

DEEPHAVEN PLANNING COMMISSION
TUESDAY NOVEMBER 17, 2009
7:00 P.M.
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CALL TO ORDER: Chairman Werneiwski called the meeting to order at 7:00 p.m.

PRESENT: Chairman Bob Werneiwski, Commissioners Barbarajean Brandt, Kent Carlson, Scott Hemink, Walter Linder and John McGary

ABSENT: None

OTHERS PRESENT: Council Liaison Paul Skrede and Zoning Coordinator Gus Karpas

MINUTES OF October 20, 2009

Motion by Commissioner Carlson, seconded by Commissioner Werneiwski, to approve the minutes of September 15, 2009 as presented. Motion carried 5-0-1. Commissioner Linder abstained.

PUBLIC HEARINGS

SPECIAL USE PERMIT – Clearwire Communications, LLC, 20225 Cottagewood Road, (R-2, 40,000) to collocate on the existing one hundred and twenty foot monopole tower located on the City Hall Campus.

1311.04(10) requires that existing towers be available for the collocation of other telecommunications providers. 1315.05 requires the issuance of a Special Use Permit for collocation of any telecommunications providers on an existing tower.

Zoning Coordinator Karpas presented his staff report. He said the request was to attach three antennas to the proposed one hundred and twenty foot tower to be built by T-Mobile.

Christopher Coughlin, Selective Site Consultants, presented the request. He said the original intent was that they would place their antennas at one hundred and ten feet on the future T-Mobile pole, but they would now be placed at one hundred feet based on their negotiations with T-Mobile. He discussed the proposed equipment cabinet noting it would be placed entirely within the existing fenced area and would not create any additional visual impact.

Chairman Werneiwski opened the public hearing.

Jeff Callister, 18150 Shaver's Lake Drive, asked if there was any analysis done on the request to justify another carrier on the tower. Council Liaison Skrede gave a brief history of the tower site located on the City Hall campus and his understanding of how coverage is attained. He said Clearwire isn't a cell phone provider, rather a broadband internet provider.

Hearing no further public comment, the public hearing was closed.

Chairman Werneiwski asked for clarification on the services provided by Clearwire. Mr. Coughlin explained it is primarily a broadband service providing internet access and limited voice capabilities. He likened their service to that of Comcast's triple plan in which internet and phone services are offered, only in Clearwire's case, the signal is transmitted through the airways rather than through a hard wire.

Commissioner Hemink asked about the potential income for the city with the approval of the request. Council Liaison Skrede said that each carrier on a tower is charged an annual fee for locating in the city. Hemink feels the proposal is a good use of an existing feature and is in support of the request.

Commissioner McGary asked if there was a map to show potential coverage. Mr. Coughlin said he could provide a map, but warned there would be gaps in coverage due to topography and the city's limitation on placement to properties controlled by the city. He said the typical radius for a tower is one half to three quarters of a mile. He explained that broadband technology does not have the same penetration power as cell phones do due to bandwidth. McGary asked if there was the ability to provide voice communications. Mr. Coughlin said in a limited capacity but not in the same manner as a cell phone carrier. McGary said the proposed antennas would be the least obtrusive located on the tower and he likes the idea of competition. He was supportive of the request.

Commissioner Carlson asked if the intent was to provide service to homeowners or businesses. Mr. Coughlin said the initial launch would be for residential service. Carlson asked if there were a certain number of subscribers necessary to make a site viable for a tower. Mr. Coughlin said each site is selected based on population of potential subscribers or "pops". He said some sites may have a lower number of subscribers but they are still needed to complete the network of coverage. Carson said he was supportive of the request.

Chairman Werneiwski asked about the different between 3G and 4G service. Mr. Coughlin explained it represents the generation of the technology, and Clearwire's 4G services replaces 3G service. Werneiwski said he was supportive of the request and feels it is a good use of existing space.

Commissioner Linder said the pole exists and the proposal is a marginal change in aesthetics. He is supportive of the request.

Commissioner Brandt asked if and when does the city satisfy its commitment to the 1996 Telecommunications Act. Council Liaison Skrede summarized the act and said the city is prohibited from categorically deny towers, though it does allow regulation. He said the city has satisfied the spirit of law with the adoption of the city's ordinance. He said the city doesn't have to approve towers without a demonstrated hardship or need by the carrier that existing towers are not adequate. Commissioner Brandt asked for clarification on the proposed equipment cabinet. Mr. Coughlin said there would be a single cabinet, approximately four foot tall, contained entirely within the existing fenced in area.

ACTION: Motion by Commissioner Linder to recommend the City Council approve the special use request to collocate on the existing one hundred and twenty foot monopole tower located on the City Hall Campus, as shown on the submitted site plan at 20225 Cottagewood Road. The proposed complies with the ordinance requirements as they pertain to collocating on existing antennas. Commissioner McGary seconded the motion. Motion carried 6-0.

SPECIAL USE PERMIT – Clearwire Communications, LLC, 18325 Northome Boulevard, (R-3, 20,000) for the construction of a new one hundred foot monopole telecommunications tower to be located on the median of the city owned parking lot.

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1311.05(1) permits the construction of cell towers with the issuance of a Special Use Permit. Section 1311.04(8)(a) permits a maximum tower height of one hundred (100) feet.

Zoning Coordinator Karpas presented his staff report. He said the request was to construct a new one hundred foot communications tower in the median of the city owned parking lot on Northome Boulevard. The proposal includes a small equipment cabinet. The proposal complies with the requirements of the ordinance in terms of tower construction.

Christopher Coughlin, Selective Site Consultants, said the original plan was to site three towers in the City of Deephaven, but due to the ordinance restrictions, were able to come up with only two that would comply with the ordinance. He said the proposed tower complies with the maximum height requirement of one hundred feet and would not take any necessary area out of the parking lot. The tower complies with the required setbacks and would not require the removal of any trees. He noted it would be designed to accommodate one addition carrier.

Chairman Werneiwski opened the public hearing.

Jeff Callister, 18150 Shaver's Lake Road, feels the photos submitted by the applicant are misleading in that they show more trees than what actually exist. He said if the tower is only for Clearwire, it does nothing to help fill the gaps in cell phone coverage and questioned the need for the tower. He asked who this would benefit and noted he hasn't heard of the company. Mr. Coughlin said that Clearwire is new to the Twin Cities market and the tower would benefit those who subscribe to their broadband service. He said the photos are an artist's rendering and they try to match the site conditions as much as possible.

Shawn Brady, 18254 Shaver's Lake Road, questioned the need for a hundred foot tower and asked if it could be lower. He said he does not support the request and thinks it's unnecessary and will take away from the character of the town. He said if the tower were to be approved, it should be smaller, thinner and shorter.

Tony Frank, 3380 Maplewood Road, said when he initially thought it was a cell tower, he felt he could live with it since there was the potential for better cell coverage. He said he would rather not have it, but if it is approved, he would like to see a cell carrier on it.

Mr. Callister asked what the hardship was to warrant the tower. Mr. Coughlin said the ordinance does not require that a hardship be demonstrated and the application, as submitted, meets the requirements of the ordinance.

Commissioner Linder clarified that the service offered did not include cell coverage. Mr. Coughlin said no, it was broadband service. Linder asked if it was within Clearwire's purview to entice a cell carrier. Mr. Coughlin said cell carriers typically come to towers on their own once one is constructed.

Commissioner Linder asked about the coverage and why the north end of the city could not be covered by the tower at Minnetonka Boulevard and Highway 101. Mr. Coughlin said wireless broadband has a lower frequency which limits to coverage to about half a mile.

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Mr. Callister noted that the tower on Highway 101 and the proposed tower are about an equal distance from his home and questioned the need for the overlap in coverage. He said the eyesore potential versus the utility to the residents doesn't make sense.

Mr. Brady said there are a number of broadband options available and used the example of Caribou Coffee and the number of choices there are in carriers. He said weighing the existing choices against the proposed tower makes him question its necessity. He feels the city should investigate the existing choices available before approving a new tower. Mr. Coughlin said the services are not the same. Whereas Caribou uses Wi-Fi services, Clearwire uses a USB card that can be inserted in your computer and used in any market that has Clearwire service.

Mr. Brady said the proposed services are already offered by the cable company. Commissioner Linder noted that wireless internet was not. Mr. Brady thinks this is a big decision and a big tower.

Mr. Callister said he would like to see graphs showing the service area and the coverage overlap with the tower on Highway 101. He asked why the tower was placed in the center of the parking lot. Mr. Coughlin said the placement was dictated by the Zoning Ordinance.

Council Liaison Skrede said that at the time T-Mobile located in the city, only 5.8% of the residents were served. The inclusion of Verizon on the tower was due to lobbying by residents. He feels the comment regarding carriers coming to towers is true and one will collocate on the site. He said the city cannot solicit any one company to locate in the city. He said that even after the ordinance was adopted, the city still had to wait for a carrier to locate. He said the city has reviewed all offers and contrary to popular belief, there haven't been that many.

Mr. Callister feels the city needs to know the increased coverage provided by the new tower, if it's only two or three block, he doesn't believe it worth it to approve the tower. He still feels it would be a minimal gain for an eyesore.

Commissioner Linder asked if the two towers in the city would be enough to create 100% broadband coverage in the city. Mr. Coughlin said he couldn't say that. Linder asked what the percent increase in coverage would be over just the tower at Highway 101. Mr. Coughlin discussed coverage stating that overlap is important in wireless communications to provide the strongest signal. He said no company spends money to make an eyesore, rather to provide coverage for customers.

Commissioner Linder said he understands that redundancy is good, but noted by Mr. Coughlin's own admission, the towers would not provide full coverage for the city. He asked if there were plans for additional towers. Mr. Coughlin reiterated that originally Clearwire sought three sites in the city, but were limited by the restrictions in the ordinance. He said the percentage of coverage is not the issue, rather it's whether the application meets the ordinance requirements.

Commissioner McGary asked if the proposed tower would benefit other cities. Mr. Coughlin said it would, but would benefit Deephaven the most.

Mr. Callister said the applicant should provide a coverage map so the city can analyze the proportion of covered versus uncovered and determine if the tower is worth it.

Hearing no further comment, the public hearing was closed.

Chairman Werneiwski said that even though he may not have a clear understanding of the technology, he feels the City of Deephaven should be on board. He doesn't necessarily want to see a one hundred foot tower, but understands it is necessary to provide maximum coverage. He supports the request.

Commissioner Linder said he's not thrilled with a tower in the city's prime intersection, but understands the technology is the wave of the future. He believes there are plenty of residents who want provide broadband service.

Commissioner Brandt said approval of the tower would invite cell carriers to the site and can envision a compound like look on the site with additional equipment sheds. She's against the request in that regard. She doesn't feel enough residents would benefit from the service and there would be a negative visual impact on the corner. She's more comfortable with the expansion of the tower at the City Hall site. She's opposed to the request, even if it means the city has to wait for another company with better technology in the future. ***She stated, based on the comments she's heard from the neighbors, they value their landscape more than the service provided by Clearwire.***

Commission Carlson supports the request because it increases competition in the marketplace. He does have some concerns. Though he does support additional carriers locating on the site, it would mean more equipment sheds on a site that does not lend itself to security and screening. He discussed ways in which the pole could be disguised and feels the issue needs to be investigated by the City Council. ***Commissioner Brandt said she would be opposed to comfluaging the tower since it includes issues of artistic privilege which can be very subjective. She would caution against the city approving any design that includes fake greenery, since it would be out of character with the surrounding area.***

Commissioner McGary asked about the height of the equipment cabinet. Mr. Coughlin said it would be under eight feet in height. McGary said the location of future carrier's equipment in the median would be more of a nuisance. He feels it's a benefit to the city to provide additional space for carriers and creates competition. He asked if there were better sites that would provide a larger coverage area. Mr. Coughlin said the coverage radius is impacted by topography and trees. McGary asked if Clearwire has disguised towers in the past. Mr. Coughlin said they have, but the City needs to understand that by doing so, the antennas are then placed inside the tower itself, requiring a wider tower. He discussed the idea of creating a flag pole and said there are other issues related to that such as the fact the flag would either need to be removed daily or lit and just the general maintenance of the flag.

Commissioner McGary asked if it would be prudent to permit a higher tower at this time to permit the collocation of two additional carriers. He believes the request benefits the residents of the city and is in favor of the tower.

Commissioner Hemink said he's in favor of increasing competition and income to the city, but there are issues he's not comfortable with including the size of the equipment cabinet in the median and how to deal with future equipment sheds. He said it is not clear the benefit of the tower and noted the previous request from Verizon included coverage maps. He also feels

pricing estimates for the service should be included to allow the city to gauge the benefit to residents. He's not in favor of the request at this time.

Commissioner Brandt asked if a condition could be included requiring it to be disguised. She feels approval of the tower would send a message to residents that the city has made a commitment for other companies locating on the site and they need to understand what they are compromising.

Mr. Coughlin said, as an applicant, they are only required to provide information based on their needs, stating that future carriers would need to come before the city for approval.

The Planning Commission discussed the need for a coverage map. Council Liaison Skrede said the reason a map wasn't required for the initial T-Mobile request was because they were within the ordinance requirements. Verizon needed to provide a map to justify their need for a variance to expand the tower. He said Clearwire is within the ordinance requirements, the next carrier may not be and would have to provide a coverage map.

Commissioner Linder said he's concerned that the coverage value does not outweigh the potential detrimental impact, especially since the service will not be available to the entire city.

ACTION: Motion by Commissioner Carlson to recommend the City Council approve the special use request to construct a one hundred foot monopole communications tower and equipment cabinet in the median of the city owned parking lot on Northome Boulevard, as shown on the submitted site plan at 18325 Northome Boulevard. The proposal is in conformance with the regulations of the ordinance. The motion is conditioned that some thought be given the location of future equipment sheds in terms of screening and security and that the City Council investigate the camouflage options to see if there are any available to lessen the impact of the tower. Commissioner Werneiwski seconded the motion. On the motion to recommend approval Commissioners Carlson, Linder, McGary and Werneiwski voted aye. Commissioners Brandt and Hemink vote nay. Motion carried 4-2.

ORDINANCE AMENDMENT – To consider the amendment of the Zoning Ordinance, establishing provisions for the regulation of temporary fences.

Zoning Coordinator Karpas presented the proposed amendment.

Chairman Werneiwski opened the public hearing.

John Adams, 3901 Hillcrest Way, discussed a situation he is currently having with his neighbor where a silt fence has been used to delineate the property line for over a year. He said it serves no purpose and is in a constant state of disrepair. He supports the proposed amendment to give staff more power to enforce the ordinance.

Andrea Nicholson, 3901 Hillcrest Way, agreed that the silt fence is not needed, noting the neighbors house is located on the other side of the property and nearly invisible. She said the fence is a nuisance.

Mr. Adams would like to see hard rules for the erection of fences and feels that a legitimate need must be shown before a temporary fence is constructed. He said a true limit needs to be established in terms of the removal of a temporary fence to eliminate loopholes.

Zoning Coordinator Karpas said the ordinance allows for flexibility on staff part to determine what constitutes a temporary fence and establishes a hard deadline for their removal.

Commissioner Linder said the situation sounds as though it is more of a nuisance issue since zoning ordinances typically don't cover eyesores. Mr. Adams said the absence of concrete enforcement provisions leaves too many loopholes.

Mr. Adams feels there needs to be language included in the ordinance which establishes what constitutes a fence.

Hearing no further comment, the public hearing was closed.

Commissioner Brandt asked when the body of the fence ordinance was drafted stating it may be time to revisit the ordinance and make revisions.

Commissioner Linder said he's generally opposed to amending the ordinance to address one issue and would prefer to see language that was more positive sounding in terms of acceptable fence characteristics. He thinks the proposed ordinance language is overly vague, and will not address the Adams/Nicholson situation.

Commissioner Carlson said he's not opposed to looking at the ordinance, but said the current amendment would be adding an enforcement provision which is a good thing.

Commissioner Hemink is concerned about trying to define temporary and also the idea of the city dictating aesthetics.

Commissioner Brandt said she has heard concerns from residents about fences, such as the allowable placement of boundary line fences that enclose yards, and feels a total review of the ordinance may be necessary.

Commissioner Linder discussed private legal options for eliminating the current situation.

Council Liaison Skrede said one of the problems with the fence ordinance is that it does not define what constitutes a fence. He said this may go a long way in addressing some of the issues related to fences. He agreed that the proposed language does have a punitive tone to it.

Zoning Coordinator Karpas expressed concerns about micromanaging what property owners can do on their property and feels by dictating types of materials and eliminating boundary fences may be going too far. Commissioner Brandt feels the impact on adjacent property owners must also be considered. She thinks language needs to be developed that takes into account the character of Deephaven as it is now.

Chairman Werneiwski said he supports the amendment. Commissioner McGary also liked the language and said it's not too limiting and its vagueness gives staff some discretion.

ACTION: Motion by Commissioner Werneiwski to recommend the City Council adopt Ordinance No. 13-52 amending the fence ordinance to include provisions regulating the placement of temporary fences. Commissioner Carlson seconded the motion. On the motion to recommend approval Commissioners Brandt, Carlson, McGary and Werneiwski voted aye. Commissioners Hemink and Linder voted nay. The motion carried 4-2.

OLD BUSINESS

PLAY STRUCTURES - Discuss the regulation of residential play structures

Zoning Coordinator Karpas summarized the results of his research stating that the League of Minnesota Cities was unable to find specific ordinances regulating play structures. He said they are typically regulated under the accessory structure provisions in most cities and reminded the Commission that they asked the Council to consider a similar measure and it was rejected. He is still seeking direction on whether the Commission still had the desire to regulate them.

Commissioner Brandt said her original intent was not to regulate small items such as a teeter-totter, but rather the larger Rainbow type structures. She thought that once a structure met a certain size, it should be enforced under the accessory structure provisions.

Commissioner Hemink said that was proposed in the past and rejected by the Council. He said he's not sure the environment on the Council has changed enough to warrant sending basically the same thing back to them. Commissioner Linder agreed stating with the same Council he can't see how the result would be different.

Commissioner Brandt would like it to be brought back before the Council. Commissioner Carlson said he would like a directive from the City Council to draft an ordinance. Brandt said it was her understanding that they had directed the Commission to revisit the issue.

Council Liaison Skrede said he would include the issue in his Liaison report to the Council and gauge their support.

LIAISON REPORT

Council Liaison Skrede said he had no report at this time.

ADJOURNMENT

Motion by Commissioner Werneiwski to adjourn the meeting. Commissioner Hemink seconded. The motion carried 6-0. The meeting adjourned at 9:20 p.m.

Respectfully submitted,
Gus Karpas
Zoning Coordinator