



**City of Lake Elmo
Planning Commission Meeting
Minutes of July 9, 2018**

Chairman Dodson called to order the meeting of the Lake Elmo Planning Commission at 7:00 p.m.

COMMISSIONERS PRESENT: Emerson, Dodson, Johnson, Dorschner, Weeks, Kreimer, Lundquist & Hartley

COMMISSIONERS ABSENT: Pearce

STAFF PRESENT: Planning Director Becker & City Planner Prchal

Approve Agenda:

The agenda was accepted as presented.

Approve Minutes: May 30, 2018

M/S/P: Hartley/: Lundquist, move to approve the May 30, 2018 Minutes as amended,
Vote: 7-0, motion carried unanimously.

Approve Minutes: June 4, 2018

M/S/P: Lundquist/Hartley, move to approve the June 4, 2018 Minutes as presented,
Vote: 7-0, motion carried unanimously.

Approve Minutes: June 18, 2018

M/S/P: Hartley/Dorschner, move to approve the June 18, 2018 Minutes as amended,
Vote: 5-0, motion carried unanimously.

Public Hearing – Conditional Use Permit and Variance Requests

Becker started her presentation regarding the Verizon Wireless Communications application for a Conditional Use Permit to install a new 125 foot telecommunications tower with a nine-foot lightning rod on the property located at 11351 Upper 33rd Street North. The applicant has also made a request for a number of variances. Those include a variance from the maximum height requirement, minimum setback requirements, and variance expiration dates.

The property this would be located on is owned by the City and is zoned public and quasi-public open space. A large portion of this site is being used for stormwater

purposes for the downtown area. The tower is proposed to be located 520 feet from the North property line, 45.5 feet from the east property line and 400 feet from the south property line. The tower has been reviewed by a 3rd party, it has received FAA & FCC approval and a structural compliance letter has been received. The tower will require a lease agreement with the City that will need to be approved by the City Council.

Proof of need is required which the applicant has provided. Lake Elmo has very poor coverage currently and the applicant showed this with maps. There were no co location areas that would meet the coverage requirements for this application. This proposal is not in a prohibited area. The adverse effects are mitigated as this area is surrounded by mature trees. Becker went through the 15 conditions of approval for the Conditional Use Permit and how the applicant meets the requirements for the variance.

Garrett Lysiak, Owl Engineering, has reviewed the application and has determined that there is a need for the tower in the location that they are requesting. Next the height of the tower was evaluated. The height of the tower will affect the coverage area. Lysiak did a local impact for the airport, and this tower passes that test. The next step is a tower search to see if there are any existing towers that can house this. In this case, there is nothing appropriate for to locate on. Lysiak stated that these types of towers really never fail. Lysiak is confident that a variance for the setback is fine because this type of tower will not fall, but if anything, the antennae will bend.

Johnson is wondering what the drawbacks are of the other sites. Lysiak stated that there are two issues. Those being frequency and interference. The next technology coming are the small cell towers. These are used for concentrated areas because the coverage area is not that great.

Dodson is wondering why they don't just wait for the small cell towers. Lysiak stated that the one being requested is a macro-tower and the small cell towers are a micro-tower and they would all communicate. Dodson is wondering if there should be language for decommissioning if technology makes it obsolete. Lysiak stated that he has never seen a tower be abandoned because another entity would take it over.

Dodson asked about the variance for the open expiration date. What kind of timeline would they be looking at? Becker stated that in the ordinance, a variance becomes invalid if construction does not commence within a year of issuance. Dodson is wondering why the City doesn't propose 2 or 3 years and not leave it open ended. Hartley would argue that if they make the lease payments, the City shouldn't care when the tower is constructed.

Weeks is wondering if the trains going through would have any impact on the towers. Lysiak stated that there is a lot of cement in the ground and they will ensure that it does not move and he doesn't feel it would be an issue.

Johnson is wondering if the reduction of the setback would affect what the property to the East can do. Becker stated that it would not affect what they can do.

Emerson is wondering about the 41 foot fall zone. The fall zone is based on this type of tower at this height.

Public Hearing opened at 7:58 pm

John Lenzmeier & Vicky Rehak, 11178 Upper 33rd Street, submitted a letter against the proposal.

Public Hearing closed at 8:00 pm

Hartley stated that if there is a lease agreement, the City will be getting paid regardless if the tower is built. The City has control through the lease agreement. Kreimer is wondering when the payments would start. Becker stated that she does not know.

Weeks stated that she went out to the site and looked at it from all directions. The trees are so thick, that most of the tower will be screened by the mature trees.

Johnson feels that the neighborhood is impacted by the cell phone tower being in this location. Johnson is not convinced that a different location wouldn't be better. Weeks stated that the aesthetics would be just as bad in another area because of the equipment necessary. Weeks feels this is a better location because it is a location that is out of the way and a place where the public does not go.

Hartley stated that Verizon is essentially negotiating with the City to lease this site, so why is the City not making them respect the required setback. Becker stated that the applicant has stated that there is no other appropriate place for it to go due to constraints. Hartley stated that they may not like it, but it is probably able to be done.

Karen O'Brien, Verizon site acquisition consultant, stated that to move the tower to a different location is not reasonable based on the site. Numerous trees would need to be taken down or retaining walls would need to be constructed and it would take up more of the natural resources of the property.

Dorschner asked if the City owns the property affected by the variance. Becker stated that 11351 Upper 33rd Street is owned by the City. Dorschner asked how far 11178 33rd Street is from the tower. Weeks gave a description of the distance between the two

M/S/P: Kreimer/Hartley, move to recommend approval of the request from Verizon Wireless for a Conditional Use Permit to install a new 125-foot telecommunications tower with 9-foot lightning rod on the site property located at 11351 Upper 33rd Street

North with recommended conditions of approval, **Vote: 7-0, motion carried unanimously.**

M/S/P: Kreimer/Hartley, move to recommend approval of the request from Verizon Wireless for a variance from the maximum height requirements, minimum setback requirements, and conditional use permit and variance expiration dates, **Vote: 6-1, motion carried, with Johnson voting no. Johnson felt there were other areas that this could go.**

Public Hearing – Zoning Text Amendment – Home Occupations

Prchal started his presentation regarding the Home Occupation Ordinance. Currently standards for a home occupation are only provided through the definition of “Home Occupation.” The Planning Commission expressed interest in having actual standards provided in the zoning code.

The topics that will be covered are storage interior/exterior, alterations to the home, traffic, location of home business (within the structure), employees, signage, and hours of operation. Prchal stated that they are suggested no outside storage which is common with other communities. Staff is suggesting to keep the maximum stock for trade at 1000 cubic feet. Interior alteration cannot remove all of the bathrooms, sleeping areas or kitchens. Exterior alterations cannot change the residential character or appearance of the dwelling unit or accessory structure to that of a commercial nature shall be prohibited. There shall be no more than 3 parking spaces and it shall all be off street parking. Some communities limit the home occupation to just the home. Staff does not see an issue with allowing the same use to be conducted from a garage or accessory structure. Staff is suggesting limiting the home occupation to one employee that does not live at the site. The current signage in the code is not changing and the hours of operation are being left the same.

Prchal stated that they did receive a comment about item 2 (b) 4 regarding contracting, excavation, welding or machine shops. The person would like to see that removed. If that item is removed it could be addressed through the site requirements of outside storage.

Dodson stated that there was a large landscape business that was operating in a residential district. Dodson does not feel that screening would be adequate because there would still be commercial operations. Dodson is wondering where the line gets drawn between a home occupation vs commercial operations.

Dodson is wondering how a mixed use building would fit into this. Prchal stated that is a live/work situation which is different than a home occupation.

Weeks stated that there are many home occupations that no one even knows exist. Weeks stated that a lot of businesses start out small out of someone's garage and might outgrow and move to a commercial location.

Emerson is wondering why there needs to be a certificate of zoning compliance and thinks that should just be eliminated. Prchal stated that if it is done through the certificate of zoning compliance, the city has a better understanding of what is going on there. Becker stated that it is currently a requirement for a home occupation that a certificate of zoning compliance be applied for.

Lundquist stated that she feels this might be a legal requirement to hold someone accountable.

Public Hearing opened at 8:36 pm

Dick Weir, 3645 Laverne Ave, is wondering if there have been problems in the past and how they were dealt with in the past. Weir feels that contractors is very vague and is wondering how contractors, excavators, welding and machine shops were selected. Weir is also wondering how much the certificate of zoning compliance costs. Becker stated it is \$75.

Barry Weeks, 3647 Lake Elmo Ave, would fall under the category of machinist, even though the type of work he does not have much impact. Weeks feels that other occupations such as cabinet making, would create more of an impact and were not singled out. Weeks feels these changes are arbitrary and capricious to name those specific trades.

Public Hearing closed at 8:42 pm

Johnson thinks that the language should be simplified. Specific industries should not be singled out, but the behavior should be looked at. Johnson feels that such broad non-compliance of the certificate of zoning compliance makes it kind of meaningless.

Dorschner feels that it is good to strengthen the ordinance, rather than just having a definition. Dorschner feels the certificate of zoning compliance gets complicated and expensive for the value the City would get out of it. Dorschner would like to see the exclusions cleaned up a little bit.

M/S/P: Dodson/Johnson, move to remove certificate of zoning compliance as a requirement of the home occupation, **Vote: 7-0, motion carried unanimously.**

Hartley is wondering if section B is even necessary. Dorschner stated that the things that clearly would not be allowed such as adult establishments should be retained. Dorschner feels that 4, 5 and 6 can be eliminated. 1 & 2 are hospitality industries that

would be handled by Washington County. Weeks thinks the nuisance code should possibly be a little stronger to help when a home business becomes large and more commercial in nature.

Johnson likes the operational requirements but you could possibly argue for more than 1 employee. What if there were 3 part time employees. Also the hours of operation might be too limited.

M/S/F: Dodson/Johnson, move to strike 3d that there shall be no more than one employee who does not customarily reside on the property affiliated with the Home Occupation, **Vote: 0-7, motion fails.**

Lundquist and Kreimer disagree. Lundquist stated that she has a friend that runs a salon out of her home in Oak Park Heights and she can't even have 1 employee. Kreimer feels that it is a home occupation that is intended for the people that resides there. The City is saying that you can have one other person in addition to yourself. Kreimer feels that if you have more than 1 employee, it is not a home occupation anymore. By striking this item, you place the burden on the neighbors to prove that the parking and traffic creates a burden. Becker stated that those rules are there so that if it is creating a disturbance, the City can investigate and enforce the rules. Dorschner stated that once a complaint is received, the City needs something concrete to enforce that.

Johnson is wondering why the signage is 2 square feet vs 4 square feet. Dodson stated that this references the sign code which is a different topic. Weeks stated that she feels anything larger than 2 square feet would be too much.

M/S/P: Dodson/Hartley, move to strike items 4-6 in item 2b that references those things not to be included, **Vote: 7-0, motion carried unanimously.**

Becker thought that number 3 was going to be left. Lundquist thought 1 & 2 were going to be left and it doesn't hurt to have those things even if they are covered by other entities. Dodson feels it simplifies the code if it is not there. Dodson amended the original motion to strike items 1-6 to only include items 4-6.

M/S/P: Dodson/Hartley, move to change item 1(a) 4 to delete the word "other" at the beginning of the sentence, **Vote: 7-0, motion carried unanimously.**

Dodson is wondering if the 1000 cubic feet still makes sense to people. Johnson thinks that Dorschners earlier point that if a problem comes up, it gives a point of reference for enforcement.

Weeks feels that in item 4e, exterior storage, equipment might be too broad of a term and if for instance a bobcat is stored outside, but screened, that shouldn't be a problem.

Dodson stated that this is another area that could be left to have teeth for enforcement purposes. Lundquist would agree. Emerson thinks that 4e should have the equipment taken out of the sentence. Emerson would add a 4g regarding screening.

M/S/P: Dorschner/Johnson, move to change item 4 e to delete the word “equipment”, ***Vote: 7-0, motion carried unanimously.***

M/S/F: Lundquist/Johnson, move to add a 4g to read equipment affiliated with the home occupation stored outside shall be screened from view, ***Vote: 2-5, motion failed.***

Dorschner feels that some of the screening can be worse than the equipment.

M/S/P: Kreimer/Dorschner, move to recommend approval of an ordinance amending the definition and adding standards for home occupation as amended, ***Vote: 7-0, motion carried unanimously.***

Public Hearing – Zoning Text Amendment – Updates to tree removal and parking lot screening

Prchal started his presentation regarding the Environmental Performance Standards. This chapter has two sections which lays out standards for tree preservation/replacement and landscaping requirements. The tree preservation applies to developments within any zoning districts except single family residential lots or clearing or cutting of trees for the purposes of forestry operations. It also applies to grading or excavation of materials greater than 400 cubic yards. After working with these standards, staff feels that they should be updated. The City Council also feels that the City’s parking lot screening requirements were over burdensome and should be reanalyzed.

There are some changes in the definitions section for clarity. Hartley pointed out that there is no definition for what an ornamental tree is. Prchal stated that he will make sure something gets included if this ordinance passes. The mitigation plan removed 3 bullet points and they are added to the variance process. The replacement calculation is shortened and simplified.

Weeks is wondering why the common trees would be included in the calculation when they are junk trees. Emerson is wondering if a development is being done on a wooded piece of property, and the road goes through, where would the trees be replaced. Prchal stated that is when the variance process would come into play. Prchal went through the conditions that would need to exist for the variance to be considered. Lundquist is wondering about nuisance trees such as buckthorn. Hartley suggested that nuisance trees be added to the definitions. Emerson is wondering why a specimen tree would require a special permit for a development. Prchal stated that it was intended to

be removed, but was missed. Prchal stated that ornamental trees are allowed for landscaping but not for tree replacement.

Prchal stated that the main change for the parking lot screening is the removal of item E (1) a, screening within the frontage strip. Prchal stated that in the codes that he looked at, there was nowhere that had no screening, so rather than complete removal, some modification could be made. If it is removed, changes would need to be made to the design standards. Hartley stated that the sheriff's dept. wants park parking lots viewable from the streets for safety reasons. It would be similar for a parking lot downtown, however, it should be screened from the neighbors behind it. Hartley thinks that adjacent to a street should be lower such as 3 feet, while the back is screened to 5 feet. Weeks showed an example of a parking lot that used an open fence with flowers and such for landscaping. The purpose is to be able to see the parking lot for safety purposes, but still have it look nice.

Public Hearing opened at 9:55 pm

No one spoke and there were no written comments.

Public Hearing closed at 9:55 pm

M/S/P: Hartley/Dodson, move to add a definition for ornamental trees in section B, ***Vote: 7-0, motion carried unanimously.***

M/S/P: Kreimer/Dodson, move to strike D, specimen trees, ***Vote: 7-0, motion carried unanimously.***

M/S/W: Dorschner/Lundquist, move to amend the definitions B, common tree to not include invasive or noxious trees such as buckthorn.

Emerson thinks box elder trees should be added to the nuisance trees. Hartley does not feel box elder should be classified the same as buckthorn. Kreimer stated that it is a pretty low replacement ratio for box elder trees.

M/S/P: Dorschner/Lundquist, move to add a fourth bullet under nuisance tree to say noxious or invasive species such as buckthorn, ***Vote: 7-0, motion carried unanimously.***

M/S/P: Dorschner/Lundquist, move to recommend removing box elder and cotton wood from the common tree definition and moving it to nuisance, ***Vote: 4-3, motion carried.***

M/S/P: Dodson/Lundquist, move to recommend approval of the amended language pertaining to tree replacement, ***Vote: 7-0, motion carried unanimously.***

Dodson is concerned about ornamental trees used for landscaping on land trust property. They require specific types of trees. Prchal stated that these are City requirements and if the land trust requires something different, the land trust can enforce that.

Weeks has a question about interior parking lot landscaping and if it can be either/or islands or corner planting beds. Prchal stated that it correct.

Emerson is wondering what is required for a commercial parking lot that is not next to a residential area. Prchal stated it is one tree for every 50 feet of street frontage. Emerson thinks that if the landscaping in the interior doesn't work, maybe trees can be planted along the outside. Weeks thinks center islands are nice to provide shade, but make it much more difficult to plow snow.

M/S/P: Kreimer/Lundquist, move to make no change pertaining to parking lot screening requirements, ***Vote: 6-1, motion carried.***

Business Item – Final Plat Northport 2nd Addition

Becker started her presentation regarding a final plat request from Pulte Homes of MN for the 2nd addition of a planned 104 unit development. This addition will include 29 single family lots. Becker outlined the engineering comments that the developer will need to comply with. Becker also went through the 13 recommended conditions of approval.

Dorschner is wondering how the City can be assured that the noise disclosure is given to first time home buyers. Becker stated that in the HOA documents those are included. Weeks stated that the noise with the airport and the train will come back to the City in the form of complaints and if that can be mitigated up front by disclosure, that is important.

Kreimer is wondering if some of the lots have usable backyards that have the gasline easement. Kreimer acknowledged that there is nothing that can be done at this point as the preliminary plat is approved, but wanted to see how they compare to Wyndham Village.

M/S/P: Dodson/Emerson, move to recommend approval of the Northport 2nd Addition Final Plat with the conditions of approval as drafted by staff, ***Vote: 7-0, motion carried unanimously.***

City Council Updates – None

Staff Updates

1. Upcoming Meetings

- a. July 23, 2018
- b. August 15, 2018

Meeting adjourned at 10:37 pm

Respectfully submitted,

Joan Ziertman
Planning Program Assistant