

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

**PLANNING COMMISSION MINUTES
October 24, 2006**

The regular meeting of the Mendota Heights Planning Commission was held on Tuesday, October 24, 2006 in the Council Chambers at City Hall, 1101 Victoria Curve at 7:30 pm.

The following Commissioners were present: Chair Lorberbaum, Commissioners McManus, Lally, Povolny, Dolan, Hesse and Harms. Also present were Mendota Heights City Engineer Sue McDermott, Mendota Heights Administrative Assistance Jake Sedlacek, and Planner Steve Gritman. Minutes were recorded by Becki Shaffer.

Approval of September 26, 2006 Minutes

Page 2, first paragraph under Case #06-29 should read as follows:

“Mr. Gritman shared a map of 1245 Dodd Road, in which the applicant is seeking a variance from the maximum shed size requirement of 144-sq. ft. to 192 sq. ft. The applicants have a single family home on the property which has an attached single car garage with the driveway off Dodd Road, and the proposed shed would be located in the rear portion of the property. This property is an oversized parcel with which would allow for some flexibility on the location of the shed.”

Page 9, first paragraph under “Further Discussion” should read as follows:

“Chair Lorberbaum said the encroachment piece is the question here and what they’re proposing is really less than what exists now ~~a big thing to her as it’s really less than what exists now.~~”

Page 12, second paragraph should read as follows:

“Commissioner Dolan said the applicant ~~is~~ has requested a roof mounted antenna due to tree interference, and does not see that there are many trees in this area. Mr. Gritman said this is consistent with other applications in the city, and believes that flush mounted in this case would not give adequate signals.”

Page 13, third paragraph should read as follows:

“Chair Lorberbaum said she would like to see more screening to the accessory building. Chair Lorberbaum asked why T-Mobile did not come up with this site in the first place. Mr. Carlson said this is not a perfect place, and would prefer to be further north. Chair Lorberbaum asked if T-Mobile will be coming back to the City requesting more additional sites. Mr. Carlson said that is possible within the next year.”

Page 13, 6th paragraph – resident name corrections

“Stewart Steinman ~~Styman~~, 1830 Eagle Ridge Drive, said he learned more things at this meeting that he was not aware of at the last meeting he attended with T-Mobile. Mr. Styman said there have been a lot of changes since

that meeting that he was not aware of. Mr. Styman said he came to the public hearing prepared to support this proposal, but now he is not comfortable with it.”

“Steve ~~Krovitz~~ Crovitz, 1850 Eagle Ridge Drive, spoke on his concerns regarding the health and environmental safety risks and has not heard these issues addressed yet. Mr. Crovitz says this proposal deals with high frequency and would like to see more discussion regarding these topics.”

Page 14, Chair Lorberbaum’s friendly amendment should read as follows:

“Chair Lorberbaum added a Friendly Amendment to include screening and landscaping around the fence and the fencing should not be opaque ~~and the fencing be opaque~~. Commissioner Hesse accepted the Friendly Amendment to the extent that the landscaping will not restrict access to the equipment.”

COMMISSIONER HESSE MOVED, SECONDED BY COMMISSIONER POVOLNY, TO APPROVE THE MINUTES OF SEPTEMBER 26, 2006 AS CORRECTED.

**5 AYES
0 NAYES
2 Abstention (Commissioners McManus and Harms)
MOTION CARRIED**

HEARINGS

PLANNING CASE #06-34

Zoning Ordinance Amendment – Cell Antennas

Mr. Grittmann said the proposed amendment on the table relates to cell antennas in the residential districts and the city code allows for the construction of wireless antennas on apartment buildings. The recent case with T-Mobile (Planning Case 06-33) was for a conditional use permit to construct a cellular antenna on a condominium building. Based on the advice of the City Attorney, the technical language should be changed to replace the wording from “apartment building” to “multiple dwellings”. Mr. Grittmann said this change would be consistent with what Staff feels the ordinance should say.

Commissioner Lally asked for the definition of “multiple dwellings”. Mr. Grittmann said this term would imply more than one dwelling in a building, typically two stories or higher. Commissioner Lally asked for the definition of “institutional”. Mr. Grittmann said an example of this usage would include schools and churches.

Chair Lorberbaum said she would rather see the language stated as “multiple family dwellings”. Mr. Grittmann said that would be acceptable.

Commissioner Dolan said the ordinance now says that antennas are not permitted on attached or detached single family homes. Mr. Grittmann said it is common that attached single family homes would be considered “town homes”, and would not be a multiple dwelling under this definition. Town homes are typically defined differently than multiple dwellings because they have separate entrances. Commissioner Dolan said the ordinance should be specific in the definitions of town homes and multiple dwelling, and asked if antennas

would be allowed on town homes. Mr. Grittmann said they would not. Commissioner Dolan suggested the wording to be “at attached or detached single family homes or town home dwellings”.

Commissioner Lally asked if the term “duplex” would apply. Chair Lorberbaum suggested it could be considered a town home. Commissioner Lally said he would suggest that a duplex would be in the same category as a town home.

Mr. Grittmann said Staff will forward such definitions to the City Council for clarification. Ms. McDermott said the timeline has been extended for T-Mobile based on the Planning Commission’s recommendation.

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

**7 AYES
0 NAYES
MOTION CARRIED**

CHAIR LORBERBAUM MOVED, SECONDED BY COMMISSIONER DOLAN, TO RECOMMEND APPROVAL OF THE AMENDMENT CHANGE AS SUGGESTED IN THE PLANNERS REPORT WITH THE FOLLOWING CHANGES:

- **Multiple family dwellings two stories or higher**
- **Wireless telecommunication antennas are not permitted on attached or detached single family homes, including town homes and duplexes**

Further discussion

Mr. Grittmann said Staff will bring back to the Planning Commission as copy of what was sent to City Council.

**7 AYES
0 NAYS
MOTION CARRIED**

**PLANNING CASE #06-35
Comprehensive Plan Amendment
Golf Course Land Use**

Mr. Grittmann said this application is a proposed amendment to the City’s comprehensive plan with the intent to create a new definition for the golf course land use designation. The current language in the comprehensive plan is a paragraph that talks about the golf course land use designation for the different golf courses in the community. In that language, it says that the intention of the land use designation is for golf course use and correlates the land use designation as the residential districts that are in the city. The reason for this is because it is the residential districts that the golf courses are allowed as a conditional use permit.

The proposed amendment is to expand the definition of the golf course land use designation to allow for the potential for low density residential in that district. Mr. Grittmann said the City previously turned down a request by the land owner / developer to plat the Par 3 golf course into a residential development of approximately 30 single family lots in this area, which is currently zoned R-1. The City denied that proposed plat based on the finding that the residential plat was not consistent with the comprehensive plan. The landowner challenged this decision in Court. The District Court had ordered the City to change the comprehensive plan to be consistent with the R-1 zoning. The finding of the Supreme Court was that the District Court was in error in that they could not direct the City to change the comprehensive plan. The proper direction was to require the City to make its comprehensive plan and zoning ordinance consistent, but not have a prescriptive way of doing that.

The City argued that they were in fact consistent, but the Court disagreed and directed the City to reconcile the inconsistency between the R-1 zoning and the golf course land use. This reconciliation is to redefine the golf course land use designation to include the possibility of low density residential under the R-1 designation. The language change would eliminate the references to other residential districts and refer to only the R-1-A zoning district as a potential use for the residential overlay district. R-1-A is a district that requires density equivalent to 40,000 sq. ft. per single family unit, and the current R-1 district provides for residential density of 15,000 sq. ft. per residential unit. This makes the R-1-A about two and one half less dense than the R-1 standpoint.

Mr. Grittmann noted some of the requirements for a planned unit development and open space allowing some flexibility in lot size. Under the rules of this proposed amendment, residential plats would be required to keep at least one-third of the property in common open space.

Mr. Grittmann noted a companion application is being made to rezone this property to R-1-A (Case No. 06-36), and this case will be subject to the approval of Case No. 06-35).

Mr. Grittmann said there were a number of other options looked at to comply with the golf course directives. One option that has been discussed quite a bit is the potential of creating a zoning district that allows golf courses exclusively. If that were done, it could be argued that the City is complying with the Court's directives to make the golf course land designation and zoning district consistent with each other. The City Council has considered this, and a number of other options, and analyzed them all for the potential that they would open the City to liability and legal concerns. The concern with the golf course district is that the City would potentially be subject to the claim of regulatory taking or inverse condemnation. This is a legal theory under which the City is essentially accused of regulating the land use in such a way as to preclude any other reasonable economic use of the property. The Court would then find that the City has essentially taken the property and there is an additional risk in this case in that the City is required to compensate the owner for the loss in value, and the landowner still keeps the property. Mr. Grittmann said this would be a significant risk to the City, and the City Council felt that this would not be appropriate to take the land. In the end, the City Council felt that the proper course was to follow the safer route by allowing limited residential development under the golf course designation and pursue the R-1-A zoning as proposed. On a parallel track, the City Council is also considering the possibility that the City may be able to acquire the property from the property owner to retain for golf course use or other public open space. That would require a different procedure, in that the City would have to negotiate a purchase from the owners. That idea is presumably pending the referendum that would support the financial cost of this acquisition. It is not known at this time whether the City Council will pursue this, and are still exploring their options. Mr. Grittmann said the proposed amendment and rezoning applications would not preclude this parallel track.

Mr. Grittmann summarized by saying the proposed comprehensive plan was designed to meet a number of objectives:

1. to satisfy the directives of the Court and to reconcile the inconsistencies between the golf course land use and the R-1 zoning;
2. to provide for a potential development scenario that would subject the City to the least potential for further legal action;
3. to provide for a development scenario that would maximize the potential open space preservation and buffering from other neighborhoods; and
4. provide the potential that the City may be able to work with the property owners for an adequate time to provide alternative land uses of this property.

Commissioner Harms asked if by taking the property, and compensating the owner, would this taking give the City the right to continue to have the property zoned as it would be zoned and not permit the owner to go ahead and develop it for any use other than golf course. Mr. Grittmann said it is the City Attorney's opinion that the City could argue this point, but there is no guarantee that the City would be able to succeed. Commissioner Harms said the City could then be penalized financially for a taking, and at the same time, lose the ability to have the zoning remain the same.

Commissioner Harms asked if the City has established a timeframe for a referendum. Mr. Grittmann said the City Council is talking about what is required to do this, and believes that it may occur in the spring. Commissioner Harms asked if there is anything that is requiring the City to take action now to rezone this to R-1-A. Mr. Grittmann said the City is under Court Order to do something, and would have to defer to the City Attorney on a timeframe. Mr. Grittmann said the City Council has studied this for some time, and has received feedback from residents, and feels a decision must be made.

Commissioner Harms expressed her concern that should the rezoning happen, and the City takes the option of purchasing the property, they may have a substantially higher purchase price because the property will have another allowable use. Mr. Grittmann said he believes it is the opinion of the City Attorney that if the City did not take this action, and stick with the idea that the only use would be for a golf course, the City may open itself to the possibility that R-1 zoning would be appropriate land use, and the City would take a risk on the other side on what the land value is.

Commissioner Hesse said he does not see anything in the amendment which would require the developer to allow the City to take this action. Mr. Grittmann said the combination of the comprehensive plan and the zoning change and the requirement for a PUD approach will give the City some time to work with the landowners on the parallel track. Commissioner Hesse said it seems the only real mechanism to keep this property operating as a golf course would be for the City or public entity to purchase this property.

Commissioner Hesse said it would seem that on an R-1-A district, the homes would be required to be larger and much more expensive for a developer to make money on it. Mr. Grittmann said it is Staff's belief that this concept would be palatable.

Commissioner Dolan said that given the Court's decision, the City has both won this case but lost where the owner has been led to a different course of action, and that the City's legal counsel believes this would be successful. Commissioner Dolan says this change in the comprehensive plan really affects not only the Par 3,

but also affects the other two golf courses. Mr. Gritman said this change would also affect the other golf courses. Commissioner Dolan asked if this change would give the other golf courses the right to develop those properties. Mr. Gritman said that would be correct. Commissioner Dolan asked if there is a way to amend the comprehensive plan to just affect the Par 3. Mr. Gritman that could be done, but it was felt that one of the objectives here was to not just allow the Par 3 golf course to go to residential development, but to try to preserve as much as the open space aspect of that property as possible, even though once it's developed as residential it's not nearly going to be like the golf course, and this option may give the City some ability to work with the potential developer to consolidate areas of open space more so than the regular platting process would be with the R-1-A.

Chair Lorberbaum said that no matter what the City does, the landowner is not required to sell the land to the City. Mr. Gritman said that was correct, and the only way the landowner would be required to sell the land to the City would be if the City initiated eminent domain actions. Mr. Gritman said in the inverse condemnation procedure, the governments have the right to regulate land use, and the taking of property is based on reasonable economic use of the property, and the landowner is required to show that the only use that the City allows is not an economic viable one. By the City's use of a referendum, the City can show reasonable economic use by using this land as park land and/or public open space.

Chair Lorberbaum said it would seem that the City is willing to see if the residents are willing to support the referendum to pay the higher price for the land if the owners were to sell it, rather than risk paying the difference between the two prices and getting nothing out of the deal. Mr. Gritman said there has not been a final decision by the City Council to pursue this action, but they have been talking about it.

Commissioner Povolny asked if this amendment passes, does the City have to pay more for the property as the price would differ depending on if the land is valued as R-1-A or golf course. Mr. Gritman said if the Court determines that the golf course is not a viable use, then the value would change.

Commissioner Lally asked who received notice of the Par 3 golf course hearing. Ms. McDermott said the notification went to everyone that was within 350-ft. of the Par 3 property. Ms. McDermott said the action before the Planning Commission is only for rezoning of Par 3. Mr. Gritman said comprehensive plan changes do not need special notification to residents as changes to zoning ordinances do. Commissioner Lally said it would seem appropriate to notify all residents when dealing with comprehensive plan changes as this seems more serious in nature than zoning changes, and it would seem fair to residents to have this notification process changed.

Commissioner Lally asked if the City has determined what an economically viable use is. Mr. Gritman said the only information that is available now is what the property owner has supplied to the City. Chair Lorberbaum said that the property owners have submitted copies of tax statements showing losses over the past few years.

Commissioner Lally asked if the comprehensive plan is affecting all three golf courses, would it be better to change the zoning on the other two golf courses so all three would be consistent. Mr. Gritman said as long as the other two golf courses want to remain as they are, there is no reason to change their zonings. If at any time those other two golf courses wish to develop those properties, they would have to come in at that time to request the zoning change, based on their viable property usage.

Commissioner McManus said he is uncomfortable with the possible implications for the other two golf courses. Commissioner McManus said he would like to know how much the City would have to pay for golf course properties as parkland or building lots. Mr. Gritman said the City would probably have to pay a Court-determined amount based on the highest potential property use, based on the real estate market.

Commissioner McManus said there are too many variables to consider and the City should be taking the time to be sure not to get caught in a trap concerning the other golf courses.

Chair Lorberbaum opened the public hearing.

John Hartman, 812 Deer Trail Point, said he was a former member of the City Council. Mr. Hartman said Park Place was named because in a previous comprehensive plan, that area (the old Wachtler property), was planned as park use. The reason it was developed was because the City could not afford the land. Mendakota Park was a PUD set for condominium buildings, and now is a park. Mr. Hartman said things have a way of changing. All of the golf courses, from the time that zoning was done, were zoned R-1, and had it not been for the change from State Law that said land use has to match the zoning, and had the owners of Par 3 come before the City at that time, the City could not have done anything.

Arnold London, 1628 Pamela Lane, said he would like to know if there has been any assessment of what it would take for the City to buy this property. Chair Lorberbaum said it is her understanding that the City has not determined what the price would be yet, nor if the landowner would be willing to sell.

Robert Ehrlich, 1656 Sutcliff Court, said he resides on the backside of the golf course. Mr. Ehrlich said the golf course is one of the jewels of Mendota Heights and spoke of the enjoyment this area has given the residents. Mr. Ehrlich said he had distributed a petition to neighbors and getting signatures of those willing to support the idea of raising taxes for purchase of the Par 3 property. Mr. Ehrlich said property values will also be affected and said the City should consider using a referendum to raise funds for the purchase of this property.

George Battis, 758 Batchelor Avenue, asked the City to take time to assess all their options.

Howard Roston, 1728 Trail Road, said he plays golf on this course and from an emotional standpoint, he would love nothing more than to see this property remain a par 3 golf course. Mr. Roston said the City should buy this property and the residents should pay the taxes to support this purchase, but as an attorney representing the property owner, he said these property owners have the right to develop this property to its fullest potential consistent with what are reasonable regulations. Mr. Roston said the government goes too far when it says to a private property owner that they cannot use their property for a reasonable development use and a reasonable profit. The citizens of this city who oppose a re-development will be the first ones to come to the City in complaint should regulations come forth and tell them they can't do something on their property. Mr. Roston said that is morally wrong and not the way the government should function. Mr. Roston said he encourages the City to explore ways to acquire this property and to maintain it as a public park. That's the right thing to do. Mr. Roston said he agrees with Commissioner Dolan's comments regarding keeping this action separate from the other golf courses. Mr. Roston said he would much rather pay money now to keep this property as green space/golf course owned by the city than to spend money later in litigation costs in the future.

Bruce Coff, 1698 Dodd Road, said he respectfully disagrees with the speaker who spoke about governmental intervention to property owners. Mr. Coff applauded the City on doing such a good job in maintaining the high

quality of zoning. Mr. Coff said he does not understand any compelling reason to pursue a parallel track, and suggested that the City pursue all the options to maintain this property as a public, open space.

COMMISSIONER LALLY MOVED, SECONDED BY CHAIR LORBERBAUM, TO TABLE THIS ISSUE SO THAT ADDITIONAL NOTICE CAN BE EXTENDED, AND TO ALTERNATIVELY REFINE THE RECOMMENDATION SO THAT THIS CASE ONLY RELATES TO THE PAR 3 GOLF COURSE PARCEL.

7 AYES
0 NAYES
MOTION CARRIED

Commissioner Dolan said he is concerned about the breadth of this amendment and this amendment should only apply to the Par 3 property in this case.

Commissioner McManus asked if it seems the referendum is favorable, should the City deal with this issue further? Ms. McDermott said the property owner has to agree to the referendum. Chair Lorberbaum said the City Council has spent many hours trying to find some alternatives, and may find help by having Mr. Gritman take back to the City Council information that was discussed at this meeting; and maybe Mr. Ralston can offer something that nobody has thought of. The City Council has tried to look at every possible alternative.

Commissioner Hesse said there seems to be an idea of a referendum, but there is not a commitment on this yet. Commissioner Hesse said this is his main reason in voting to table this case, and would like to see more of a commitment for the referendum. Commissioner Hesse said he believes that the City went through all this litigation and processes, and it seems that the City is back to where they started.

Commissioner Harms said one of the options the City has to consider with this property should be that the City should treat this case uniquely, and it sounds like the hang-up with the referendum may be that the property owner must consent and if the condemnation action is pursued the consent would not be needed. Commissioner Harms said she believes the City should obtain an appraisal of the fair market value of the property along with an estimate of what the condemnation action would cost.

Mr. Gritman said the Planning Commission has 60 days to make a recommendation to City Council from October 3rd, and after that time, the City Council could take the action themselves without the Planning Commission's recommendation. Mr. Gritman said the Planning Commission could consider this action at the November meeting. Chair Lorberbaum said that the Planning Commission typically does not meet in December, so there is a need to make a decision one way or another.

Commissioner McManus said the City Council will see that there is a great deal of unease on the majority part of the Planning Commission.

Commissioner Lally said he would like to see more information on why changing the zoning is not an option.

**PLANNING CASE #06-36
Rezoning from R-1 to R-1-A**

Mr. Grittmann said this case is proposing to rezone the Mendota Heights Par 3 Golf Course from its current R-1 zoning designation to R-1-A. Mr. Grittmann said given the tabling of the previous case, Mr. Grittmann recommended that the Planning Commission table this case as well.

COMMISSIONER MCMANUS MOVED, SECONDED BY COMMISSIONER DOLAN, TO TABLE CASE NO. 06-36.

**7 AYES
0 NAYES
MOTION CARRIED**

ANNOUNCEMENTS

Chair Lorberbaum said the Parks Committee will be holding a meeting on November 14th at 6:30 for the public to talk about Valley Park and the tennis courts. Mr. Sedlacek said Valley Park was scheduled on the regular maintenance capital improvement plans to resurface the tennis courts. City Council recommended to the Parks Commission that the tennis courts be taken out. The Parks Commission felt strongly that resident input should be heard before doing that.

Chair Lorberbaum reminded residents that November 7th is Election Day.

Chair Lorberbaum reminded residents about the Annual Halloween Bonfire on October 31st from 7:00 pm to 9:00 pm. The bonfire will be located on the undeveloped portion of land behind Mendota Plaza. The Mendota Heights Volunteer Fire Department will be coordinating this event. Hot dogs, soda, and other goodies will be given free of charge. Residents of Mendota Heights are allowed to deposit brush no larger than 4" in diameter for fuel to the fire. In the past, the City has had trouble with illegal dumping at the site and in order to prevent this from happening this year, the City will be limiting the hours of operation from 8:00 am to 7:00 pm from October 19th to October 30.

Chair Lorberbaum encouraged residents to support the Fireman's Ball each year and to attend since it is a really fun event.

VERBAL REVIEW – Jake Sedlacek

PLANNING CASE #06-29 Tom and Nancy Harkness Variance
• City Council approved as recommended by the Planning Commission.

PLANNING CASE #06-30 Pat Hoffman Lemay Shores Comp Plan Amend.
• City Council approved as recommended by the Planning Commission.

PLANNING CASE #06-31 Jon Berg (O'Shaughnessey/Perlman) Variance, Critical Area Permit

- City Council approved as recommended by the Planning Commission.

PLANNING CASE #06-32 John and Melanie Morgan Variance

- City Council tabled this action as the City Council wanted additional information regarding the elevation of the applicant's proposed addition. At this time, the City has not received this information.

PLANNING CASE #06-33 T-Mobile Condition Use Permit

- City Council came to consent on the wording change.

COMMISSIONER HARMS MOVED, SECONDED BY COMMISSIONER DOLAN, TO ADJOURN THE MEETING AT 9:15 PM.

7 AYES

0 NAYS

MOTION CARRIED

Respectfully submitted,

Becki Shaffer, Recording Secretary