies have been kept in violation of this ordinance. If [the designated City official] finds a violation, then he/she may order that the bees be removed from the City or such other action as may address the violation, and that the apiary lot be disqualified for permitting under this ordinance for a period of 2 years from the date of the order, the apiary lot ownership changes, in which case the prohibition shall terminate. If the order has not been complied with within 20 days of the order, the City may remove or destroy the bees and charge the beekeeper with the cost thereof. Upon destruction of bees by the City, all equipment shall be returned by the City to the beekeeper, with expenses of

transportation to be paid by the beekeeper. The City's destruction of the bees shall be by a method that will not damage or contaminate the equipment, include wax foundation.

8.3 The decision of the hearing officer may be appealed by the beekeeper as provided in the City's rules and procedures. If no provision for appeal exists, then the beekeeper may file a notice of appeal with the City secretary within 15 days of the date the order is placed in US Mail to the beekeeper, or 10 days if the decision is announced at the hearing by [the designated City official]. An appeal shall not stay [the designated City official]'s decision, and the beekeeper shall be required to comply with such order pending the outcome of the appeal.

8.4 No hearing and no order shall be required for the destruction of honey bees not residing in a hive structure that is intended for beekeeping.

Section 9. Savings Clause.

In the event any part of this ordinance or its application to any person or property is held to be unenforceable for any reason, the unenforceability thereof will not affect the enforceability and application of the remainder of this ordinance, which will remain in full force and effect.

Section 10. Effective Date.

This ordinance shall become effective on _____, 20_____.

ATTACHMENT A
(March 18, 2016)

Community	License/Permit required	Fee	Zoning	Location	Setback Requirements	Colony Density	Neighborhood Notification
Model Ordinance					Flyway barrier required if within 25' of lot line	½ acre or less: 2 ½ acre to ¾ acre: 4 ¾ acre to 1 acre: 6 1 acre to 5 acres: 8 Over 5 acres: no restriction No limit if undeveloped land within 200-foot radius of hive	
Minneapolis	Annual Permit	\$100 Initial \$50 Renewal	Residential and non-residential		Flyway barrier required if within 25' of lot line Exception for rooftop hives	½ acre or less: 2 ½ acre to ¾ acre: 4 ¾ acre to 1 acre: 6 1 acre to 5 acres: 8 Over 5 acres: no restriction No limit if undeveloped land within 200-foot radius of hive	Yes – Written consent 80% of property owners within 100 feet of property and signatures of 100% of occupants adjoining the property Exception for rooftop hives
Bloomington			Residential Non-residential*	Not permitted in front yard	100' – residential lot line 150' – adjoining dwelling unit on neighboring lot		
Stillwater	Permit		Single-family residential properties with one exception for two-family properties		Flyway barrier required if within 25' of lot line	½ acre or less: 2 ½ acre to ¾ acre: 4 ¾ acre to 1 acre: 6 1 acre to 5 acres: 8 Over 5 acres: no restriction	Yes – within 150-foot property lines – 10 day comment period
Edina	Annual Registration	\$20	Residential	Not permitted in front yard	10' – lot line 20' – adjacent dwelling unit 20' – public sidewalk	½ acre or less: 2 ½ acre to ¾ acre: 4 ¾ acre to 1 acre: 6 1 acre to 5 acres: 8 Over 5 acres: no restriction If undeveloped land within 200-foot radius of hive: 12	Yes – within 200 feet
Eden Prairie	Annual Registration	None		Not permitted in front yard – less than 10 acres	10' - lot line 10' - dwelling unit Flyway barrier required if within 25' of lot line	½ acre or less: 2 ½ acre to ¾ acre: 4 ¾ acre to 1 acre: 6 1 acre to 5 acres: 8 Over 5 acres: no restriction No limit if undeveloped land within 200-foot radius of hive	Yes – within 200 feet – 30 day comment period
Mounds View	License – Public Hearing – City Council		Single-Family	Rear yard only – hives must face towards lot interior	10' – lot line and dwelling on subject property 25' – trail or walkway	4	
White Bear Lake	License – 5 years	\$30	Single-Family Two-Family	Not permitted in the front yard	10' – lot line 25' – dwelling unit on adjoining lot Flyway barrier required if within 20' of lot line	4	Written consent from property owners within 100 feet

*Bloomington's ordinance has different standard for non-residential properties