

City of Lake Elmo

651/777-5510

3800 Laverne Avenue North / Lake Elmo, MN 55042

City of Lake Elmo
3800 Laverne Avenue North

City Council Workshop

January 13, 2009
6:30 p.m.

1. Agenda
2. Review application from T-Mobile to construct a wireless telecommunication tower at 9057 Lake Jane Trail
3. Telecommunication tower moratorium ordinance discussion
4. Other
5. Adjourn



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ITEM: Review alternatives related to an application for a 125-foot wireless telecommunications tower for 9057 Lake Jane Trail North

REQUESTED BY: FMHC Corporation, Applicant
Dan and Jean Olinger, property owners, 9057 Lake Jane Trail North

SUBMITTED BY: Kyle Klatt, Planning Director

REVIEWED BY: Jerry Filla, City Attorney
Kelli Matzek, City Planner

SUMMARY AND ACTION REQUESTED: The City Council is being asked to review and discuss additional information related to an application for a wireless telecommunications tower that has been proposed for 9057 Lake Jane Trail. This workshop is the first of two potential workshops scheduled in January to allow further discussion of the wireless telecommunications tower permit that has been submitted to the City and reviewed at previous Council meetings. The applicant did grant a 60-day extension to the City to allow for additional discussion of this matter prior to any Council action. The new deadline for action is February 10, 2008.

The tentative schedule for the review of this request is as follows:

January 13 – Workshop
January 27 – Workshop
February 3 – Regular Meeting (Council Decision)

Depending on the results of the earlier workshop, the Council would also have the option of taking action on January 20th and not dealing with this request at any meetings after this date.

WORKSHOP INFORMATION: For the purposes of facilitating additional discussion on this item, staff is recommending that the workshop focus on the following points:

1. The status of the Fire Station Number 2 site and specifically whether or not this property would be viable for a new wireless telecommunications tower.
2. A discussion of other potential sites near the Olinger property and why other sites may or may not be able to accommodate a new tower.
3. The alternatives previously discussed for an alternate tower design at 9057 Lake Jane Trail North, including a stealth or camouflaged tower.

Information concerning the latter two items will be presented at the workshop by T-mobile and its representatives; information on the first item may be found in the attached letter from the City Attorney and below as part of this memorandum.

FIRE STATION NO. 2 SITE: The City Attorney has prepared the attached letter that summarizes the issues associated with the construction of any new structures, including a wireless communications tower, on the Fire Station No. 2 site. Although the City owns this property, there

are use restrictions and easements that were put in place at the time the property was transferred to the City. These restrictions essentially limit the portion of the property that could be used for a new structure, limit new structures to only those that serve a public interest, and would require that the MPCA and Washington County sign off on the construction of new facilities over this site.

The location on the fire station property, that would be the most feasible for a new tower based on the underlying restrictions, would be a narrow strip of land that extends 125 feet south of 9057 Lake Jane Trail North. As noted by the City Attorney, restrictive covenants prohibit the construction of any structures on the fire station property (Parcel C) lying south of the north 125 feet of this property. The attachment to the City Attorney's letter (Exhibit A) shows the location of the Fire Station property (Parcel C) and the 125-foot buildable area. The attached aerial image also depicts this area by marking a line parallel to and 125 feet south of the northern boundary of Parcel C.

Because the City's wireless telecommunications ordinance requires a setback equal to the height of the tower plus 20 feet, there would not be enough room to build a tower over 105 feet on the fire station property given the restrictions that require new buildings to be located 125 feet from this northern property line. The City Code does allow some flexibility from setbacks, however, when a tower is certified to fall within a shorter distance than the required setback.

If the Council would like to pursue the option of placing the tower on the Fire Station property, the following must occur:

- The City would need to determine that a wireless communication tower is for a public purpose.
- There will need to be some additional discussions with the MPCA and Washington County to determine the appropriate process for requesting a new structure on this site.
- The City will need to obtain a release from the appropriate easements and covenants that have been applied to this parcel.
- T—mobile would need to identify a location on Parcel C (as shown on Exhibit A) that would allow the construction of a tower and accessory equipment, provide access, and meet applicable setback and other zoning requirements.
- A new application would need to be submitted for the fire station property since it is a separate parcel from 9057 Lake Jane Trail North.

Although it may be possible to locate a wireless communications tower on the fire station property, the steps outlined above would take some time to accomplish and would require a fair amount of cooperation between the City of Lake Elmo, MPCA, Washington County, and T-mobile in order to put together a plan of action that would result in a positive outcome.

ADDITIONAL INFORMATION: A notice regarding the January 13th workshop was sent out to residences in the Lake Jane Area using the petition previously submitted as a basis for determining the notification area.

Staff will prepare an updated list of options for consideration by the Council at the workshop meeting.

RECOMMENDATION

This meeting is for the City Council to receive information and discuss options based on the information presented and gathered at the workshop.

ORDER OF BUSINESS FOR WORKSHOP PRESENTATION AND DISCUSSION

Introduction and Report	Kyle Klatt, Planning Director Jerry Filla, City Attorney, legal perspective
Questions to presenters	Mayor and Councilmembers
Statement from applicant	FMHC Communications representative
Questions to presenters	Mayor and Councilmembers
Questions/comments to all presenters from the public	Mayor facilitates
Discussion	Mayor and Councilmembers
Direction	City Council

ATTACHMENTS:

1. Letter from City Attorney Dated 12/16/08
2. Exhibit "A" – Survey of City Property
3. Aerial Image of Fire Station No. 2 Site

Warren E. Peterson
Jerome P. Filla
Daniel Witt Fram
Glenn A. Bergman
John Michael Miller
Michael T. Oberle
Steven H. Bruns*
Paul W. Fahning*
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December 16, 2008

Kyle Klatt
Planning Director
City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

VIA EMAIL

RE: Use of Fire Station Site
Jamaca Avenue

Kyle:

In October of 1995, Washington County conveyed a 110-acre parcel of land to the City of Lake Elmo. The area was identified on a survey as "Landfill Park". Landfill Park is located immediately south of the Olinger property. When it was conveyed to the City, Washington County restricted the use of the property and reserved certain rights.

1. Use Restrictions. The 110-acre parcel can only be used for park, recreation, open space or other public purposes.
2. Reservation of Rights. Washington County has a right of access to the property in order to test the subsoils and groundwater; in order to construct and maintain testing equipment; and in order to use a portion of the property for improvements to Highway 13.

In November of 1995, the City of Lake Elmo, Washington County, and the Minnesota Pollution Control Agency executed a Landfill Clean-up Agreement ("Agreement"). The Agreement applies to all of Landfill Park and to some other adjacent properties. For purposes of the Agreement, Landfill Park is divided into Parcels A, C and D. Parcel C is the fire station site.

As part of the Agreement, the City conveyed an easement to the Minnesota Pollution Control Agency over all of Parcel C and placed restrictive covenants on a portion of Parcel C.

MPCA Easement. This Easement allows the commissioner of the MPCA to access all of Parcel C in order to remove waste from under and around the then existing driveway on Parcel C; in order to relocate the driveway on Parcel C; and in order to sample and maintain current and new ground water monitoring wells and gas monitoring equipment on Parcel C.

Restrictive Covenant. The restrictive covenants require all drinking water wells on Parcel C to be installed in compliance with MPCA regulations; and prohibit the construction of any structures on that part of Parcel C lying south of the north 125 feet thereof.

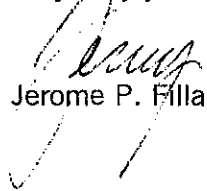
Attached is a survey that was included as Exhibit A in the Agreement. The boundaries of Landfill Park coincide with the area shown on Exhibit A as Parcels A, C and D. In order to allow a wireless telecommunication tower to be constructed on the fire station site, the following would need to occur:

1. The City Council would need to determine that the proposed wireless telecommunication tower use is for a public purpose. A City Council's "public purpose" determination is subject to judicial review. Minnesota courts have indicated that the term "public purpose" is not capable of a precise definition but generally construes the term to mean an activity which will serve as a benefit to the community as a whole; which, at the same time, is directly related to the functions of government; and which does not have as its primary objective the benefit of a private interest. *Visina vs. Freeman* 89 N.W. 2d. 635. "Public purpose" has also been construed to mean an activity that promotes the public health, safety, welfare, security, prosperity and contentment of all of a City's residents. *City of Pipestone vs. Madsen* 178 N.W. 2d. 594.
2. Washington County would need to grant a release of its rights over any area occupied by a wireless telecommunication tower or its support structures.
3. The Minnesota Pollution Control Agency would need to release its easement over any area occupied by a wireless telecommunication tower and its support structures.
4. The Minnesota Pollution Control Agency would need to allow the City to rescind the restrictive covenant that was applied to the fire station site as part of the Agreement.

I am waiting for a response from the Minnesota Pollution Control Agency. I have not talked to Washington County.

If you have any questions, please contact me.

Very truly yours,


Jerome P. Filla

JPF/jmt



Area Not Subject to MPCA Structure Restriction

150 feet