

**DEEPHAVEN CITY COUNCIL MEETING  
MONDAY, DECEMBER 21, 2009  
MINUTES**

**1. CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

PRESENT: Mayor Paul Skrede, Councilmembers Kim Crockett, Keith Kask and Steve Adams

ABSENT: Councilmember John Wheaton

STAFF: Zoning Coordinator Gus Karpas, Police Chief Cory Johnson and City Administrator Dana Young

**2. PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

**3. APPROVE DECEMBER 7, 2009 MINUTES**

Motion by Councilmember Adams to approve the December 7, 2009 Council minutes. Seconded by Councilmember Kask. Motion carried 4-0.

**4. MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

**5. UNFINISHED BUSINESS**

**A. Review City Requirements on Telecommunications Act**

Mayor Skrede asked Administrator Young to review Attorney Steve DeRuyter's memorandum concerning the City requirements on the Federal Communications Act of 1996.

Administrator Young stated that the City Council asked several questions of Attorney Steve DeRuyter at their December 7<sup>th</sup> Council meeting, including whether broadband companies such as Clearwire are covered under the provisions of the Telecommunications Act, whether the City is required to approve a particular tower site for each request made by a carrier, and is the granting of one site within the City sufficient to be in compliance with the Telecommunications Act.

Administrator Young stated that Mr. DeRuyter wrote that the Telecommunications Act is applicable to wireless carriers including broadband carriers. He stated that, according to Mr. DeRuyter, the general requirement of the Telecommunication Act when reacting to a request for site approval for a communications tower is that a city shall not "unreasonably discriminate among providers of functionally equivalent services" or act in a manner that would prohibit or have the effect of prohibiting the provision of personal wireless services. He stated that this was intended and has been interpreted by the courts dealing with the Act to prevent a city from simply setting arbitrary standards such as "we are only going to allow one tower site in our city" or other similar conditions which prevent the providing of services by a carrier or which discriminate among carriers.

Administrator Young added that Mr. DeRuyter doesn't necessarily think that this means a city must approve each request for a site. A city can require a carrier to negotiate for antenna locations on existing tower sites within the city limits as a precondition to approving an independent site.

Mayor Skrede noted that he and Zoning Coordinator Karpas had recently attended a telecommunications seminar last week in the attempt to learn some additional information about the Telecommunications Act but most of the seminar dealt with how to keep the paperwork of an application flowing, although he noted that the seminar did discuss the possibility of locating all antennas inside the pole.

## **B. Review Potential Tower Sites**

Administrator Young provided a brief overview of the publicly owned property in the northern portion of Deephaven that could serve as potential tower sites, including:

- Chowen's Corner parking lot
- Pump Park
- Hillside Park
- Lake Louise Park
- Thorpe Park
- Parkway Park

Mayor Skrede stated that the City's overall plan to address the requirements of the Telecommunications Act of 1996 is to site towers on publicly owned land, which makes it easier for the City to regulate the location of towers, and to have one site available in the southern portion of Deephaven and one on the northern portion. He stated that this would be a reasonable way to accommodate cell carrier requests.

Councilmember Kask stated that he is concerned with using the Pump Park property as a tower site primarily because it would give the perception that parks would be open to the placement of these structures and he was very reluctant to see a tower at Thorpe Park. He stated that he felt it could set a precedent for future requests. However, he stated that he doesn't consider Pump Park as a primary park and it might make some sense to locate a tower there. He added that the City could potentially receive a number of other requests for tower sites and the Chowen's Corner parking lot site should not be taken out of consideration.

Councilmember Kask stated that he felt it would have been disastrous for the City not to require cell carriers to be located on city property. He stated that both Pump Park and Chowen's Corner parking lot are reasonable locations but generally felt that the latter was a commercially zoned site that also had better access than Pump Park.

Councilmember Crockett stated that the discussion of potential cell tower sites was the most important issue in front of the Council—other than budgets—in years. She stated that at some point, we could be saturated with cell towers and that it was important to have a comprehensive plan rather than just reacting to applications. She stated that a southern and northern location might be sufficient to address future tower requests. She stated that she would like to take the full statutory period to review this request in order to involve our Park Committee and Planning Commission in this process. She stated that she was concerned that in the future, we might want to retain all the parking spaces in the Chowen's Corner parking lot in the event of a future redevelopment of the commercial area. She

stated that while she doesn't particularly want to locate a tower within a park property, Pump Park could accommodate future carriers. She stated that she felt that the Council's focus should be on either Pump Park or the Chowen's Corner parking lot since the only other viably sized property – Hillside Park – was a worse alternative when compared to the other two sites.

Councilmember Adams stated that the Chowen's Corner parking lot seems to be the most suitable particularly when considering multiple carriers. He stated that he doesn't really understand how access could be provided to Pump Park.

Councilmember Crockett stated that access and suitability should be issues that are resolved by the carrier.

Councilmember Adams stated that people do want improved cell coverage and we don't want to stand in the way of allowing that to happen.

Mayor Skrede stated that we currently have a southern location for a cell tower and are discussing an appropriate location for a northern location and doesn't believe that we need the involvement of other committees to come up with that conclusion. He stated that a decision should be handled at this level. He stated that if it is commonly agreed that Hillside Park is unacceptable, the Council is down to deciding between Pump Park and the Chowen Corner parking lot.

Councilmember Crockett asked if the wetland properties off of Hamilton Avenue would be an acceptable site.

Clearwire representative Christopher Coughlin stated he would have a number of concerns regarding a wetland site due to strict adherence to wetland setbacks, flood zone standards and endangered species concerns.

Councilmember Crockett stated that the City's 2005 Wireless Communications Tower ordinance might have done a great job in addressing the southern tower site but it might need to be revised now that we are considering a new northern site.

Councilmember Kask stated that he could understand that Councilmember Crockett is representing the concerns of her constituents in the area surrounding Chowen's Corner and acknowledged that Pump Park is not well used and could be suitable as a tower site. He stated that he has always been conflicted over the fact that the City has imposed parking requirements on businesses but not on those who are fortunate enough to be located right next to the City parking lot. He stated that the Chowen's Corner parking lot is readily accessible and commercially zoned but felt that both Pump Park and the parking lot would be suitable sites. He stated that we wouldn't be taking away any public amenities by using Pump Park and from an aesthetic standpoint, the tower would be tucked between two buildings. However, he stated that he still would be uncomfortable with setting a precedent for using park property as a tower site.

Councilmember Crockett stated that she would like staff to show the impact of locating the Clearwire tower at both sites, as well as the impact if two additional carriers collocated on the tower.

Jeff Callister, 18150 Shaver's Lake Road, acknowledged that a tower was going to be sited in the northern portion of Deephaven but stated that the parking lot site would only provide coverage to

around 59 Deephaven residences and to a number of Woodland residences. He stated that better coverage would be available for a greater number of Deephaven residents if the tower were located at either Pump Park or Thorpe Park. He stated that, by his calculations, Clearwire could pick up an additional 750 residences at Thorpe Park and well over a 100 residences at Pump Park. He stated that the tower should be moved from the parking lot site to benefit a greater number of Deephaven residences through better coverage.

Lucy Hicks, 18175 Carole Lane, stated that she is not here this evening on behalf of her role on the Deephaven Park Committee, but as a concerned citizen. She requested that the Council step back to consider the greatest amount of cell coverage that would be accommodated by the fewest number of cell towers.

Mayor Skrede stated that no one has a business plan for who might want to locate in Deephaven. He stated that most of the major carriers are already filled out in terms of coverage so it's very difficult to guess how many additional carriers might be coming in.

Councilmember Kask stated that it's very difficult to predict what new technology might be coming in to town. He stated that cell carrier towers have a five mile radius and broadband has a ½ mile radius. He stated that it's hard to plan where they might need to go because you can't anticipate the technology. He added that up until a few months ago, nobody had even heard of Clearwire.

Councilmember Crockett asked Christopher Coughlin whether he was aware if there were any federal dollars available for cities to purchase land for new tower sites.

Christopher Coughlin stated that he hasn't heard of any funding for cities for this particular use. He added that he knows of several instances where carriers have purchased property on behalf of a city and deeded the property over to the city in exchange for the abatement of rent.

Councilmember Crockett asked if the equipment for broadband emits noise.

Christopher Coughlin stated that they use air conditioning condenser units that emit noise but that they are rated for residential use.

Councilmember Crockett asked if Mr. Coughlin was familiar with Pump Park and if there would be any access issues at this site. She asked if the applicant had to have access into the site or whether they could simply use the available parking along Minnetonka Blvd to utilize the site.

Christopher Coughlin stated that their technicians need to adhere to certain OSHA standards, in particular, there are limits to carrying certain pieces of equipment of a particular weight. He stated that he thought that Pump Park was not a suitable site for the following reasons:

1. There are drainage issues at Pump Park in the west by northwest portion of the site.
2. There would be considerable tree removal to accommodate the tower.
3. There would be a substantial increase in the impervious surface on the site, which would add to the existing drainage problem.
4. There would be a strong desire to have a driveway access for the carriers and an adequate turnaround on site to eliminate the need to have their vehicles back up onto Minnetonka Blvd.
5. And, although it's not a substantial concern, each carrier has an engineered fall zone in the event of a severe tornado or ice storm, and with only a 50' wide lot, there would be a greater possibility of hitting the adjoining buildings.

Lucy Hicks asked about the long term health effects of a tower.

Christopher Coughlin stated that Clearwire adheres to all FCC standards.

Mike Daly, 3325 Shavers Lake Road, stated that he wouldn't really see the tower from his property but felt that it would hurt the aesthetics of the downtown area and the location of tower at the parking lot site wouldn't address coverage for the majority of the residents. He stated that for these reasons he would like to see the Council vote it down.

## **6. PLANNING & ZONING REQUESTS**

**A. 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. 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.**

Councilmember Crockett said she would like the city to take the remaining time it's allotted under State Statutes before acting on the request. She said she would like to see a drawing showing what the parking lot site would look like with other carriers. She said it's no secret that the tower would attract other carriers and she would like a better grasp what the site would look like built out. She also would like to take the time to see if the defects in Pump Park could be addressed to make it a suitable site for the tower. She feels, without that information, she would have to vote against the request.

Mayor Skrede noted the Council has already asked the applicant to wait two weeks for additional city review. Councilmember Crockett said she asked for that information and never received it. She noted the Council acts in a timely manner when residents come in with a request, but she feels differently about this since it is a commercial entity.

Mayor Skrede said it's a matter of reasonableness. The application before the Council is for the parking lot location. In order to move it to Pump Park, there would need to be a new public hearing. He noted the applicant is not responsible for providing renderings for a site that they have not applied for.

Councilmember Crockett felt staff could provide the information. City Administrator Young said staff could show what an equipment shed would look like on the site, but would not have the ability to do any renderings. Crockett said she would just like an idea of what the buildings would look like.

Mayor Skrede noted the site is not on the application before the Council. He said he's not prepared to guess what a future applicant is going to need in terms of equipment sheds and access.

Councilmember Crockett was also concerned about a stealth pole and whether future carriers could collocate in a stealth manner without having to reconstruct the pole.

Councilmember Adams asked if the application complied with the city code. Zoning Coordinator Karpas said it did. Adams said the Council discussed the request at the last meeting and took more time to consider the unanswered questions at that time and received guidance from legal counsel on the Federal Telecommunications Act. He doesn't see a need to continue the request, since there is an

application that has been acted on by the Planning Commission and the applicant has provided their reasoning why one site is better than the other. Councilmember Crockett doesn't feel the Council has enough information to approve the request at this time.

Christopher Coughlin, Site Selection Consultants, said he appreciates the effort made by the Council to understand the needs of Clearwire. He would like to address some of the comments made by the Council and members of the public. He spoke on the issue of coverage and distributed a map assembled by an electrical engineer. He discussed the concept of POPS, Population of Potential Subscribers, noting the site on Northome Boulevard would reach 1,251 POPS, while the City Hall site would reach 2,218 POPS.

Mr. Coughlin noted, that based on the city's ordinance, it's difficult to site a tower without having a portion of the signal going into another city. He said the current ordinance doesn't contain standards on a minimum number of POPS required in order to make a tower viable for the city. He said he has never seen such an ordinance requirement in any of the city's he has approached in his career. He said Clearwire feels the number of POPS meets their economic standards for the installation of the tower. He feels the application before the City Council meets the code requirements.

Mr. Coughlin addressed some comments regarding the lower towers in neighboring cities. He said the City of Minnetonka permits a 90 foot tower, which is lower than Deephaven, but based on the topography of the area a taller tower is necessary, along with the requirement that the tower be co-locatable. He discussed the issues with a stealth tower, not necessarily for Clearwire, but with future co-locators. He said that the vertical space required for internal antennas is greater than if the antennas were located outside the tower. He said this is an issue when it comes to a potential third carrier who may argue, that based on the available location on the tower, their needs could not be met and they may apply for an additional tower.

Councilmember Crockett asked about the height necessary to accommodate two additional carriers. Mr. Coughlin said he's not sure without knowing who the other carriers would be.

Mr. Coughlin noted that if Thorpe Park was opened up to towers, Clearwire would not withdraw their application, rather they would most likely submit a new application for a third location in the park

Councilmember Crockett asked if the Council felt comfortable that the proposed tower in this location would meet the needs of the residents. She's still concerned about the aesthetic impact on the neighborhood.

Councilmember Adams asked why aesthetics was not a concern when the tower was constructed and later enlarged on the City Hall site. Councilmember Crockett said she didn't hear any concerns raised by Councilmember Adams or the neighbors, where it has been in this case.

Councilmember Crockett asked again if the Council felt comfortable that this tower would achieve the kind of service desired by the residents and about the ability to co-locate two additional carriers.

Mayor Skrede said there are no other companies before the Council. He said the proposed tower meets the city's ordinance. He said it sounds like if the antennas are on the outside, it could accommodate two additional carriers, but the ordinance only requires one additional carrier.

Councilmember Crockett asked if the Council had a feeling on the type of tower it would like to see, whether it should be a stealth tower or not. Mayor Skrede said if the city required a stealth pole, it would do so knowing that a third carrier may not be able to co-locate, which opens up the site to two towers. If a standard tower was approved, it could potentially hold three carriers. He noted that approving a standard tower doesn't mean a third carrier won't come in asking for the tower to be built taller.

Councilmember Kask said he was prepared to look at the Pump Park site until he discovered it was not discussed by the Park Committee. He said regardless, the application before the Council is to construct the tower on the parking lot site.

Councilmember Crockett moved to deny the special use request to construct a one hundred foot mono-pole tower in the city owned parking lot located at 18325 Northome Boulevard. Motion failed for lack of a second.

Councilmember Adams moved to approve the special use request to construct a one hundred foot mono-pole tower in the city owned parking lot located as submitted for 18325 Northome Boulevard. The application complies with the requirements of the ordinance for the construction of a telecommunications tower. The proposed complies with the ordinance requirements as they pertain to collocating on existing antennas. Seconded by Councilmember Kask. Upon roll call vote on the motion to approve Councilmembers Adams, Kask and Skrede vote aye. Councilmember Crockett voted nay.

Mayor Skrede noted that Councilmember Wheaton was not in attendance at the meeting and did not vote on the request.

Mr. Coughlin thanked the Council and stated the Clearwire wants to be a good neighbor in the community.

**B. ORDINANCE AMENDMENT – Second Reading of Ordinance No. 13-52, Amending the Zoning Ordinance to establish procedures for the regulation of temporary fences.**

Zoning Coordinator Karpas presented the proposed amendment. He said changes were made based on the conversation held by the Council at their last meeting.

Councilmember Kask noted there was a minor error in the language in Subdivision F.

Councilmember Kask moved approve the second reading of Ordinance No. 13-52 as amended, amending the fence ordinance to include language defining what constitutes and provisions regulating the placement of temporary fences. Seconded by Councilmember Adams. Motion carried 4-0.

**7. NEW BUSINESS**

**A. Approve Clearwire Lease Agreement**

Administrator Young stated that the preliminary draft of the Ground Site Lease Agreement with Clearwire for the site at the Chowen's Corner parking lot (18325 Northome Boulevard) was initially negotiated by Mayor Skrede and Administrator Young to ensure that this agreement met the principal requirements and rental fees that were established in prior lease agreements. Attorney Steven

DeRuyter, with the firm of Leonard, Street and Deinard, provided a more extensive legal review of the draft documents and give us his recommendations on the proposed Lease Agreement.

He stated that the Ground Site Lease Agreement for the Chowen's Corner parking lot site (18325 Northome Blvd) is nearly identical to the Lease Agreement for the City Hall tower site that was approved by the City Council on December 7<sup>th</sup>. The only changes are noted in the attached Document #3, which shows the differences between the two leases.

Mayor Skrede stated that the majority of his negotiations concerned establishing the monthly or annual rental fee.

Councilmember Crockett stated that a number of residents don't particularly care about the annual rental fee and would be more than willing to pay higher taxes over having new towers.

Councilmember Kask noted that the exhibit in the Lease Agreement didn't describe whether the tower would be a stealth or a standoff pole. He stated that it was his understanding that it would be a standoff pole in order to accommodate additional carriers.

Mayor Skrede and Councilmember Adams agreed that it was also their understanding that the proposed pole was going to be a standoff pole.

Motion by Councilmember Adams to approve the Ground Site Lease Agreement with Clearwire at the Chowen's Corner parking lot site (18325 Northome Blvd). Seconded by Councilmember Kask. Councilmember Crockett opposed the motion. Motion carried 3-1.

## **7. REPORTS FROM STANDING COMMITTEES**

### **A. Public Works Committee**

Administrator Young presented a review of the Public Works Committee meeting held on November 4, 2009.

- Reviewed weed control applications at Thorpe Park.
- Reviewed recommendations from Sara Dale on controlling winter traffic at Walden Beach.
- Met with Alan Catchpool, with CEI Engineering, to review a proposal to provide engineering services for the renovation of the Village Hall tennis courts.
- Recommended hiring a part-time employee to assist with snow plowing operations during the absence of Dick Jeurissen.

### **B. Park Committee**

Administrator Young presented the following review of the Park Committee meeting held on December 2, 2009:

- Discussed Thorpe Park Playground Improvements.
- Discussed Deephaven Days

Administrator Young stated that a copy of the proposed fund raising letter from the Park Committee is attached for Council review.

### C. Boat Committee

Administrator Young presented the following review of the Boat Committee meeting held on December 9, 2009:

- Reviewed a request from Andy Foster to be placed back on the St. Louis Bay Slide Transfer List.
- Reviewed a discrepancy concerning the resident status of an individual requesting a 2010 Mooring Permit.
- Discussed Carson's Bay Ramp Improvements and the status of the grant application to the LMCD's Save the Lake Fund.
- Discussed renter's access to the waiting lists.
- Discussed the need for new Committee members in 2010.
- Reviewed the Five-Year Marina Fund Budget Forecast.
- Recommended the appointment of Sue Jerutis as Boat Committee Chair and Mike Kelly as Vice-Chair.

Bob Woodburn, 20180 Cottagewood Road, was present to present a check in the amount of \$50.00 as a donation to the City parks department as a reward for Administrator Young and Zoning Coordinator Karpas's decision to quit smoking. He stated that he had originally offered Administrator Young and Zoning Coordinator Karpas a walleye dinner if they could quit smoking for a year. He stated that they joined him and his wife for dinner at the American Legion in Wayzata but paid for the dinner themselves due to the state regulations concerning the accepting of gifts by municipal employees and suggested that he make a donation to the City park department instead.

### 9. ADJOURNMENT

Motion to adjourn by Councilmember Adams, seconded by Councilmember Kask. Motion carried 4-0. The meeting adjourned at 9:26 p.m.

Respectfully submitted,

Dana H. Young  
City Administrator