

**CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**PLANNING COMMISSION MINUTES
January 26, 2010**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, January 26, 2010, in the Council Chambers at City Hall, 1101 Victoria Curve at 7:00 P.M.

The following Commissioners were present: Chair Lally, Commissioners Field, Hennes, McManus, Norton, and Viksnins. Those absent: Commissioner Povolny. Those present were Assistant to the City Administrator Jake Sedlacek, and NAC Planner Carie Fuhrman. Minutes were recorded by Carla Wirth.

Approval of November 24, 2009 Minutes

COMMISSIONER FIELD MOVED, SECONDED BY COMMISSIONER NORTON, TO APPROVE THE MINUTES OF NOVEMBER 24, 2009 AS PRESENTED.

AYES: 6
NAYES: 0

Hearings

**PLANNING CASE #10-01
Clear Wireless, LLC
2341 Lexington Avenue
Conditional Use Permit**

Planner Carie Fuhrman explained that FMHC Corporation, on behalf of Clear Wireless, LLC, is requesting approval of a Conditional Use Permit (CUP) to collocate wireless equipment on the existing water tower located at 2431 Lexington Avenue. The parcel is zoned I, Industrial, and will include new antennae: three 4-foot panels, two 2-foot dishes, and a single cabinet located on the ground inside the water tower. The applicant is proposing to mount Clearwire antennas to the exterior wall of the water tank at a height of 126 feet, 8 inches, which is well below the top of the water tower and existing carrier antennas. The only ground equipment proposed is an H-frame mounted equipment cabinet located inside the water tower.

Ms. Fuhrman noted that wireless telecommunication structures are allowed as a CUP in all zones and are regulated by Section 12-1J-6. Since the equipment is to be located on the City's property, a developer's agreement may be necessary, at the discretion of the City in addition to the CUP. She stated the rest of the review standards are straightforward and a bond is required in accordance with FCC rules.

Ms. Fuhrman advised the subject parcel is guided CC, City Hall/Public Works/Fire Hall, in the 1999 Comprehensive Plan so the request is consistent with this land use category. Adding the antenna and ground equipment to the City's water tower does not infringe upon the intent of this land use category. Ms. Fuhrman presented the considerations available to the Planning Commission for approval with conditions or denial based on findings. She stated the City strongly encourages new personal wireless service antennas to be located on existing towers or support structures and this proposal meets this objective. Based on the review of the applicable Zoning Ordinance requirements, City staff recommends approval of the CUP to collate wireless equipment on an existing telecommunications tower as illustrated on the submitted site plans and subject to the conditions detailed in the staff report.

Chair Lally agreed that collocation is the best option for this type of equipment.

Pat Conlin, FMHC Corporation on behalf of Clear Wireless, LLC, thanked Staff for their review and explained Clearwire's basic service is not telephone, it is high speed internet service to businesses and homes. This can be an

outdoor mobile internet service but, for the most part, they are looking to provide service to a stationary location. She advised their service abides by the rules and regulations of the FCC, under which they are licensed. Ms. Conlin displayed a picture of their antenna and ground equipment when compared to other carriers, noting Clearwire equipment is much smaller in size.

Chair Lally asked Ms. Conlin about the recommended conditions and requirement for FCC approval of the antenna in regard to noninterference and a report from a qualified professional engineer. Ms. Conlin stated they have no objection to those conditions.

Commissioner Field asked if a developer's agreement has been established. Ms. Conlin stated it has not been formally established and they are happy to comply with that requirement.

Chair Lally opened the public hearing.

Seeing no one coming forward wishing to speak, Chair Lally asked for a motion to close the public hearing.

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER FIELD, TO CLOSE THE PUBLIC HEARING.

AYES 6
NAYES 0

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT AS REQUESTED BASED UPON THE FINDINGS THAT THE PROPOSED ANTENNA AND ACCESSORY EQUIPMENT INSTALLATION MEETS ALL OF THE ZONING ORDINANCE REQUIREMENTS AND IS CONSISTENT WITH THE INTENT OF THE CONDITIONAL USE PERMIT CRITERIA ALLOWING SUCH FEATURES, AND SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. A DEVELOPER'S AGREEMENT SHALL BE ESTABLISHED BETWEEN THE APPLICANT AND CITY.**
- 2. A BUILDING PERMIT MUST BE OBTAINED PRIOR TO CONSTRUCTION AND INSTALLATION.**
- 3. THE APPLICANT SHALL PROVIDE AN ABANDONMENT BOND TO THE CITY AS REQUIRED BY SECTION 12-1J-6.H.1.b OF THE ZONING ORDINANCE.**
- 4. THE PROPOSED ANTENNA SHALL COMPLY WITH ALL FCC REGULATIONS. THE APPLICANT MUST SUBMIT PROOF OF ANY APPLICABLE FEDERAL, STATE, OR LOCAL LICENSES TO THE COUNCIL PRIOR TO RECEIVING A BUILDING PERMIT.**
- 5. THE APPLICANT SHALL ABIDE BY ALL OTHER REGULATIONS IN SECTION 12-1J-6 OF THE ZONING ORDINANCE.**
- 6. ALL WORK WILL BE COORDINATED WITH THE CITY ENGINEER AND CONSULTANT OVERSEEING THE WATER TOWER PAINTING PROJECT.**

AYES 6
NAYS 0

Chair Lally advised the City Council would consider this application at its February 3, 2010, meeting.

Discussion and Approval of Comprehensive Plan

Assistant to the City Administrator Jake Sedlacek presented the 2030 Comprehensive Plan, the guiding document for the physical development in Mendota Heights and required to be reviewed every 10 years. He reviewed the past considerations of this document, public hearing of the draft, informal review by the Metropolitan Council, and need to complete the Plan for adoption and recommendation to the Met Council. He advised that the Metropolitan Council provided feedback to the City as well as Councilmember Duggan who made suggestions for grammatical changes. In addition, maps will be updated and included for Pilot Knob. Mr. Sedlacek advised of revisions to be made and requested input from the Commissioners on changes needed prior to Council consideration at their next meeting.

Chair Lally stated it is critical that the Comprehensive Plan designation and zoning designations align and not conflict. He asked about changes with Mendota Plaza and open space. Mr. Sedlacek referenced the zoning map on Page 107 and explained the designation for Pilot Knob and Mendota Plaza will have to be updated.

Commissioner McManus referenced Page 2 and asked that the Le Cordon Bleu College of Culinary Arts be included in the list of educational institutions. On Page 61, Paragraph 2, Line 4, he asked that the word “starting” be changed to “started.” Commissioner McManus asked that language be revised on Page 78, Principal Arteries, which indicates that Highway 110 bisects the City north/south (but it is east/west) and I-35 bisects the City east/west (but it is north/south). Mr. Sedlacek stated that Councilmember Duggan raised this same issue.

It was agreed that since a second person has raised this question, staff will revise the language to provide more clarity. Chair Lally noted the highways create four quadrants in Mendota Heights.

Commissioner Norton stated he appreciated staff’s work and only had stylized issue comments but would not impose his viewpoints on how this document should be written.

Commissioner Viksnins noted the census data is mostly from the 2000 census. Mr. Sedlacek stated if Plan approval is pushed back two years, it could contain the most recent census but for right now, the 2000 census is the most reliable data. He noted the next Plan update will be in 2020, resulting in the same situation; however, the City would not have to wait for ten years before the next update, if determined by the City Council.

Commissioner Viksnins stated the demographic profile and number of people in Mendota Heights has changed since the 2000 census and there may be other more recent sources, such as employment records. Mr. Sedlacek stated the Metropolitan Council does have some updated information but other information is only available through the census.

Commissioner Viksnins noted the document references City Administrator Danielson, which needs to be updated.

Commissioner Hennes noted Page 44, Paragraph 2, references “Lexington and 110” but it should be “Dodd and 110.” On Page 69, he noted the language referencing Mendota Bridge seems to be dated without reference to the rebuilt bridge of the 1980s or 1990s. Mr. Sedlacek stated staff will review that section.

Commissioner Hennes referenced Page 59, and asked about a development plan that had been approved about a year ago for a housing development. Mr. Sedlacek said a PUD for Hoffman Homes was approved but is officially on hold and a two-year extension was granted at their request. Commissioner Hennes referenced Pages 60 and 64, Housing and Affordable Housing, and said he was struck by how little rental housing is available in Mendota Heights and that only 4.4% is considered affordable. He asked if this is enough for the next 20 years. Mr. Sedlacek explained the City has reacted to what the market presents rather than being proactive in creating more affordable housing. He noted that in 2008 a group came before the Council to request it pursue more affordable housing. It was noted that many units in the Centex Townhome development many qualify but there is always more that can be done.

Commissioner Hennes referenced Page 56, Somerset Area, and asked whether property owners have expressed interest in subdividing their lot. Mr. Sedlacek advised that one property owner has asked staff about the potential to redevelop smaller lots along Delaware but there has not been much interest.

Chair Lally commented on the difficulty of developing larger ten acre lots along Delaware and Wentworth because there is not sufficient frontage on a public road, some lots contain a conservation easement, and a tendency to not support flag lot configurations.

Commissioner Hennes felt the stated traffic volumes and maps on Pages 78 and 79 seemed exaggerated in some areas. Mr. Sedlacek reviewed traffic projections for Wagon Wheel and deferred the question to engineering staff. Acting Public Works Director/City Engineer Ryan Ruzek explained that the County and Metropolitan Council generate traffic volumes and staff does not always agree with their projections.

Commissioner Hennes noted Page 81 references the expansion of I-35E between St. Paul and Highway 110 and asked when that would occur. Mr. Sedlacek explained it is a Mn/DOT project but not scheduled in the near future.

Commissioner Hennes referenced Page 84, Bikes and Pedestrians, and asked if the City has identified gaps in the trail system, had plans to fill the gaps, or if it was dependent on funding. Mr. Sedlacek explained the City has not conducted a study of this matter and would have to request funding from the Met Council for a study of that type. It was noted that the Dakota County Greenways Initiatives includes visioning in how the trails and other resources connect to the public. He reviewed the location of trail corridors that have and have not been completed and stated the next step will be with the Dakota County Greenway Initiative.

Commissioner Hennes asked if areas that still need parks would be funded by the City. Mr. Sedlacek explained that parks are funded through a special park dedication fund from developments. During the past few years, the City has opted for a cash contribution instead of the dedication of small park outlots since they sometimes become maintenance issues.

Commissioner Field noted the Commission's role is to comment on this Plan, in an advisory role. Mr. Sedlacek stated that is correct and changes suggested by the Commission will be presented to the Council. Commissioner Field asked if anything unexpected came from the Metropolitan Council's review. Mr. Sedlacek stated they offered stylistic changes, additions of maps of the airport, but nothing unexpected.

Mr. Sedlacek displayed a map that identified the Pilot Knob area, industrially zoned lots, and portion of land to be addressed by the Pilot Knob Preservation Association. It was noted this site is 7.59 acres of City owned land and 1.63 acres of residential parcels.

Gail Lewellan, 656 Sibley Memorial Highway, President of the Pilot Knob Preservation Association (PKPA), introduced four other residents in support: Jennifer Otto, Jane Jefferson, Lori Evans, and Tom Evans. She referenced a publication "*Over the Years*" by Dakota County that detailed the history of Pilot Knob and stated they are committed to preserving and raising public awareness of this site. They received a grant that will be used to produce a colored informational brochure to advise the public of this cultural significance. She presented its history since owned by the Dakota Indians to the present day and used a map to identify the nine acres they are concerned with today.

Ms. Lewellan reviewed Page 94 regarding preservation of active and passive open space and policy statement to support that goal, which they also supported. She referenced the section of the Comprehensive Plan that described Pilot Knob and encouraged the Commission to recognize the cultural significance of an expanded area over what is shown in the Comprehensive Plan from 25.5 acres to 35 acres, which better matches the area identified by the Historical Register.

Chair Lally asked if the PKPA was requesting a revision to the Comprehensive Plan. Ms. Lewellan apologized for coming so late into the process and stated they are requesting a change to the 2030 map to identify the nine acres zoned Industrial as open space, the same category as the 25 acres to the north.

Chair Lally asked if there is additional property in the zone that should be identified with “stripes” just north of the nine acre parcel. Ms. Lewellan stated that is correct since part of the land was color coded inappropriately.

Chair Lally asked if there had been discussions of how the nine acres would be used, if it would be developed or purchased with park funds for park property. Mr. Sedlacek stated a majority of the parcels were purchased with TIF with the intent of being Industrial; however, that TIF District expired. He noted the Comprehensive Plan is the guiding document for Mendota Heights so it may or may not be a good discussion at this point in time. It was noted that on the City-owned parcels, the residential structures were removed and the lots are now an open grass area. Ms. Sedlacek stated the City is not pressing the matter but the owners know the City is interested, at some point, in purchasing the homes.

Commissioner McManus asked why it was zoned Industrial. Mr. Sedlacek noted this nine acres site is at the northern boundary of the Industrial Park. Commissioner McManus asked if the City is prepared to protect this property for use as a future park space if an application is submitted for an Industrial use. Mr. Sedlacek stated staff has followed the existing documents and the property is zoned Industrial.

Commissioner McManus asked how the process is initiated to change this land into a park area. Mr. Sedlacek stated a concerned resident can present the request at a meeting, or the City can raise the issue to amend the Comprehensive Plan. In order to sell City property, a public hearing has to be held by the Planning Commission to assure it fits with the City’s vision and the Comprehensive Plan. It was noted that since this property is already zoned Industrial, an applicant for an industrial project may think they have a “leg up” with their request.

Commissioner Field noted in this situation, the City owns all but two lots and if someone wanted an Industrial use, there may be an argument it is a taking. Mr. Sedlacek stated that is a real concern and should be discussed.

Ms. Lewellan stated she appreciates the Commission’s comments and recognition of the difficulty in changing currently privately owned property to public property. She noted that in 2003, when Pilot Knob was a matter of controversy, the issue was raised that the 25 acres the City owned was designated for Medium and High Density. She agreed it would be good for the City to get ahead of an Industrial request and consider the status of the nine acres.

Commissioner Field stated one way to deal with it is to zone all the City owned land to be consistent with the land use being advocated and to leave the other two parcels; however, that may be considered spot zoning.

Ms. Lewellan stated they have not been in touch with the private property owners but at one time, one of the owners strongly supported the position of the PKPA. She used the map to identify the area of the hill and described artifacts that had been found in that location.

Mr. Sedlacek stated staff had encouraged the PKPA to attend the meeting tonight and since this matter has been discussed it is now on record and the Council will advise staff in how they want to proceed. He recommended the Planning Commission act on the Comprehensive Plan and make a further recommendation if it wants staff to follow up on the matter.

Chair Lally stated the Commission could find that the PKPA has made valid points and encourage the Council to direct staff to look into it further. He agreed this area was of historical significance.

Commissioner Field asked if the City should approach the matter administratively through a moratorium so there is time to conduct a land use study. He pointed out that the private land owners were not invited to attend tonight and notice was not published that this would be considered so it would be troublesome to take action tonight. However, after acting on the Comprehensive Plan another recommendation could be made to the Council regarding the need for a moratorium to conduct a land use study.

Ms. Lewellan welcomed the opportunity to return to a future meeting for additional discussion. Chair Lally thanked Ms. Lewellan for bring this matter before the Planning Commission.

Chair Lally opened the floor for audience members to make comment on the Comprehensive Plan. No one responded.

COMMISSIONER VIKSNINS MOVED, SECONDED BY COMMISSIONER FIELD, TO RECOMMEND SUBMITTAL OF THE COMPREHENSIVE PLAN FOR COUNCIL CONSIDERATION WITH CHANGES IDENTIFIED TO DATE.

AYES 6
NAYS 0

Chair Lally advised the City Council would consider this recommendation at its January 5, 2010, meeting.

COMMISSIONER NORTON MOVED, SECONDED BY COMMISSIONER VIKSNINS, TO RECOMMEND THE CITY COUNCIL EXPLORE ALL POSSIBLE OPTIONS OF THE 7.59 ACRES OF CITY-OWNED PROPERTY ADJACENT TO THE PRESERVED PILOT KNOB AREA AND THE HISTORICAL SIGNIFICANCE OF THE ADJACENT PROPERTY.

Discussion ensued regarding whether an interim ordinance concept should be recommended and the entire 9.22 acres of privately owned land included in the motion.

A FRIENDLY AMENDMENT WAS ACCEPTED TO INCLUDE THE ENTIRE 9.22-ACRE PARCEL SOUTH OF ACACIA BOULEVARD, EAST OF PILOT KNOB ROAD, AND WEST OF HIGHWAY 55.

AYES 6
NAYS 0

Discussion of Zoning Ordinance Amendment

Ms. Fuhrman explained the memorandum provided to the Commission summarized the substantive Zoning Ordinance changes and the other changes made to the text were technical, clerical, or for clarifying purposes. Ms. Fuhrman presented the more significant changes starting with Page 2, Nonconforming Structures/Uses, to reflect the recent amendment to State law regarding the rights of nonconformities, including the right to rebuild within specific timeframes, regardless of the cause of the discontinuance. She explained that formerly, the Code required an “act of God” type of loss and prohibited replacement if more than 50% of the nonconformity were destroyed. Now, any nonconformity may be replaced if a permit is requested within six months and replacement is done within 12 months.

Ms. Fuhrman referenced Page 3, Accessory Structures, and explained staff is currently revising this section to merge all of the accessory structure regulations into one section. On Page 7, String Rule, the proposed language would change the “string rule” to permit some encroachment ahead of the current strict string line. The proposed change would average the adjacent setbacks and the required 30-foot setback to establish a modified front setback. The intent is to allow some forward encroachment allowing for remodeling projects without completely abandoning the string line concept. Ms. Fuhrman advised of the significant formatting changes to move all articles from Article J into Article D, making Article J “reserved,” and merging Article H into Article K, making Article H “reserved.”

Chair Lally noted the fence regulation would require industrial fences to comply with residential fence regulations when abutting residential property. Residential fences have an open requirement but if next to an industrial use, he would prefer the fence to be more closed, possibly to completely block the view.

Commissioner Norton stated this was extensively addressed during the Bituminous Roadway application. Ms. Fuhrman stated staff will look at this matter.

Commissioner Viksnins noted the revised language for accessory structures will be forthcoming and asked if there are other revisions where the language has not yet been finalized. Ms. Fuhrman stated that is the major section and the other changes are minor in nature.

Mr. Sedlacek stated the intent is to receive Commission input tonight. A public hearing will be held at the February meeting and a recommendation made to the Council. If approved by the Council, it would be published and become the new Zoning Code.

At the request of Commissioner Viksnins, Ms. Fuhrman provided an explanation of how the “string rule” will be applied. Commissioner Norton drew a diagram to define how the “string rule” would be measured. Ms. Fuhrman stated such a diagram will be included in the Code.

Commissioner McManus stated he cannot remember a time when the Commission has not considered an exception where it made sense to do so, after careful consideration. He noted that the setback distances have not been very great and asked what would happen if the setback varied greatly. Mr. Sedlacek explained staff found, in processing variance applications, there are a variety of setbacks in Mendota Heights. The string rule was an attempt to keep everything in a straight line and this revision would allow some variety while maintaining the neighborhood’s character. In this case, it would have to be a reasonable request and have no other alternatives. He described several past variance considerations and how the new language would have been applied.

Commissioner McManus stated he understands the decision making has been subjective but always took into consideration if the neighbors would be impacted. He did not feel that the new language would guarantee the neighbors would not be hurt, which is the Commission’s responsibility to assure. He stated if the other Commissioners are comfortable with this language he would go along but felt someone should “eyeball” the distance to assure neighbors are not impacted.

Commissioner Norton stated that this will remove some subjectivity and the “string rule” is only used when there is no other alternative. He stated from a litigation standpoint, it is important to remove subjectivity to assure all are treated alike.

Commissioner McManus asked what happens when a resident wants a setback slightly ahead of the string rule. Commissioner Norton stated they could apply for a variance. Commissioner McManus felt that did not remove subjectivity. Chair Lally stated that the opportunity for variances will be less frequent with the new language.

Commissioner Viksnins noted it may be harder to justify the variance given there is already some “wobble room” in the revised ordinance. He asked if there have been a lot of instances where there is great significance between setbacks. Mr. Sedlacek stated he thinks every other month staff is dealing with a question or application where this language would likely allow it. He noted older neighborhoods, like along Wentworth, have significant variances in setback.

Commissioner Field noted the revision would allow some requests to be administratively approved rather than involving a protracted process through the Planning Commission and City Council.

Commissioner McManus felt the average citizen would not understand this language but thinks it may work as long as City staff can explain it to them.

Chair Lally requested the Commission be provided with an updated Zoning Ordinance prior to the February public hearing.

Verbal Review

Mr. Sedlacek gave the following verbal review:

PLANNING CASE #09-40 Clear Wireless, LLC Conditional Use Permit
• Approved by the City Council as recommended by the Planning Commission.

PLANNING CASE #09-41 City of Mendota Heights Wetlands Permit at Par 3 Golf Course
• Approved by the City Council as recommended by the Planning Commission.

Mr. Sedlacek advised that due to the Caucus Night, the Council meeting would be held on Wednesday, February 3, 2010. He also advised that the Planning Commission will be electing a Chair and Vice Chair at the February meeting. Mr. Sedlacek noted that two Council seats will be open this year and Mayor Huber has indicated he will not run for reelection.

Commissioner Field asked for an update on Mendota Plaza. Mr. Sedlacek stated staff received communication from Mendota Plaza that there were MPCA soil issues. An Action Plan is now in place and they are working to clean the site. He explained they anticipate closing the construction loan in March of 2010 and starting construction immediately.

COMMISSIONER NORTON MOVED TO ADJOURN THE MEETING AT 8:39 P.M.

AYES 6
NAYES 0

Respectfully submitted,
Carla Wirth, Recording Secretary