

CITY OF MENDOTA HEIGHTS
DAKOTA COUNTY, MINNESOTA
PLANNING COMMISSION MINUTES
May 23, 2006

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, May 23, 2006 in the Council Chambers at City Hall, 1101 Victoria Curve at 7:30 pm.

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The following Commissioners were present: Chair Lorberbaum, Commissioners McManus, Lally, Dolan, Hesse and Harms. Those Commissioners excused: Commissioner Povolny. City Staff present were City Engineer Sue McDermott and Administrative Assistant Patrick C. Hollister. Also present was Planner Steve Gritman. Minutes were recorded by Becki Shaffer.

Approval of April 25, 2006 Minutes

Page 2, Bullet #9:

➤ “The ~~sole~~ pole of this tower is to be used to cellular communications and no other uses allowed.”

Page 2, Bullet #10:

➤ “Safety requirements – the applicant needs to show by a professional structural engineer that the tower will meet/exceed any safety and/or construction standards including but not limited to standards for meteorological conditions.”

Page 4, 5th paragraph:

“Commissioner Povolny asked if towers are located in parks in other cities, and that there is not much more parkland left anymore. Mr. Gritman said it’s rare, but not unheard of.”

Page 6, 2nd paragraph, should read:

“Mr. Carlson said ‘We’ve talked about five-year plan, that was part of your zoning requirements, we have provided this map in our application, this is essentially our five-year plan, with the addition of the location at Wentworth Park and the location at City Hall. All the other locations indicated on this 2-mile radius map are existing sites ... so we do feel we’ve met that condition of the code.’”

Page 7, 2nd paragraph:

“Chair Lorberbaum said if the receptors at Sibley High School are taken down, Wentworth Park will not accommodate them, thereby Wentworth site would ~~not have no~~ help ~~for~~ as a replacement cell tower Sibley. Mr. Carlson said it’s hard to say as there is a different zoning criteria, a different topography and development of their area. Mr. Carlson said it’s possible the Wentworth Park location could cover that what is lost at Sibley with a multiple situation, but not by itself.

Page 7, 8th paragraph:

“Chair Lorberbaum asked the applicant if sites were explored farther along Dodd Road toward Smith, or on Wentworth towards West St. Paul. Mr. Carlson said he did, and did not find anything except suggested Somerset Elementary School, but his engineers stated that would be too far north. Mr. Carlson said there was nothing to be found ~~find~~ within the radius needed that would provide adequate height.”

Page 7, 13th paragraph:

“Chair Lorberbaum asked the applicant about a “Plan B”. Mr. Carlson said he had no “Plan B”. ~~said the applicant has no “Plan B” if the City says no to this.~~ Mr. Carlson said they would only modify the proposal but there are no other properties to fall back on. Chair Lorberbaum said if the Commission tables this, the applicant can come back with modifications.”

Page 8, 5th paragraph:

“Commissioner Hesse asked if these towers are strictly for the use of cell phone in the city, or are they going to be used for other wireless technologies. Mr. Carlson said they will handle any kind of wireless technology. The uses coming out today and in the near future could change dramatically. Cell phone carriers are also starting to use wireless internet and other services. Wireless technology today is what ~~land-line~~ lines technology was many years ago. Land line is going away as the generations have progressed. Commissioner Hesse expressed his concerns that it is important to keep up with technology, and maybe a T-Mobile engineer will be

able to speak at the next meeting to give some forecasting information. Mr. Carlson said he will make sure an engineer is in attendance at the next meeting.”

Page 8, 9th paragraph:

“Commissioner Harms said the feeling is strong against a larger structure and asked to what extent an accessory building or a fence would be needed around a pole. Mr. Carlson said they still need to have the same equipment, Mr. Carlson said the landscape pads and the facility enclosure and how the landscape pads are built, or how the facility is enclosed, that all can be modified. A fence or a building is needed to protect the facility.”

Page 8, last paragraph:

“Commissioner McManus said he never accepts that there are no alternatives and asked Staff if there have been any studies done, or any drive-arounds drive around with the applicant, to allow Staff to ensure that Staff would be ready to assure the Commissioners that there are no other sites anywhere around that doesn’t include a parkland. Mr. Hollister said it’s true that T-Mobile came to the City. The City is not looking for profit opportunities at its parks or City Hall. T-Mobile came to the City identifying gaps in their coverage and the City is not experts on wireless operations and need to rely on representations about where the gaps are and what is necessary for them to fill their gaps. When T-Mobile identified those “dead spots”, Staff looked at their maps and although Staff is not lobbying for Mr. Carlson and T-Mobile, they are in agreement that in the case of Wentworth Park, this location became the suggested proposal by default because there is nothing else in that area except single family homes. As objectionable as this tower may appear, it would be worse if the City allowed residents to open their properties up to rent space for towers. Mr. Hollister said the City is under some obligation by law to make reasonable accommodations to wireless communication technology and while that does not mean they can put up towers wherever they want to, nor does that place a burden on the City to eliminate all dead spots, the City is supposed to reasonably accommodate these things.”

Page 9, 8th paragraph:

“Preston Smith, 1416 Cherry Hill Road, said both his children use this park when playing with their friends. Mr. Smith said there is a large number of children in the area that play there. Mr. Smith said he worked at one time for Channel 2 TV and has some experience in network microwave towers that extend from Shoreview up to Alexandria and Duluth. Mr. Smith noted there are three airports in the area (International, Fleming, and Holman Field), and it is pretty likely that lights will be needed on a tower. Mr. Smith said increased technology brings increased tower heights sights, and this will not go away. Mr. Smith said the issue is that the residents will have to give up some precious park land for a national concern, and at the end of the day, the residents will have to pay T-Mobile for services while putting up with the loss of this beautiful area. The residents will gain nothing by losing this park land. Mr. Smith noted some possible alternatives for towers such as the area adjacent to I-35 E and the power line right of way which is fairly close to Wentworth Park.”

Page 10, 1st paragraph:

“Alan Wienblatt, 754 Upper Colonial Drive, said he would like to supplement his letter that was submitted to the City saying that he by saying I could not be more proud of his neighbors. Mr. Wienblatt said he is also impressed by the Commissioners and what they are doing, being the custodians and stewards of not only the parks, but the city. Mr. Wienblatt said “In conflict between progress and humanity, progress always has the upper hand and we must, in the name of progress, have better cell phone coverage for every possible company. We must, in the name of better coverage, have the tallest tower, the widest aerial coverage. So who is to speak for the parks, who is to speak for the children, who is to speak for the residents of the city?”

Page 12, 8th paragraph:

“Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close table this hearing.”

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER HARMS, TO APPROVE THE MINUTES OF APRIL 25, 2006 AS CORRECTED.

5 AYES
0 NAYES
1 Abstention (Commissioner Dolan)
MOTION CARRIED

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HEARINGS

PLANNING CASE #06-09

**Dianne Wilke
739 Cheyenne Lane
Variance**

Mr. Gritman shared a map showing the location of 739 Cheyenne Lane, and reviewed the request for a variance to allow for the construction of a new attached garage to an existing single family home. The applicant has a garage in that space now that is approx. 400 sq. ft. in area and is seeking a variance to allow for internal remodeling and to allow to a garage expansion to the front of the property toward Cheyenne Lane into the required 30-ft setback. The resulting setback with this addition would be approximately 19-ft from the right of way line of Cheyenne Lane. The existing garage is currently below the minimum size standard and is a non-conforming structure. Staff believes that the applicant has investigated other alternatives to expanding a garage on this property and it appears that any other option would require other variances. Staff believes the location would provide a reasonable amount of room and recommends approval of the variance, showing the hardship as having to bring the current garage in conformance.

Commissioner Dolan asked if this construction will be consistent with the neighborhood. Mr. Gritman said it will be closer to Cheyenne but it appears that there are no other good options to avoid the encroachment. Mr. Gritman said the applicant cannot build to the back because there is an existing porch in that location, as well as affecting some internal floor plans, which could cause some major reconstruction and possibly have some structural implications. Mr. Gritman said this proposal appears to lend reasonable use of the property.

David and Diane Wilke, 739 Cheyenne Lane, thanked the Commission for tabling this case from the April meeting as Mr. Wilke was out of town. The Wilke's explained how the remodeling would add an extra bedroom and a bath. Mr. Wilke said the new bathroom would be made handicap accessible for Mrs. Wilke's elderly mother.

Commissioner Lally said he was impressed to see all the applicant's neighbors consent to this variance.

Commissioner McManus said this proposal would not hurt the character of the neighborhood.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close the public hearing.

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER DOLAN, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE VARIANCE AS PRESENTED BASED ON THE FINDING THAT THERE IS NO REASONABLE ALTERNATIVE TO EXPAND THE GARAGE, BRINGING THE CURRENT GARAGE INTO COMPLIANCE.

6 AYES
0 NAYS
MOTION CARRIED

PLANNING CASE #06-10

**T-Mobile
Conditional Use Permit, Wetland Permit, and Code Amendment**

Chair Lorberbaum said this case has been withdrawn.

PLANNING CASE #06-11

T-Mobile

City Hall, 1101 Victoria Curve

Conditional Use Permit, Variance, Wetland Permit, and Code Amendment

Mr. Grittmann reviewed the site map for a proposed telecommunications tower by T-Mobile. The location is the City Hall property, located at 1101 Victoria Curve. The proposed tower would replace the existing currently used by the Police Department. The applicant would use this tower for cellular communications and the City is negotiating with T-Mobile to collocate their communications to the proposed tower. Mr. Grittmann said to accomplish this; the applicant is seeking a Conditional Use Permit, a variance based on setback issues, and a wetland permit due to the proximity to the wetland area to the north. The applicant is also seeking an amendment to the zoning ordinance to permit location of these towers in residential districts and also, potentially an amendment would permit the height of the tower to reach 120-ft. The current zoning ordinance allows towers to be a maximum of 75-ft in height in the locations they area currently allowed (and not in residential areas).

Mr. Grittmann said at the request of the Planning Commission Meeting of April 25th meeting, the applicant has submitted their materials with some additional information including clarification that there will be no need to a blinking light on the top of the tower. This is in accordance with FAA requirements. Other changes relate to the equipment building having a flat roof as opposed to a slant roof. This will allow collocators of the tower to add their own equipment buildings.

Mr. Grittmann said additional landscaping information has been provided as well as information on market penetration and methods to determine coverage needed.

Commissioner McManus asked if the Police Department is strongly encouraging this proposal. Mr. Grittmann said he believes the Police Department is generally in favor of this proposal, and feels it would be of benefit to them. Commissioner McManus asked if the City Administration has made any formal comments. Mr. Hollister said he believes the Police Department and the Police Chief definitely are interested in this proposal and referred to a copy of an email from Chief Aschenbrener, dated May 22, 2006. In this email, Chief Aschenbrener indicated that the Police Department is about to embark on a new communications system and in order to accommodate that, they need height. Therefore, they are interested in having the 120-ft. monopole to accommodate that height, and are interested in collocating with T-Mobile. Chief Aschenbrener has indicated that if the City were to turn this proposal down, probably within the next two to three years, the Police Department will go to the City Council to ask the City to erect their own tower. If this is done, the City will have to provide the funding. The Police Department sees this as an opportunity to share costs with the private sector and sees this as a win-win situation.

Chair Lorberbaum said she talked to Chief Aschenbrener previously, and asked him if the City needs to have the tower at 120-ft. high. In response to that question, Chief Aschenbrener said the state of the art technology that they are using is line of sight, and due to the topography of the Mendota Heights area, a minimum height of 120-ft. is desirable.

Commissioner McManus questioned why industrial property to the south, across Highway 110, was not looked at for a suitable site. Mr. Grittmann said the applicant would have to address that issue.

Commissioner Lally asked for clarification on the setbacks for additional equipment buildings. Mr. Grittmann said the accessory structure setback is 10-ft.

Commissioner Lally referred to the letter included in the packet from Clair M. Billington, Inc. and asked who this person was. Mr. Grittmann said this letter was provided by the applicant, who can better answer that question.

Chair Lorberbaum acknowledged an email she received from Commission Povolny, who could not be at the meeting. In this email, Commission Povolny stated he was "totally against T-Mobile putting this cell tower at city hall".

Chair Lorberbaum asked if there are any known cities in Dakota County that have towers in residential area, and asked what best practices are being put into place. Mr. Grittmann said some cities allow them in residential districts, and the heights are most likely more limited in residential areas than those in industrial areas. There are some cities that do not allow them in residential areas as well. Mr. Grittmann said there is a challenge in Mendota Heights as there is such a large area of continuous residentially zoned property, and accordingly to the applicant, the penetration into those areas with these types of facilities is more difficult to accomplish.

Chair Lorberbaum asked Mr. Gritman if, since he is acquainted with a lot of other cities, he can come up with any alternative locations. Mr. Gritman said he is not sure he would have a better alternative, but would suggest if the towers need to be in residential areas, they should be lower. However, if the towers are built lower, there is a possibility that more towers would be needed.

Commissioner Dolan asked Mr. Gritman if he has any idea how many companies would be interested in collocating. Mr. Gritman said based on his experience with other cities, where there are collocation opportunities, they always seem to be filled up.

Commissioner Dolan asked if there were any findings that show Mendota Heights to have relatively poor service within the city. Mr. Gritman said information supplied by the applicant indicates that there is a problem. Commissioner Dolan said there are other cities throughout the Twin Cities that have hired their own expert consultants to determine whether a problem exists.

Commissioner Hesse said it would seem that if the towers are shorter, collocation would be harder and therefore, more towers would be needed. Mr. Gritman said as technology has increased, it seems that the towers have been going taller in many cities.

Commissioner Hesse said there has been some apparent difficulty at Sibley High School with the receptors that have been installed on their roofs. Mr. Gritman said it seems that the problem mostly lies with building maintenance issues due to these receptors and therefore, the school district will not be renewing those leases. Mr. Hollister confirmed this information. Chair Lorberbaum said upon further investigation and talking to school officials, there are also union rules that prohibit workers from working around those receptors.

Commissioner Harms referred to the Telecommunications Act of 1996; it looks like the Planning Commission would be prohibited to base a decision to deny this proposal based on environmental issues of radiofrequency. Mr. Gritman said this was correct. Commissioner Harms said there then needs to be substantial evidence to deny this request, and in this case, T-Mobile is bringing this case in conjunction with the support of the Police Department. Does that mean T-Mobile is using the public safety component to win approval of this proposal? Mr. Gritman said the fact that the Police Department is interested in this tower and giving support to this proposal, gives no legal support to this proposal as the Police Department has made it clear that they will continue and maintain operations without this tower and would be able to find other options. Should the Police Department find the need to build their own tower in a few years down the road, they would have to go through the same process as T-Mobile is doing now.

Commissioner Harms asked if there are any concerns about the poles being placed close to property lines. Mr. Gritman said there is no concern as the towers are built to collapse into themselves and not fall over onto neighboring properties.

Commissioner Harms asked if the City would go with the text amendment, and create this proposal as a CUP process going forward, will that make the standard for denying applications in the future more difficult for the Planning Commission? Mr. Gritman said there is a presumption that applications would be allowed if they meet the conditions and there would be a lower threshold. The City would have a lot more discretion with the text amendment than with a CUP. As an example, the City could call on expert consultation where issues are concerned (safety, welfare, effects on property values, etc.). Mr. Gritman said he would suggest changes in the language that would require towers to be located as accessory uses on institutional properties and that would limit numbers of eligible sites.

Chair Lorberbaum it's been suggested that this 120-ft. tower would negatively impact the property values of some homes nearby. Mr. Gritman said it's been his experience with other cities where this is a common concern and the industry has provided some information that the towers do not have a negative impact on property values. Mr. Gritman said he is not aware of any incident where this type of structure has any negative impact on property values.

Mr. Steve Carlson, Carlson & Harrington Commercial Real Estate Services, Inc., 346 Country Road, Stillwater, Minnesota, is the consultant for of T-Mobile, introduced Rajiv Parekh, Radio Frequency Design Engineer for T-Mobile. Mr. Carlson reviewed coverage maps specific to the City Hall location. The projected coverage map showed where there is good coverage in the area, along with showing the gaps. Mr. Carlson and Mr. Parekh talked about the concerns with in-building coverage. Mr. Carlson spoke about the difficulty of providing quality services in the largely residential area of Mendota Heights.

Mr. Carlson said Joshua Mathews, Senior Engineering Manager, T-Mobile USA designed the coverage map for T-Mobile, and has indicated that through the computer models, the internal information through customer complaints, and the monitoring of the network,

this particular area (between City Hall and the location they are looking to fill) holds approximately 500 customers. Of these 500 customers, T-Mobile receives approximately 175 complaints of dropped calls per day on average through this area.

Mr. Carlson said there have been a few modifications to the plans and highlighted those changes.

- There will be some landscaping done to the south, which will buffer the view from Highway 110. Passer-bys may only see the top of the roof of the equipment building from that elevation.
- T-Mobile has agreed to drop their antenna location down 10-ft so that the top 10-ft will be used by the Public Safety systems. There are no lease agreements completed with the City as of yet. The discussion to this point has been that T-Mobile will provide this space.
- The site plan shows what T-Mobile will lease, which is just space for the tower itself and T-Mobiles equipment building. Any collocators would be required to pay additional land leases to the City.
- Architectural changes to the building include a flat room as opposed to the originally proposed slanted roof. The plans also call for cedar shakes. The brick on the building will match the City Hall.

Mr. Carlson referred to the memo from Mr. Mathews, dated May 17, 2006, said there is a T-Mobile metro-wide three-year plan which includes the site at City Hall, the existing site at the water tower, and the proposed site on Wentworth Avenue. Mr. Carlson said the City can consider this their five-year plan as well.

Commissioner McManus asked if there are any occurrences of interference by T-Mobile's antenna by other types of communication such as radio and television. Mr. Carlson said there should be no interference as private and public sectors run on their own frequencies as licensed by the FCC. Mr. Parikh confirmed that there are no interference issues with frequencies.

Commissioner McManus asked if T-Mobile has looked into the industrial area to the south of Highway 110 for a possible site. Mr. Carlson said this area is zoned Business Park and is required to adhere to the same zoning requirements of a 75-ft height limit, and would most likely be required to collect the same approvals, with the exception of a wetland permit as with the City Hall location.. Mr. Carlson said there are also residential areas in there as well. Mr. Carlson said it's his opinion that the City Hall location is the best location. Mr. Carlson said he has given the south location some consideration, but there would be issues with the radius coverage from the tower and may create more gaps.

Commissioner Lally inquired about the lease agreements/rental rates that were discussed at the February City Council Meeting. Mr. Carlson said actual dollar negotiations have not been formally discussed.

Chair Lorberbaum suggested keeping the discussion to the tower location, and not directed to any financial/lease negotiations at this time. Commissioner Lally said it was his intention to find out if the City would have a revenue source and would this be a feasible project for the City to partner with.

Commissioner Lally asked what the roof was changed to a flat roof. Ms. McDermott said she requested that a flat roof be installed instead of a pitched room, making any additions easier to accomplish, and that the pitch roof would not blend in well with City Hall.

Commissioner Lally said the T-Mobile website has some information regarding their coverage, stating they have great coverage and there is no mention that Mendota Heights has inadequate/poor coverage and service. Mr. Carlson said that is part of T-Mobile's marketing strategy. Mr. Parekh said that they are trying to improve the coverage that they have with better quality to address the dropped calls and in-building calls.

Commissioner Lally asked if the topography of Mendota Heights cause problems with service. Mr. Parekh said topography is the primary concern, and other concerns include tree line density.

Commissioner Lally asked for more information about Clair M. Billington, Inc., who submitted a letter addressed to Mr. Josh Mathews regarding an evaluation of this proposal. Mr. Parekh said he was T-Mobile's counsel for FAA studies, and was originally with the FAA.

Chair Lorberbaum said Cingular does not have a tower in Mendota Heights, but yet they are able to give coverage, where T-Mobile seems to need a tower or some sort of receptor about every 1 to 1½ miles. Does this mean T-Mobile's technology is such that the City has to make accommodations because T-Mobile is less powerful than Cingular? Mr. Parekh said Cingular works on a different higher frequency and therefore does have more power. Mr. Parekh said it also depends on where the sites are placed.

Chair Lorberbaum asked if Nextel backed out of their negotiations that were previously held, or did the City discourage them from going forward. Ms. McDermott said Nextel did not come back and it was assumed they were no longer interested in the site. It may have been from the combination of Nextel and Sprint, and the subsequent re-evaluations of their current sites. Chair Lorberbaum asked if the City would be showing displeasure with Nextel should they approve the T-Mobile proposal. Ms. McDermott said that would not be the case, and now Nextel would have the opportunity to collocate with T-Mobile.

Commissioner Dolan referred to the 175 dropped calls a day and asked what an acceptable number would be to T-Mobile. Mr. Parekh said 20 to 25, and to keep in mind that not all dropped calls are due to coverage issues. There are other reasons people experience dropped calls.

Commissioner Dolan asked if the leased positions on the pole will go to T-Mobile. Mr. Carlson said was correct. The owner of the tower maintains the tower and equipment. Commissioner Dolan asked if renting space is a lucrative proposition to T-Mobile. Mr. Carlson said it is revenue for them. Mr. Carlson said it is not the objective to gain collocators for the sake of making money. At this point, there are no other carriers that have contacted T-Mobile with interest.

Commissioner Hesse said he would like a final ruling on any lighting on top of the tower. Mr. Carlson said the official determination comes from the FAA, the consultant provides two functions 1) he lets any tower developer know whether they need to apply to FAA for lighting determination, and in this case, T-Mobile needs to do so; and 2) he looks at the safety thresholds for FAA. As soon as FAA ruling comes through, T-Mobile will let the City know of its ruling.

Chair Lorberbaum opened the public hearing.

Karen Jones, 1903 Lexington Avenue, said she lives directly across the wetlands from City Hall and this tower would be directly in her view and is opposed to this proposed tower. Ms. Jones believes this tower could decrease her property value greatly. Ms. Jones said an alternate sight across the highway would be appreciated.

Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close the public hearing.

COMMISSIONER MCMCANUS MOVED, SECONDED BY COMMISSIONER HESSE, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND DENIAL OF THE TEXT AMENDMENT GIVEN THIS IS A RESIDENTIAL DISTRICT.

Mr. Grittmann said to sight the tower on residential zoned property, an amendment to the zoning ordinance would be necessary to allow this placement. The height of the tower is the second issue and if the City were to allow the use of the residential property, the code would need to allow for the 120-ft height. Chair Lorberbaum said if the text amendment is denied to allow a tower in residential zoned areas, the current site is dead. Mr. Grittmann said that would mean there could not be any tower there at all at any height.

Commissioner Harms asked how the City will reconcile the public safety needs which are still going to be there, with the neighbor's reasonable concerns about the aesthetics. Commissioner Harms is not sure they will see any substantial changes in technology in the next 12 to 24 months that. Commissioner Harms said it was her understanding that the Police tower must be in close proximity to the Police Station as it is hardwired. Mr. Grittmann said the Police Chief's memo indicates that there needs to be a direct connection to the Police Department and it is his understanding that the farther away the tower is, the cost rises to make that connection. Chair Lorberbaum said if there is to be a direct connection, cable connections will need to be buried under Highway 110. Commissioner Dolan said that could be extremely expensive.

Commissioner McManus said the existing Police tower could be increased incrementally on site if needed to take care of the public safety needs, and does not believe it would need to go to 120-ft., and does not like to equate cost with public safety. Chair Lorberbaum reminded the Commission that the Police Chief indicated there is a need for a higher tower to accommodate the new technology from Dakota County that will be coming in the near future.

Commissioner McManus said he is very opposed to putting this tower in a residential area when T-Mobile has not given proof that they have looked in other non-residential areas.

Chair Lorberbaum asked if this case can be tabled again. Mr. Hollister said that given the unique situation, and the missing information that is needed, it would be acceptable to table this case until the next meeting. Commissioner Harms said any approvals could be contingent on the ruling by the FAA on lighting.

Commissioner Dolan said if the Commission is taking the Police Chief at his word, the City would need 120-ft., and if the City is not bearing the costs, and the tower has to go up anyway, it seems to make sense to approve.

Chair Lorberbaum said she is very concerned about the neighbors but the Police Chief said that is what will be needed.

Commissioner McManus asked if it is known how much it would cost to run a cable under Highway 110. Commissioner Lally said the Police Chief's email to Mr. Hollister indicated the current cost of a dedicated line would vary between \$90 and \$250 per month, as this is a rental issue and not an up-front cost. Commissioner Lally said he did not have enough information on the needs of the Police Department. Ms. McDermott said they will be switching over to the 800 MHz system, which is a county-wide system and the 120-ft. tower is needed as part of that system. Chair Lorberbaum said other cities may or may not require a 120-ft tower depending on the topography of those cities.

Commissioner McManus said the City is being asked to make a very serious decision, which is going to open the door for building towers in residentially zoned areas and he believes there is not significant information available to base all of these considerations.

Chair Lorberbaum asked Commissioner Lally if he is interested in withdrawing his motion, or should the Commission continue and vote on the motion on the floor.

Commissioner Lally withdrew his motion in order to obtain more information, and said he is unsure on how much more information is needed. It's a known fact that this tower is needed by the City for public services, and based on Commissioner Harms questions to the Planner that this does open the door for the Wentworth Park site to come back as a potential opportunity for T-Mobile or any other applicant because now it's a presumed permitted use in a residential area.

Chair Lorberbaum said it would possibly depend on the wording because they are using the language such that it only would be permitted if connected to an institution site. The wording from the City talked about not wanting a commercial provider in a park, and would not necessarily open up doors for other providers. Commissioner Lally asked if churches and school would be considered institutional sites. Commissioner McManus said that would be true. Commission Hesse said it would all depend on how the language is written and agreed upon, as the language could be made to be more restrictive or flexible as the City is comfortable with.

COMMISSIONER MCMANUS MOVED, SECONDED BY CHAIR LORBERBAUM, TO RECOMMEND TABLING THIS CASE BASED ON THE FINDING THAT ADEQUATE STUDY OF ALTERNATIVE SITES HAVE BEEN COMPLETED AND SUFFICIENT INFORMATION IS PROVIDED TO MAKE A DECISION.

3 AYES
3 NAYS (Commissioners Dolan, Hesse, Harms)
MOTION FAILED

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER LALLY, TO RECOMMEND DENIAL OF THE APPLICATION AS PROPOSED BASED ON THE FINDING THAT THERE IS NO SUFFICIENT INFORMATION IS PROVIDED TO MAKE A DECISION AND NO FINDING THAT THE PROPOSED SITE IS ESSENTIAL.

3 AYES
3 NAYS (Commissioners Dolan, Hesse, Harms)
MOTION FAILED

COMMISSIONER HESSE MOVED, SECONDED BY COMMISSIONER HARMS, TO RECOMMEND APPROVAL OF THE APPLICATION AS PROPOSED CONTINGENT UPON FORMAL FINDING BY THE FFA THAT THE LIGHTING IS REQUIRED ON TOP OF THE TOWER AND THE CODE IS AMENDED TO THE SATISFACTION OF THE CITY.

Commissioner Dolan asked if there are any other issues that should be addressed at this time to incorporate into the motion. Commissioner Hesse said he is not aware of any. Commissioner Dolan said there is a condition that the tower must be engineered to collapse onto itself. Commissioner Hesse said conditions discussed in the Planners Report would cover that.

Commissioner Dolan asked if that would be accepted as a friendly amendment. Commissioner Hesse said he will accept the friendly amendment.

Commissioner Lally said he is not concerned about the wetlands permit as the proposed tower would be far enough away from the wetlands and does not see any potential negative impact on the wetlands. Commissioner Lally said he is concerned about setbacks and that the text amendment would not be site specific.

Commissioner Harms asked Mr. Grittmann if, under the way this proposal is submitted, this tower would be an accessory structure to an institutional principal, and would this mean that the structure's function has to have some connection with the principal's use? Mr. Grittmann the language can be written as to define the accessory use very narrowly. Chair Lorberbaum said that as the ordinance currently stands, receptors could be on a church or a school which we have been allowing. Commissioner Hesse said there has been no discussion at all and this may be something that his condition of his motion would sufficiently narrow the limits. Commissioner Harms asked if the motion would be worded in such a way that it would be subject to finding wording that really limits the availability of this exception to a use where the accessory structure is linked and functioned to the principal institution or some other such concept.

Commissioner Hesse said it is difficult to speculate and it would be inappropriate to talk about specific pieces of the language that would be incorporated into the ordinance until the Commission can actually look at a draft. Commissioner Dolan said he believes that if this motion is passed, the case will go onto the City Council and the Planning Commission would not have the opportunity to see the language. Chair Lorberbaum said that would be true. Mr. Grittmann said if this motion is passed, the case would go to the City Council with the recommendations from the Planning Commission, and that the City Council would have to follow up. Commissioner Hesse said the Planning Commission can give recommendations to the City Council on what the language should be. Commissioner Harms said that by linking the tower use with the Police Station in this case would narrowly limit the connection. Chair Lorberbaum said Staff would have enough time to craft some language to present to the City Council.

Chair Lorberbaum said she likes the narrowing concept and will vote to approve this motion.

4 AYES
2 NAYS (Commissioners McManus, Lally)
MOTION FAILED

PLANNING CASE #06-13
Kevin Gardner
796 Sibley Memorial Highway
Critical Area Permit

Mr. Grittmann reviewed the map which showed the location at 796 Sibley Memorial Highway. This property is a single family parcel zoned R-1 and the applicant is seeking permission to grade and reline and repave the existing driveway. In the past, there has been a significant amount of fill placed on the site that also comes into play with this particular permit. The site plans shows that the applicant owns two lots and the house sits across the lot line. The existing driveway comes onto Sibley Memorial Highway and is

wider than the current code requires and crosses over the property of the neighbor to the north. It is in this area that the City Engineer has indicated fill has been placed with may have negative drainage impact on the neighboring property. It is noted in the Staff Report that there are a series of fence locations on the property that have been constructed and needs to be verified for compliance. The applicant indicates that these fences will be modified as necessary.

The paving of the driveway is a requirement of city code and the applicant will be paving this area to comply with code. The grading would be modified and the driveway will be realigned to not encroach onto the neighboring property. The greatest issue is the fill that has been brought onto the property. Staff recommends approval to allow the applicant to bring this property up to code.

Commissioner Dolan asked how the existing home was built on the property line. Mr. Grittman said he was not sure but it is not uncommon for homes that were built several years ago to ignore property lines divisions prior to the zoning ordinances.

Commissioner Dolan asked if the driveway will end up being too narrow after this work would be done. Mr. Grittman said the driveway would end up being 17-ft. in width and that is sufficient.

Chair Lorberbaum asked if the applicant was previously fined because they brought in too much dirt. Mr. Hollister said the applicant is seeking instruction to correct these issues. Mr. Hanson had more fill put onto his property than is permitted and was cited by the Code Enforcement Officer for that, and was ordered to rectify the situation. Mr. Hollister said if the Planning Commission, upon completion of the Public Hearing, feels it would be more appropriate to have the dirt removed, that would be the recommendation to the City Council. The Planning Commission can make the finding that if it is appropriate to allow the dirt to remain on site by re-grading and moving it around on the site, the Planning Commission can make the recommendation that the permit be approved. If the Planning Commission feels the dirt would need to be removed, the recommendation to deny the permit would direct the applicant to remove the dirt. Commissioner Hollister said the applicant received a notice as a Critical Area Permit for the grading, but which it is intended to mean what happens to the fill. If the Planning Commission feels that the notice is insufficiently worded, this case can be continued until next month and Staff would send out new notices. The intent is to find out what happens to the fill – does it stay there which is what Staff meant as grading.

Chair Lorberbaum asked if the Planning Commission can make determinations with the information as it is. Mr. Grittman said Staff feels that the notice is sufficient to take whatever action is appropriate. Chair Lorberbaum said that the notice has then notified the neighbors with enough information for the Planning Commission to take action on the amount of fill at this time. Mr. Grittman said that is correct.

Chair Lorberbaum said if the Planning Commission feels that the drainage is having a negative impact, the Planning Commission can direct the applicant to correct the situation through the conditional use permit process. Mr. Grittman said that was correct.

Chair Lorberbaum said that as part of the conditional use permit, if there are other things around the yard beyond accessory structures, the Planning Commission could instruct the applicant to remove those items as well. Mr. Grittman said if these items are reasonably related to the scope of this permit, those findings could be found.

Commissioner Lally asked if there are any permits for the fencing that the property owner has along the driveway entry on Wachtler. Mr. Grittman said he is not aware of the status of any permits having been granted. Commissioner Lally asked if the property owner has abandoned use of that access. Mr. Grittman said he did not know.

Commissioner Lally asked if it is considered abandonment of use if wood piles, rock, and fill are placed across this driveway. Mr. Grittman said he is not sure that the City has ordinances that show what constitutes abandonment.

Commissioner McManus said it appears to him that this was a temporary barricade to prevent people from entering the property by this driveway.

Commissioner McManus said it appears that the applicant is trying to fix up a very needy area and it's too bad the applicant did this in a way that he did not get permits and some city supervision, and therefore he may have hurt the neighbor to the north and to the east. Commissioner McManus said it's important to remember that the applicant is trying to fix the problems at hand. Commissioner McManus said the question may be "did the applicant hurt somebody else in trying to help himself"?

Kevin Gardner, 248 Apollo Drive, Lino Lakes, is the applicant representing Mr. Hanson. Mr. Gardner is the engineering surveyor for the applicant. Mr. Gardner said the biggest topic is the relocation of the driveway, and the ultimate goal is to try to bring this property into compliance. Mr. Gardner said it has been indicated to him by the neighbor to the north that the fill previously brought into this location has create drainage issues.

Commissioner Harms asked if regrading will take care of the drainage problem. Mr. Gardner said it would, and that the fill that was brought onto the site was not properly seeded and vegetated. This type of work is considered construction activity which requires a critical area permit.

Commissioner Harms asked if grading the dirt to prohibit the runoff from going into the neighbors would also require more than just seeding. Mr. Gardner said that was correct and the area up in the corner where the existing driveway covers the other property is such a small area it would not be hard to incorporate that work into this permit. Mr. Gardner said there is a significant swail (drainage ditch) along the property line, and Mr. Gardner is under the impression that the work to be done is specifically at the end of the driveway.

Commissioner Hesse said the desired result of this application will ensure that there will be no drainage issues for the neighbor to the north.

Commissioner Dolan said there are also some concerns about drainage to the neighbor to the south, and Staff needs to obtain plans that ensure that drainage concern.

Commissioner Dolan asked why this fill was brought onto this property. Mr. Gardner said he is under the impression that throughout time, the house was built onto blocks that were exposed and fill was brought in over time to fill in around the house to cover up the block. Mr. Gardner said there seems to be some fill along the driveway but was not sure why this was done.

Commissioner Dolan asked if the area of the driveway which was currently encroaches onto the neighbor's property will be re-seeded. Mr. Gardner said those details will have to be worked out with the neighbor, and consent will have to come from the neighbor to do such work.

Commissioner Dolan asked what plans are in place to correct the fencing. Mr. Gardner said he is not aware of any plans are for the fences. Mr. Hollister said there is an issue with a fence that is higher than 3-ft within 30-ft of the property line against the public right of way, which is in non-conformance. Commissioner Dolan said this fence needs to either be removed or placed back further.

Chair Lorberbaum said that Mr. Gardner is doing a fantastic job but it looks like he doesn't have all the information he needs from the applicant, which places him in a difficult position to answer questions he does not have answers to. Chair Lorberbaum said she talked extensively with the neighbor to the south. Chair Lorberbaum said it looked as though there has been significant fill placed on the applicant's property which has negatively impacted the neighbors property, which may require either removal of the fill, possibly to bring the drainage back to where it was; removal of the fill because the fill has impacted the roots of all the trees between the driveway and the neighbor's house; and /or put into place some type of drainage system to remove the drainage so it does not go onto the neighbors property.

Mr. Gardner said the Planning Commission can put whatever conditions on the approval that may be necessary. Chair Lorberbaum asked Mr. Gardner how they can vote on something when Mr. Gardner is not sure what to do. Commissioner Harms said the applicant may be suggesting that the Planning Commission provide certain specifications with the approval of the City Engineer, and the applicant cannot operate outside of those specifications. Commissioner Harms said this may give the City some advantage with the recommendations of the City Engineer.

Commissioner Lally asked if the property owner uses the access onto Wachtler. Mr. Gardner said he does not believe this access is used as there is some debris in that area, and this access does not lead to the existing garage. Commissioner Lally asked if there are any plans to close this driveway access off. Commissioner Hesse said upon inspecting the property, he found that there was a fence blocking the access. Ms. McDermott said that this fence, which was in violation of the 30-ft setback, has since been removed. Ms. McDermott said Mr. Hanson is not going to be paving that part of the driveway, and will not therefore be able to park any vehicles on that surface.

Commissioner Lally asked if the northern property line will be restored to its original condition, and noted there are some trees along that property line. Mr. Gardner said the work to be done is to the west of the trees. Commissioner Lally asked if it is part of the plan to remove the fill down to natural grade. Mr. Gardner said that is not part of the plan, and that the property owner wishes to keep the grade as it exists.

Commissioner Lally asked if there will be any work associated with what the neighbor describes as a 4-ft. high mound along the property line. Commissioner Lally said it is his understanding that this 4-ft. high mound runs along the entire property line, and not just at the end of the driveway. Mr. Gardner this will have to be looked into a little closer as he was not aware there was any fill along that portion of the property.

Commissioner McManus said it seems there was a huge amount of fill brought in on that northern property line and maybe to the extent of three to five feet. Commissioner McManus said it looks as though somebody's fence got buried. Mr. Gardner said he is not aware of any fence that has been buried.

Mr. James Hanson, 796 Sibley Memorial Highway, is the owner of the property. Mr. Hanson said the fence in question is not buried, it's been down there for over 30 years. The previous owner put this fence in this location. Commissioner McManus said there is currently dirt up against it. Mr. Hanson said there is no dirt against the fence and the neighbor refused to fill their side of the fence to meet the level of the dirt on Mr. Hanson's property. Mr. Hanson said the driveway is to the level of the garage where it's always been for the last 40 years, and the neighbor's property slopes down from that. Mr. Hanson said the fence is about waist high on his side. Commissioner McManus asked if this fence has always been that height. Mr. Hanson said that was correct.

Mr. Hanson said the only concern with this application is the part at the end of the driveway where he is turning into and out of his driveway and crossing over the property line. Mr. Hanson said the City or the County previously purchased 15-ft. of that property so it seems like the Hanson's are always driving on the neighbor's property, but if the property line is moved back to where it's supposed to be, the triangular portion of concern goes away. Mr. Hanson said he is willing to change the driveway to straighten out the driveway and alleviate this concern.

Commissioner McManus asked if the neighbor to the north has ever complained there is drainage into their yard. Mr. Hanson said he is not aware of any drainage concerns of the neighbor.

Commissioner McManus referred to the fill to the south of the property and asked Mr. Hanson if he would be taking care of the fence. Mr. Hanson said the fence has been removed and has no plans to enter/exit onto Wachtler. Mr. Hanson said this access will be graded over and seeded.

Commissioner McManus asked Mr. Hanson if he has any problems concerning drainage and encroachment with the neighbors to the south. Mr. Hanson said the south side neighbor is concerned because they feel that there is too much fill on the south side of his property that the drainage of their yard is being encroached by too much water, but they have had a problem with water drainage ever since the house was built in 1952.

Commissioner McManus asked why the fill was brought in. Mr. Hanson said the purpose of the fill was to cover up the block walls of the basement. Mr. Hanson said there is no water coming off his property, but the water is coming down the hill from Ivy Falls.

Chair Lorberbaum asked Mr. Hanson if the City Engineer has reason to believe that the drainage has increased to the neighbor to the south because of the fill, will he be willing to rectify the situation. Mr. Hanson said he is willing to do so.

Chair Lorberbaum opened the public hearing.

Nancy Schmitt, 788 Sibley Memorial Highway, is the neighbor to the north. Ms. Schmitt said she has lived in her home for twenty years and spoke about the fill that Mr. Hanson has brought onto his property over the past few years. Ms. Schmitt said she would estimate the amount of fill to be approximately 500 cubic yards. Of that, about 100 cubic yards has fallen onto her property and explained how her property has been affected. Ms. Schmitt said she owns the chain link fence which is partially buried. Ms. Schmitt said in the process of bringing in fill, Mr. Hanson has also cut down some of her trees and has also partially buried some existing trees, killing them in the process. Ms. Schmitt expressed some concern on the proposed work and is uncertain of the grading and distance allowance to grade 4- ft of dirt. Ms. Schmitt wants all the soil removed from her property and have her property graded back from the property line, and is looking for direction from the City Engineer.

Chair Lorberbaum asked when this fill was brought in. Ms. Schmitt said it began a few years ago and has progressed over time. Chair Lorberbaum asked if it over a twenty year period. Ms. Schmitt said that was not true.

Dan Caruso, 1238 Wachtler Ave, is the neighbor to the south. Mr. Caruso showed photos of the property line between them and Mr. Hanson. These photos show before and after the fill, and that there is an enormous amount of water on the Caruso's property. Mr. Caruso said Mr. Hanson has brought in at least 50 to 100 truckloads. Mr. Caruso said Mr. Hanson has been bringing in a lot of fill during 2003, which has elevated Mr. Hanson's yard approximately 4-ft. This dirt has been placed to cover Mr. Hanson's block walls but has been leveled out until it drops by the property line. Mr. Caruso said he has two sump pumps along the property line, as well as two more inside the home. Mr. Caruso said the culvert under the abandoned driveway is plugged. Mr. Caruso acknowledged that his property does flood from several sources. There is no drainage under his property and every thing Mr. Hanson does exasperates the situation. Mr. Caruso said he has his drainage issues under control until Mr. Hanson's fill made the problem come back. Mr. Caruso said he would like to have some of the fill removed to bring his property back to where it was. Mr. Caruso said Mr. Hanson has had a lot of "temporary" issues that have lasted for years. Mr. Caruso said he offered to help Mr. Hanson, in so far that he would purchase some property. Mr. Hanson declined these offers of help.

Commissioner McManus asked if the culvert was to be cleaned, would that solve the problem. Mr. Caruso said it would not.

Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close the public hearing.

CHAIR LORBERBAUM MOVED, SECONDED BY COMMISSIONER DOLAN, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays
MOTION CARRIED

Commissioner Harms asked if the former grading that has changed by reviewed by City Engineer. Ms. McDermott said that Mr. Hanson's engineer needs to look into correcting these situations and presenting some resolutions to the City. Ms. McDermott said she agrees with the Caruso's that there is probably a much larger low area that got filled in, and this low area has been pushed onto their property. Ms. McDermott said this is her belief based on aerial contours that the City has from Dakota County. Ms. McDermott said the Planning Commission can recommend approval based on City Engineer approval of plans. Ms. McDermott recommended that a plan also be provided for the north side of the property.

CHAIR LORBERBAUM MOVED, SECONDED BY COMMISSIONER HESSE, TO RECOMMEND APPROVAL OF THE CRITICAL AREA PERMIT FOR GRADING, DRIVEWAY REALIGNMENT, PAVING AND FOR THE FILL SUBJECT TO THE APPROVAL OF THE PLANS FOR NORTH AND SOUTH BY THE CITY ENGINEER WITH THE UNDERSTANDING THAT THE AREA OF THE DRIVEWAY THAT IS CURRENTLY GRAVEL, THE PLAN FOR RESTORATION BE APPROVED BY THE CITY TO MAKE SURE THE SOIL IS SUFFICIENTLY DEEP AND THAT IT CAN BE RESODDED AND RESTORED TO ITS ORIGINAL CONDITION.

Further Discussion

Commissioner Dolan asked what kind of involvement do the neighboring property owners have in this process. Ms. McDermott said Staff can provide them with a copy of the plan that is received from Mr. Hanson's engineer and allow them to give input. Mr. Hanson will also be required to receive permission to go onto any other property to restore any of the neighboring land. Commissioner McManus asked what would happen if the neighboring property owners do not approve the plan that is approved by the City. Ms. McDermott said it may become a civil case for the court system.

6 AYES
0 NAYS
MOTION CARRIED

PLANNING CASE #06-14
Ryan C. Burns
906 Nina Court

Conditional Use Permit

Mr. Grittmann reviewed the map showing the location of 906 Nina Court, in which the applicant is seeking a conditional use permit to construct a fence on a single family property within the 30-ft setback area of the public street. A conditional use permit is being proposed to address this property which has a rear yard exposed to a side street.

Staff recommends approval of this proposal as it is consistent with the standards of this ordinance.

Ryan Burns, 906 Nina Court, said he just moved to the area about a month ago and is planning on being married soon. Both he and his bride-to-be have children and dogs, so they would like to make this area of their property safe.

Mr. Burns said he did not receive opposition from any of his neighbors.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close this hearing.

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER HARMS, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER HESSE MOVED, SECONDED BY COMMISSIONER HARMS, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT AS PROPOSED.

6 AYES
0 NAYS
MOTION CARRIED

PLANNING CASE #06-15

Thomas W. Ullman

651 First Avenue

Conditional Use Permit and Variance

Mr. Grittmann reviewed the map showing the location at 651 First Avenue, in which the applicant is seeking approval for a conditional use permit to allow for construction of a detached garage. The proposed garage would replace a 20-ft by 20-ft garage structure in the rear of the property, which abuts Laura Street. The new garage would be 34-ft by 20-ft., and the applicant has asked for consideration for two alternatives – one being a 720 sq. ft. (24-ft x 30-ft), and one being a 780 sq. ft. (26-ft x 30-ft) structure. Staff recommends the 720 sq. ft. garage as an additional variance would be required to construct a garage larger than 750 sq. ft.

The property is currently a legally non-conform lot due to the lot area and lot width. The applicant is also requesting a variance from the side yard and rear yard setback requirements. The size of the lot may create a hardship for the applicant. The applicant also has an existing 8-ft by 8-ft shed.

Commissioner Dolan asked if the existing garage has access to the alley. Mr. Grittmann said it does not.

Commissioner Lally commented on the narrowness of Laura Street. Mr. Grittmann said a setback of 15-ft would adequately fit the proposed garage; a 20-ft setback would be very tight. If the setback were to be 20-ft, the applicant would most likely have to move the shed. If the shed is moved, it would have to be moved into the back yard and there would be some aesthetic challenges. An option would be to remove the shed, and allow for the larger garage to accommodate the things that are stored in the shed.

Thomas W. Ullman, 651 First Avenue, said this was a very narrow lot, and spoke of the challenges he encountered with measurements to give him enough space to fit everything on this lot. Mr. Ullman said the 15-ft would be a workable solution without having to do a lot of creative restructuring. Mr. Ullman said he would be willing take the shed out if he could build a larger garage to store his equipment. Mr. Ullman said he does not have a lot of space in the rear yard and whatever the Planning Commission can suggest would be fine with him.

Commissioner Harms said it looks like 15-ft may be aesthetically more pleasing than the 20-ft. Mr. Ullman said other garages are sitting on the property line (on the Laura Street side) and they are to have the same setbacks as he does. Mr. Ullman said if he has to go with the 20-ft. he would have to take out a maple tree.

Commissioner McManus said it may make more sense to take out the shed and allow for a larger garage so there are not multiple buildings crammed onto the small lot.

Commissioner Dolan asked if a new notice would need to be published to allow for a larger garage, taking out the shed. Mr. Gritman said the notice went out to the public for a variance on an accessory building only, not relating to sizes and setbacks.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close this hearing.

COMMISSIONER HARMS MOVED, SECONDED BY COMMISSIONER DOLAN, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

CHAIR LORBERBAUM MOVED, SECONDED BY COMMISSIONER HARMS, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT FOR THE CONSTRUCTION OF A DETACHED GARAGE AS PROPOSED, AND THE VARIANCE FOR THE DETACHED GARAGE SUBJECT TO THE FACT THE GARAGE WOULD MEET CITY CODE, MEANING NO MORE THAN 750 SQ. FT. AND THE SETBACK BE 15-FT.

6 AYES
0 NAYS
MOTION CARRIED

**PLANNING CASE #06-16
Thomas R. Wohlers
2218 Lexington Avenue South
Conditional Use Permit**

Mr. Gritman reviewed the map showing the location of 2218 Lexington Avenue South, where the applicant is seeking a conditional use permit which would allow for an existing detached accessory building. The issue came up when the applicant was seeking to construct a new attached garage to the existing home. There is an existing structure to the east side of the back yard of the property and is noted as an existing detached garage on the drawing that the applicant has provided. The dimensions of this structure do not allow functioning correctly as a garage as it is only 16-ft deep. This building has a total of 341 sq. ft in area, and is below the threshold of what would be consistent with the requirements for a detached garage.

Mr. Gritman said the issue with the existing building was that it was constructed without building permits. Staff believes that due to the size of the property, if this were an existing attached garage, and the applicant was seeking to construct an accessory building, there would be conditions placed on that accessory building that it would meet the building code and that the building is in fact, not constructed as a garage but as an accessory building. Staff has suggested that the applicant remove the overhead door currently on this building and replace with a utility door so that it does not appear to be a garage as it would not allow for vehicle storage. Staff instructed the applicant to work with the Building Official to make sure it meets with the building code specifications. With these conditions met, Staff recommends approval of the conditional use permit.

Chair Lorberbaum said she would prefer the existing accessory structure not be painted to match the home as it would make that structure stand out. It would be preferable to leave the accessory structure in the present condition to allow the building to blend better in with the property.

Thomas R. Wohlers, 2218 Lexington Avenue South, apologized for not getting the proper permits.

Commissioner McManus said the building is so far away from the road he could hardly see it. Chair Lorberbaum said she could not find it very well either, and that it is a lovely building.

Commissioner Dolan asked the applicant for his feelings regarding the Staff recommendations. Mr. Wohlers said he has no problems with those recommendations.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close this hearing.

COMMISSIONER LALLY MOVED, SECONDED BY COMMISSIONER HARMS, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER LALLY, TO RECOMMEND APPROVAL OF THE CONDITIONAL USE PERMIT FOR A DETACHED ACCESSORY BUILDING TAKING INTO CONSIDERATION AND INCLUDING THE PROVISIONS RECOMMENDED BY THE PLANNER.

6 AYES
0 NAYS
MOTION CARRIED

**PLANNING CASE #06-17
Ronald W. Buelow
1666 Mayfield Heights Road
Critical Area Permit**

Mr. Grittmann reviewed the map showing the location of 1666 Mayfield Heights Road, where the applicant is seeking a critical area permit which would allow for the construction of a fence and freestanding address sign. Mr. Grittmann reviewed the site plan showing the location of the proposed address sign, and the proposed section of the fence which would be located to the rear deck area.

The applicant's proposal would affect the existing ground marginally, if at all, but the construction. The applicant had not submitted the material information before the Planners Report was made, but has supplied the Planning Commission and Staff with this information at the meeting. Staff feels the fencing and signage meets all code requirements and recommends approval of the critical area permit.

Chair Lorberbaum asked if the fence and signage was existing and placed before the appropriate permits were obtained. Mr. Grittmann said that was correct.

Mr. Ronald W. Buelow, 1125 Sibley Memorial Highway, is the applicant. Mr. Buelow said he is an architect and is currently in the process of remodeling the property at 1666 Mayfield Heights Road. Mr. Buelow said the home is currently for sale, which is why he purchased the property and remodeled it. Mr. Buelow said this property had very serious problems relating to its site.

Chair Lorberbaum said it was interesting that the applicant has made all these changes that a future homeowner may not want. Mr. Buelow said that as an architect, there were some things he felt would be appealing to potential homebuyers.

Commissioner Lally said he believes the sign and trellis adds to the property and sees where the applicant is surprised that a sign and trellis would impact the critical area. Mr. Buelow said he was surprised.

Commissioner McManus said he suspects that Mr. Buelow has not come before the Planning Commission as required because Mr. Buelow would not think that would be necessary.

Mr. Buelow said he would recommend that the Planning Commission look for opportunities to empower Staff to make decisions on things related to critical area permits that are so extremely obvious that the process should not be taking his time and the time of the Planning Commission, and paying \$100 in fees and having to go to the City Council. Mr. Buelow said this is out of balance with the issue here and if that's not possible, have at least in the step not having to burden City Council with listening to this. Commissioner McManus said the Planning Commission does not make these rules, but they have to abide by the City Council's instructions. Commissioner McManus recommended that Mr. Buelow take these comments to the City Council to bring it to their attention.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close this hearing.

COMMISSIONER DOLAN MOVED, SECONDED BY COMMISSIONER HESSE, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER DOLAN MOVED, SECONDED BY CHAIR LORBERBAUM, TO RECOMMEND THE CRITICAL AREA PERMIT IN ACCORDANCE AND SUBJECT TO THE CONDITIONS SET FORTH IN THE PLANNERS REPORT.

6 AYES
0 NAYS
MOTION CARRIED

PLANNING CASE #06-18

**Steven J. Weintraut
869 Mendakota Court
Wetlands Permit**

Mr. Gritman reviewed the map showing the location of 869 Mendakota Court, where the applicant is seeking a wetlands permit to construct a series of improvements to the rear portion of his single family property. The applicant is proposing a serpentine-type walkway from the upper portion of the property down to the edge of the lake/wetland area. The applicant's activity includes construction of the walkway with some landing areas, and finally a dock at the edge of the wetland. The applicant has indicated that some trees and buckthorn will have to be removed in order to improve visibility from the upper areas to the lake surface. The applicant has been asked to submit some additional information on materials to be used and what trees are to be removed. The applicant also intends to trim some cattails in the wetland area as well as a series of some saplings in and about the wetland area.

Mr. Gritman said Staff encourages the removal of buckthorn, but discourage the removal of other vegetation, particularly the burr oak species in this area. Aspen is relatively short-lived. Removing sapling or trimming cattails within the wetland area would not be allowed by ordinance and Staff would not recommend that vegetation removed.

Mr. Gritman said the walkway appears to be reasonably designed to navigate the relatively steep slope down the hill. The State has an ordinance for shorelines, which does not technically apply in this case, that relates to landings, steps and walkways of this type to gain access to the water's edge. Mr. Gritman said there is some question about the dock and did not receive a lot of information from the applicant about plans for a dock. Mr. Gritman said it has been the City's practice to not allow docks that extend into the wetland areas.

Mr. Grittmann said Staff recommends approval of the wetlands permit and have suggested the following recommendations:

- Prohibit any vegetation alteration within the wetland area itself.
- Minimize vegetation removal within the 100-ft buffer zone to the buckthorn and selected Aspens, leaving the oaks in place.
- Identify additional information regarding the dock structure.
- Proposed groundcover to be a natural groundcover and not a cultured lawn area.

Commissioner McManus said several of the oak trees seem to be about 2-in in diameter or less. The applicant has indicated to him that they would prefer to put other trees in that are better. Mr. Grittmann said it would be reasonable to recommend trees to be replaced with a different species.

Commissioner McManus asked if the “no cultured lawn” could be placed below the 100-ft mark. Mr. Grittmann said it would be within 30-ft of the wetland edge to allow for runoff buffer.

Commissioner McManus asked what the Planner would recommend for ground cover for the remainder of the area, which is currently mulch. Mr. Grittmann said on a slope, mulch is going to run off with rainfall, so a vegetated cover would be more appropriate.

Commissioner Lally asked what the material of the walkway will be. Mr. Grittmann said it is his understanding that it would be a wood walkway.

Chair Lorberbaum asked if the applicant removes buckthorn, and it comes back, would he be expected to remove it again. Mr. Grittmann said if it’s effectively removed, it would not come back; there is no code to remove buckthorn and it’s allowed and encouraged. If it comes back, the City can ask the applicant to do his best to remove it again.

Chair Lorberbaum asked if the applicant has approval to remove any oak less than a certain diameter. Mr. Grittmann said that would be okay.

Commissioner Dolan asked if there were any other docks in this area. Mr. Grittmann said he was not aware of any, and that several years ago, the City has asked a property owner to remove an existing dock at least back to the edge of the wetland.

Commissioner Dolan asked if it seemed odd that the City has no ordinances regarding docks. Mr. Grittmann said this was not unusual.

Steven J. Weintraut, 869 Mendakota Court, handed out copies of documents to Staff and the Planning Commission that provided additional information and photos. Mr. Weintraut explained the layout of his property and spoke about how he wanted to utilize some of his property that has never been used. Mr. Weintraut said the intent of his plans is to try to get his family down to the lake to enjoy it, and said his son has cerebral palsy and is in a wheelchair. This walkway will allow for his son to gain access to the lake and other parts of the yard. Mr. Weintraut explained the current condition on the existing trees and spoke on how he plans to remove and replace, the burr oaks are smaller and are not growing very well as all the branches are dead from the base to about 20-ft upward. Mr. Weintraut said the saplings are not in the wetland area. The material of the walkway is proposed to be small scale rocks, and according to his neighbor who is a professional landscaper, this material will allow the wheelchair to safely roll over top of these rocks.

Mr. Weintraut said he has about 40-ft of cattails and would be willing to plant vegetation in that area to replace some of the cattails that are removed. Mr. Weintraut said he will agree to replace/replant as the Planning Commission sees appropriate and looks to the Planning Commission for their suggestions and recommendations.

Mr. Weintraut said he believes that a property owner on a lake should be entitled to construct a dock on this property.

Mr. Grittmann said the information the applicant has provided at the meeting gives more clarity to the proposal, and sees the Aspens as being the primary concern. The oaks don’t seem to present a big issue and the Dakota County Soil and Water Conservation District has a list of plants that could be used as a resource for the applicant to use for groundcover. Chair Lorberbaum asked if the roots are the issue. Mr. Grittmann said there should be roots to help avoid erosion, and the natural grass cover is preferred to filter runoff into the lake. Trees and shrubs are better for erosion control, and the wetlands ordinance is not as strict as the critical area ordinance is on terms on how much vegetation a resident can remove. The Critical Ordinance addresses more the view from the water surface. The

removal of the Aspens is not as big an issue as the oaks; however if the oaks are diseased they could be removed. Staff recommends the Aspens can be taken down, but leave as many oaks as possible.

Chair Lorberbaum asked if the 1-in rock base for the walkway deteriorate over time. Mr. Grittmann said this is an effective groundcover and makes a good pathway. It's actually used in a lot of state parks.

Commissioner McManus said the City Council previously made the decision to have a dock removed, and the Planning Commission needs to be very careful on this decision. Mr. Grittmann said in that particular case, the dock was in the wetland and the requirement was that this dock had to be removed back to the edge of the wetland (which is usually the edge of cattails, as they are in the wetland). Commissioner McManus asked for clarification that no dock should be put in an area where cattails are growing. Mr. Grittmann said that would be consistent with the previous decision.

Commissioner Dolan asked about the dock that was approved for Visitation School, and was that in the wetlands. Commissioner Hesse said he was not aware of why that dock was removed other than the fact it was constructed without approval. Ms. McDermott said that according to the City Administrator, it has been the policy and it is believed there is something in the ordinance that did not allow docks, but Staff could not find any language on this. Commissioner Lally said the dock at Visitation was a floating dock. Commissioner Hesse said that dock probably has stabilizers and there is not a lot of difference in wetland disturbance from them as opposed to footings.

Mr. Weintraut said if the DNR requires any permits for removal/trimming of cattails, he would obtain such permits. Mr. Weintraut said his contractor indicated that a dock can be placed without trimming cattails.

Commissioner Dolan said the Planner mentioned that the dock would be temporary in nature. Mr. Weintraut said this means the dock would not be permanently fixed and built into the land.

Commissioner Hesse asked if there were any other docks in the lake. Mr. Weintraut said he believes there may be one off a property by Wagon Wheel Trail, and that this property also has cultured land right up to the water. Commissioner Hesse said he cannot understand why a dock would not be permitted in Rogers Lake. Commissioner Dolan said he was surprised that there are not formal standards for docks. Commissioner Hesse said he believes the dock was removed because there was no permit issued.

Chair Lorberbaum asked if the Planning Commission should review the ordinance to search for any language regarding docks. Ms. McDermott said she has reviewed the ordinance and there is no language regarding docks in the ordinance. Mr. Weintraut said he looked as well and thinks it's a matter of being a right of the landowner, referring to a Supreme Court ruling in 1968 that states "Riparian rights include the right to install a dock (Farnes v. Lane, 281 Minn. 222, 161 N. W. 2d 297 (1968))". Mr. Weintraut said if that is true as the Minnesota Supreme Court says it is, that may eliminate the ability of the City to say no. Chair Lorberbaum said that may be true, but the City may have some input as to the length, materials, and construction of the dock. Commissioner Dolan said he's sure other cities, such as Minnetonka, limits dockage in some ways. Mr. Grittmann said that is true.

Commissioner Harms asked what kind of precedence has been created by the previous case, and would feel, had she been that particular homeowner, that she has been treated unfairly if she were told to take out her dock and then someone else would get to have one.

Chair Lorberbaum asked Staff to research this case and come back to the Planning Commission with information.

Commissioner McManus asked the applicant what type of vegetation will be used to cover the upper hillside and the lower hillside. Mr. Weintraut said he will follow the City's recommendation and do some further research with landscaping experts. Commissioner McManus said the DNR would be a good resource.

Commissioner McManus said about the 100-ft level, the groundcover will be up to the applicant, and asked the applicant would he plans on doing with the ground. Mr. Weintraut said he may seed it, and will be consulting with Ms. McDermott on what materials would be appropriate.

Chair Lorberbaum opened the public hearing. Seeing no one come forward to speak, Chair Lorberbaum asked for a motion to close this hearing.

COMMISSIONER HARMS MOVED, SECONDED BY COMMISSIONER HESSE, TO CLOSE THE PUBLIC HEARING.

6 Ayes
0 Nays

COMMISSIONER HESSE MOVED, SECONDED BY COMMISSIONER MCMANUS, TO RECOMMEND APPROVAL OF THE WETLANDS PERMIT SUBJECT TO THE CONDITIONS OUTLINED IN THE PLANNER'S REPORT, INCLUDING THE FOLLOWING RECOMMENDATION:

- **Tree removal – the Aspens may be removed, the burr oak and red oak will remain on the site.**

Commissioner Dolan said he is still concerned about regulations on docks in the ordinances to go forward to apply to future applications for dockage. Commissioner Dolan said he would recommend the City to encourage the Planner to come back with a recommendation for dock language in the ordinance.

Commissioner Hesse added a friendly amendment that some of this research be done before the next City Council meeting. Commissioner McManus accepted the friendly amendment.

6 AYES
0 NAYS
MOTION CARRIED

VERBAL REVIEW – Sue McDermott

PLANNING CASE #06-12 ISD #197- Somerset Elementary School Conditional Use Permit & Variance

- City Council approved as recommended by the Planning Commission.

Other Comments

Commissioner Lally said Mr. Hollister provides a review of potential applications to Staff, City Council, and Planning Commission members. This is kind of like the process that Mr. Buelow was talking about and he may not know that this process exists. Commissioner Hesse said Mr. Buelow was talking about in critical areas, the Planning Commission should be able to give direction to Staff to allow postings in yards without coming in and spend \$100 on an application. Commissioner Hesse said he agrees with Mr. Buelow's logic.

COMMISSIONER MCMANUS MOVED, SECONDED BY CHAIR LORBERBAUM, TO ADJOURN THE MEETING AT 11:45 PM.

6 AYES
0 NAYS
MOTION CARRIED

Respectfully submitted,

Becki Shaffer, Recording Secretary