

CITY OF APPLE VALLEY  
PLANNING COMMISSION MINUTES  
JUNE 16, 2010

**1. CALL TO ORDER**

The City of Apple Valley Planning Commission meeting was called to order by Chair Churchill at 7:00 p.m.

Members Present: Jeannine Churchill, Tom Melander, David Schindler, Ken Alwin, Tim Burke and Paul Scanlan

Members Absent: Keith Diekmann

Staff Present: Community Development Director Bruce Nordquist, City Planner Tom Lovelace, City Attorney Michael Dougherty and Assistant City Engineer David Bennett

**2. APPROVAL OF AGENDA**

Chair Churchill asked if there were any changes to the agenda.

Community Development Director Bruce Nordquist replied that agenda item 6E, Apple Valley Transit Station Sign Variance was withdrawn by the applicant.

Chair Churchill called for a motion.

MOTION: Commissioner Melander moved, seconded by Commissioner Alwin, to approve the agenda. The motion carried 6-0.

**3. APPROVAL OF MINUTES OF JUNE 2, 2010**

Chair Churchill asked if there were any changes to the minutes. Hearing none she called for a motion.

MOTION: Commissioner Burke moved, seconded by Commissioner Schindler, to recommend approval of the minutes of the June 2, 2010, meeting. The motion carried 6-0.

**4. CONSENT ITEMS**

--NONE--

**5. PUBLIC HEARINGS**

--NONE--

**6. LAND USE/ACTION ITEMS**

- A. Wildwood Park Telecommunications Tower C.U.P. – Consideration of a conditional use permit to allow for construction of a 125 ft. tall telecommunications monopole in Wildwood Park.**

City Planner Tom Lovelace stated that the applicant is requesting approval of a conditional use permit to allow for the installation of a 125-foot telecommunications tower in Wildwood Park, a 9.6-acre city park, which is

located between 137<sup>th</sup> Street West and Herald Way, approximately ¼-mile north of 140<sup>th</sup> Street West. The zoning code requires that a conditional use permit be approved for wireless communication towers. By definition, a conditional use permit is a permit specially and individually granted by the City Council after review by the Planning Commission for any conditional use so permitted in any zoning district.

The applicant is proposing to erect a 125-foot tall telecommunications monopole and ground equipment in a 200 sq. ft. (10 ft. x 20 ft.) area which is located approximately 210 feet west of 137<sup>th</sup> Street West. More specifically, the monopole and equipment will be located approximately 40 feet north of the sand volleyball court and 75 feet east of the west ball field.

The applicant will have access to the antenna site via an existing paved pathway currently used by the Parks and Recreation Department for access to park equipment and buildings.

The original site plan showed the location of the monopole and the 218-foot fall zone radius, which encroached into the 137<sup>th</sup> Street West right-of-way. The fall zone setback is measured from the property line; therefore, the proposed pole location would not meet the minimum setback of 1.5 times the fall zone, which is defined as the height of the pole. The tower height has been shortened by 20 feet, which brings their proposal into conformance with the fall zone requirements.

The area surrounding the park has rolling terrain with significant grade changes and the tree canopy appears to be at an average height of 50-65 feet. The petitioner has provided the City with specific information on why the proposed telecommunications tower at this location needs to be 125 feet tall.

Based on comments received during the public hearing with regard to a tower's compatibility with the surrounding area and the possibility of the tower being hidden in the trees, staff stated they would like to work with the applicant on the use of stealth technology that could be used to help the tower blend in better with the existing surroundings and explore the opportunity of locating the tower closer to a forested area of the park.

The applicant has proposed locating the tower closer to the wooded area along the north side of the east/west trail, between the tennis court and a north/south trail. They have provided photo simulations that show what the monopole will look like from various points in and around the park. The applicant has stated that the new location will not reduce the height of the tower and it will likely be able to meet the fall zone setback requirements.

The applicant has provided a site plan with their photo simulation packet that shows the proposed new location of the tower and equipment, but they have not provided any detailed plans of the site. They stated that they did not want to submit revised plans until after they have received input from the Commission on the new site. Any approval would be subject to the applicant meeting all the requirements set forth in the code and staff's review of more detailed plans to ensure that they meet those requirements prior to issuance of any construction permits. Also, staff would require that the applicant submit all the necessary plans for City review prior to putting it on the City Council agenda.

City Planner Tom Lovelace asked for comments from the Planning Commission.

Commissioner Burke said he remembers that the two previously approved poles were light blue in color. He asked if that was correct.

Lovelace stated that the Hayes Park tower would have a similar color to the existing light poles at the hockey arena, which is galvanized silver. The tower at Christ Church would have co-location of lights on it in the parking lot. Lovelace stated that he would need to take a look at that to remember the color, although he said that the blue color is a common selection since it blends in with the sky.

Commissioner Melander said that he likes the siting of the tower in the trees more than the first location proposed. He said if it would fail to meet the fall zone requirements, he would be in favor of a variance to allow for it to be in the trees.

Lovelace said that the City may have concerns with meeting the fall zone requirements for the adjacent Wildwood townhome property.

Hearing no further comments from the Planning Commission, Chair Churchill asked to hear from the petitioner.

Peter Coyle, of Larkin Hoffman Daly & Lindgren Ltd, zoning counsel for Clearwire, stated that Clearwire is willing to relocate the site as indicated by staff. He stated that he is available to answer any questions that the Commission may have.

Hearing no comments or questions from the Planning Commission, Chair Churchill asked legal counsel for an explanation of the legal issues concerning the towers, federal requirements, City code, and the issue of compatibility with the park.

City Attorney Michael Dougherty responded to the federal requirements, stating that the City cannot exclude the type of facilities that Clearwire wishes to have. It is the City's choice as to whether Clearwire would be a user in the City's parks. To date, the City Council and the Parks and Recreation Committee have suggested that Clearwire move forward with their applications at this site and others as conditional use permits as required in the city code. He stated that the Planning Commission is charged with looking at this as any other project that would come before them and assure that the conditions have been met. If they haven't been met, then the Planning Commission must articulate why they haven't been met.

Chair Churchill stated that it is her understanding that the Planning Commission does have the right to determine whether this particular use is compatible with a proposed location.

Mr. Dougherty said that is correct, to the extent that the City Council has decided what types of uses are permitted in certain districts. The City has determined that these types of towers are permitted within parks but under certain conditions. The Planning Commission has to decide if it is appropriate and if it is not, state why it is not.

Chair Churchill stated that it is her understanding that the City cannot exclude an applicant wholesale throughout the city and that the City does not have to provide a location that gives the applicant 100% coverage throughout the city if the City does not have appropriate or compatible sites.

Mr. Dougherty stated that is correct, although he does not know to what degree throughout the whole city that there has been an evaluation done for coverage.

Chair Churchill asked for clarification from Lovelace on which site the Planning Commission would be acting on if a motion was called.

Lovelace responded that the site would be north of the trail within the tree line and it would be subject to meeting all of the city requirements. If the applicant was not able to meet the fall zone setback requirements, it would be a basis for denial of the request. He stated that if it were to move forward, staff would recommend requiring more stealth technology be considered other than just the color of the tower.

Commissioner Scanlan stated that he is concerned that the applicant hasn't provided a site plan for clear direction of where the tower will be located and the applicant's lack of addressing stealth technology.

Mr. Coyle stated that the current application reflects a fully compliant site. The modification to the site plan is an attempt to respond to comments received from residents and members of the Planning Commission. He stated that another change in plans may or may not have been acceptable to the Commission and it is not a prudent use of money to draw up additional plans before approval. He said that they want to be cooperative and show a willingness to shift the site around, although they don't want to spend the money on engineering plans until they're sure it meets the Commission's approval. Mr. Coyle said that they will be happy to provide site plans once it is approved.

Commissioner Scanlan said that the applicant is asking the Commission to vote on this and came unprepared as far as what staff and the community have asked for and also knowing the timeline that the City is under.

Mr. Coyle stated that he respects Commissioner Scanlan's comments. He said in regard to the stealth technology, he has worked on wireless tower installations all over the state, and it is really hard to do something with a 125 ft. structure that doesn't cause more attention to it when you try to stealth it. He said he appreciates that is still a concern to staff and they will continue to work with them on that.

Chair Churchill asked the applicant, from his perspective, if the Planning Commission's actions will be on the alternate site or on the original proposed site.

Mr. Coyle said that they are prepared to modify the application based on the request that it be located closer to the trees. He would request the Planning Commission to consider recommending a variance for the modified location as a safety measure if the City Council would deem it to be acceptable. He said the new location is acceptable to Clearwire.

Chair Churchill stated that the potential variance for a different site and new site plans have not been part of the public hearing process to date. She asked legal counsel if the City is opening itself to problems on acting on something for which there has been no public hearing.

Mr. Dougherty replied yes; it needs to go through the public hearing process.

Lovelace stated that if the Planning Commission is uncomfortable acting on a plan they haven't seen, they can act on the original plan as reviewed. He said that staff was thinking they would not need a variance and would have to meet the fall zone requirement if they moved it to the north and demonstrate a hardship.

Chair Churchill said they do not know if a variance is required or not because there is no site plan.

Lovelace said that staff did utilize geographic information system capabilities to approximately measure out the new location and it appeared that it would need a variance, although Mr. Kenny assured staff that it would meet the fall zone setback requirements.

Commissioner Melander asked legal counsel if the Commission should approve this based on the site in the trees, and it were not able to meet the requirements, would it fall back to the original location.

Mr. Dougherty said no, it would have to meet city code. He said the applicant could lower the height of the tower or come back for a variance.

Chair Churchill asked if any commissioners would like to make any further comments before taking action.

Commissioner Schindler stated that he cannot come up with a reason why a 125 ft. tower would be compatible with a park. There are some scenarios where this could be acceptable, but this is not one of them.

Commissioner Alwin concurs with Commissioner Schindler. He said it will be hard to minimize the visual impact of a tower of this height.

Commissioner Melander said that he has a problem with treating this park differently than any other park in the City. He said lots of parks have these types of towers.

Commissioner Burke said that he feels, as it's been outlined and what the City's rules and regulations are, he will vote in favor of the tower.

Commissioner Scanlan said he has concerns of safety of the pole in the park.

Chair Churchill said that where she's voted in favor of adding a tower to a park, it has been where there is already a structure there. She said she has a hard time approving a resolution that would create a new structure in a park. She called for a motion.

MOTION: Commissioner Melander moved, seconded by Commissioner Burke, to recommend approval of a conditional use permit to allow for up to a 125-foot tall telecommunications tower at Wildwood Park, subject to compliance with the Apple Valley City Code and all the tower construction requirements set forth in Section 155.385 of the City's zoning code and the following conditions:

- The tower shall be constructed in accordance with approved site, elevation, and landscape plans, which shall be submitted for staff review prior to consideration by the City Council.
- The color of the communications tower and stealth technology shall be determined by the City Council.
- No fence shall be constructed around the perimeter of the leased area per the request of the Parks and Recreation Department.
- Detailed engineering drawings and structural data shall be submitted for review and approval by a city-retained structural engineer prior to the tower construction.
- Such operations shall be conducted in conformance with an agreement between the City of Apple Valley and Clearwire Wireless, LLC.
- All applicable federal, state, and local permits shall be attained prior to any installation of the wireless antennas and accompanying equipment.
- The fall zone for the site north of the trail near the trees must meet all fall zone regulations.

The motion failed 2-4. (Churchill, Schindler, Scanlan, Alwin)

Chair Churchill stated that this item will continue to the City Council with the Planning Commission's recommendation of denial of the conditional use permit.

**B. Galaxie Park Telecommunications Tower C.U.P. – Consideration of a conditional use permit and variance to allow for construction of a 90 ft. tall telecommunications monopole in Galaxie Park.**

City Planner Tom Lovelace stated that the applicant is requesting approval of a conditional use permit to allow for the installation of a 90-foot telecommunications tower in Galaxie Park, a 13.8-acre city park located along the west side of Galaxie Avenue, approximately ¼-mile north of 140<sup>th</sup> Street West. The zoning code requires that a conditional use permit be approved for wireless communication towers.

The applicant is also requesting approval of a variance from the minimum tower setback requirement from the property line. The proposed pole's fall zone will encroach up to 36 feet beyond the south property line that abuts the residential property at 7097 Upper 139<sup>th</sup> Street West.

The applicant is proposing to remove the existing 50-foot light pole currently used to illuminate the outdoor hockey rink, which is located in the southeast corner of the rink and replace it with a 90-foot tall monopole that will contain the rink lights and wireless internet antennas. This monopole, along with some equipment cabinets, will be located in a 200-sq. ft. area (10 ft. x 20 ft.).

The applicant will have access to the antenna site via an existing paved pathway currently used by the Parks and Recreation Department for access to park equipment and buildings in the park.

The petitioner has provided a site plan that shows the location of the monopole and the 135-foot fall zone radius. The plan shows the distance from adjacent properties and buildings, in particular the property and dwelling unit located at 7097 Upper 139<sup>th</sup> Street West, which indicates that the tower will not meet the minimum fall zone requirements. Therefore, they are requesting a variance to allow for the fall zone to encroach up to 36 feet into the before-mentioned residential property. The petitioner has submitted a letter from a licensed engineer that states that the proposed tower will have a "break point" which will cause it to fall upon itself during a structural failure.

The 90-foot tall telecommunications monopole will replace an existing 50-foot tall skating rink light standard. New stadium lights will be attached to the monopole that will replace the skating rink lights.

No grading plan has been submitted with this request. The only excavation needed will be for the footings for the monopole and concrete pads for the equipment cabinet. The petitioner will need to restore all disturbed areas to the satisfaction of the City.

The petitioner has provided a landscape plan with their application which has been reviewed by Parks and Recreation staff and they have indicated that there is no room to plant the trees as proposed, similar to the situation at Hayes Park. Therefore, staff is suggesting that the petitioner provide a minimum of eighteen (18) deciduous trees to the Parks Department for planting elsewhere in the park. This number is equivalent to the number of trees proposed to be planted around the perimeter of the lease area at the other park sites. The trees shall be a minimum of 2½ inches in diameter and the species shall be determined by the Parks Department.

No signage other than warning and equipment information signage that is required by the manufacturer or federal, state or local agencies that have jurisdiction over these types of facilities shall be allowed.

Lovelace stated that a man representing "Friends of Galaxie Park" provided staff with a petition with signatures of residents that are opposed to the proposed tower. He submitted it into the record.

Lovelace asked for comments or questions from the Planning Commission.

Chair Churchill asked the size of the park.

Lovelace responded that it is a little less than 14 acres.

Commissioner Scanlan asked if the homeowner that would be affected by the fall zone has been notified.

Lovelace responded that the homeowner has received public notification for the proposal.

Commissioner Melander asked legal counsel about reviewing the ordinance.

City Attorney Michael Dougherty replied that revisiting the ordinance would be to see if it makes sense to have a fall zone dimension such as it is if there is a break point. He stated that it will be a policy decision of the Planning Commission and the City Council if they would like to amend the ordinance.

Chair Churchill asked if there are other lights around the hockey rink.

Lovelace said yes, there is one additional one; one at each end of the rink.

Commissioner Scanlan asked if the light pole could be relocated towards the center of the rink.

Lovelace said that could be an option, although staff would need to check with the Park and Recreation Department. He said there is also a pleasure rink located southeast of the hockey rink and it may be affected by the relocation of the pole. Lovelace said the illumination may also affect homes nearby.

Hearing no further comments from the Planning Commission, Chair Churchill asked to hear from the petitioner.

Peter Coyle, Larkin Hoffman Daly & Lindgren Ltd, zoning counsel for Clearwire, stated that they are comfortable with staff's recommendations and willing to cooperate to position the tower in the most advantageous position.

Commissioner Burke asked Lovelace how the motion works with the variance attached.

Lovelace responded that there is not a clear definition of the fall zone in the City ordinance and it is a continuing discussion with legal counsel.

Chair Churchill asked if the approval for a cell tower at Hagemeister Park required a variance.

Lovelace said no. He also mentioned that at the time the section of the communications tower ordinance was written, the City used a model ordinance that was provided to staff.

Chair Churchill stated that the reason she previously supported the tower at River Valley Church is because it was private property and was located in more of a commercial area.

Commissioner Alwin commented that he has concerns about changing the ordinance just because the applicant needs a variance.

Lovelace stated that staff has been advised by legal counsel that if there are multiple variances coming in and the City is approving them, then it is time to look at the ordinance. He said that there has been River Valley Church, Wildwood and this application.

Commissioner Alwin said he can appreciate that, but there has been just one and he doesn't think that the City is there yet.

Commissioner Scanlan asked if the "break point" is engineering data or if there has been actual physical testing to be able to confirm the engineering data.

Michael O'Rourke, Market Manager for Clearwire said that they overbuild the bottom half of the tower to make the break point be the mid-point. He said if there was a really high wind or tornado, the tower would

fold over and the fall down radius becomes half the tower height. He said it is pretty reliable engineering data.

Commissioner Scanlan said the break point is known only through engineering data then.

Mr. O'Rourke said that the manufacturers simulate the actions of winds to verify the data. He said they could provide that data.

Commissioner Schindler said that with the current location the Commission would have to make a decision to require a variance. He stated that he thinks the Planning Commission should look at the code and consider the new data which might change what the fall zones are for towers and incorporate that with a change to the City's current fall zones. He doesn't see anywhere this can go without changing the code or creating a variance.

Commissioner Melander stated that he agrees with Commissioner Schindler. He said if they grant a variance they're failing to meet a hardship.

Commissioner Schindler said another option would be to move the tower to another location on the property where it would meet the fall zone requirements, although it would not be replacing a light pole structure.

Lovelace confirmed that there are probably other locations in the park where it would meet the requirements, although the Parks and Recreation Department would like to utilize collocation. He stated that is how the City did it at the Hayes Park location.

Commissioner Alwin asked if there were light poles by the soccer field.

Lovelace responded no and also added that there are no light poles near the parking lot either.

Commissioner Schindler suggested asking the applicant if they're amenable to tabling the item so that the City could take a look at the zoning ordinance.

Mr. Coyle stated that they would be happy to cooperate with the City on a code revision as was done with the previous River Valley Church site, but his recollection is that both the Planning Commission and the City Council were comfortable moving that application forward and approving it with the direction of staff to come back with code changes which they adopted later on. He said that would be their request.

Mr. Coyle said they cannot put themselves in the position to table this application and then wait for the ordinance process to play out. He is asking the Planning Commission to take action on the application this evening based on either scenario 1 or scenario 3 as outlined by staff.

Commissioner Scanlan said that the applicant has known all along that a variance would be needed on this property and had ample time to come up with alternative options. He said in his mind he only sees two options, tabling it or denial.

Mr. Coyle responded that they've agreed to this site with staff's direction and that is why they haven't pursued alternative sites.

Commissioner Alwin seconded Commissioner Scanlan's comment that the site cannot possibly comply with city ordinance with respect to setback requirements without a variance. And without a hardship the variance doesn't work.

Hearing no further comments, Chair Churchill called for a motion.

MOTION: Commissioner Burke moved, seconded by Commissioner Melander, to recommend approval of a conditional use permit to allow for a 90-foot tall telecommunications tower at Galaxie Park, located at 13900 Galaxie Avenue, subject to meeting all the tower construction requirements set forth in section 155.385 of the city's zoning code and the following conditions:

- Upon approval of a variance granted for the setback requirement.
- The communications tower shall replace an existing outdoor skating rink light standard and the rink lights shall be remounted and wired for operation at the expense of Clearwire Wireless, LLC.
- The tower shall be constructed in accordance with the site and elevation plans, dated May 13, 2010.
- A minimum of eighteen (18) deciduous trees, with a minimum diameter of 2½ inches, shall be provided to the City for planting within the park property. The species of the trees shall be determined by the City Parks and Recreation Department.
- The color of the communications tower shall be the same color or a similar color as the existing light pole.
- No fence shall be constructed around the perimeter of the leased area per the request of the Parks and Recreation Department.
- Detailed engineering drawings and structural data shall be submitted for review and approval by a city retained structural engineer prior to the tower construction.
- Such operations shall be conducted in conformance with an agreement between the City of Apple Valley and Clearwire Wireless, LLC.
- All applicable federal, state, and local permits shall be attained prior to any installation of the wireless antennas and accompanying equipment.

Chair Churchill asked Commissioner Burke to state a reason for the variance because there needs to be a hardship.

Commissioner Burke replied that the hardship would be a requirement for co-location.

The motion failed 1-5. (Schindler, Scanlan, Churchill, Melander, Alwin)

Chair Churchill commented that she can see no hardship on this land to support the variance.

Lovelace asked if the Planning Commission would be interested in taking a look at the ordinance as it relates to the towers and their break points and possibly making an ordinance amendment.

Chair Churchill replied that she would be interested in revisiting the ordinance if the City Council would like the Planning Commission to do that.

The Commission members were in support of the Chair's comment.

**C. "PD-646" Ordinance Amendments – Consideration of amendment to reduce the building setback from 40 feet to 20 feet in zone 1 to allow for construction of a lumber yard warehouse for the Menard's building materials store. (PC10-26-Z)**

City Planner Tom Lovelace stated that the applicant is requesting an amendment to an existing building setback in Planned Development No. 646. More specifically, the petitioner is requesting that the current setback of 40 feet for buildings abutting a collector street be reduced to 20 feet in order to allow for the construction of a 31,107-sq. ft. warehouse and shipping area building.

The applicant is also requesting site plan/building permit authorization approval to allow for the remodeling of their existing outdoor lumber yard. This remodeling project will include a new 43,065-sq. ft. unheated garden center, the before-mentioned warehouse and shipping area, relocation of an off-peak generator, and a new entrance into the merchandise yard area, which is proposed to be directly off Flagstaff Avenue. The site is located at 14960 Florence Trail.

The construction of the new entrance will require the reconstruction of the street, from Florence Trail to 147<sup>th</sup> Street West. The street currently has two driving lanes in both directions with no median. The plans submitted by the petitioner propose the reconstruction of this section to include two through lanes in both directions and north bound left turn lanes at the new yard entrance and the 147<sup>th</sup> Street West intersection. A raised median will also be constructed. This reconstruction will require the construction of a retaining wall along the east side of the street, from just north of the Florence Trail intersection and continuing north approximately 600 feet.

The city's zoning code defines a planned development as "An urban development often having two or more principal uses and having specialized performance standards relating to an overall approved development plan to provide for an optimal land use relationship." Furthermore, planned development zoning was created to allow more flexibility in planning and development by relaxing traditional, rigid setback and side yard requirements found in conventional zoning ordinances thus creating the ability to tailor uses, area requirements, and performance standards to a lot-by-lot approach. Therefore, the Commission may want to consider an amendment that would allow for a reduction in the setback for an accessory structure when constructed in conjunction with a building material sale operation. The amendment could go further in its specificity to state that the accessory structure shall be incorporated into a merchandise yard screen wall.

Reconstruction of this street will be a public project with all project costs being the responsibility of Menard's. No building permit shall be issued until the petitioner has entered into an agreement with the City agreeing to Menard's acceptance of the cost of the design and reconstruction of the street.

The proposed garden center will be constructed of green metal and clear polycarbonate panels and the warehouse and shipping area will be constructed using green colored steel panels on the east and west elevations, and a combination of tan split face block and 4-foot wide sienna colored "Belgian" block bump outs along the north elevation, as revised. The metal panels shall be integrally colored and staff is recommending that at a minimum, an additional colored split-face block be added to the north warehouse wall and the design of the wall shall be similar to the proposed elevation dated April 20, 2010.

The petitioner is proposing to screen the relocated off-peak generator with a combination of landscaping and treated wood wall. The planned development ordinance requires that screening materials for mechanical equipment shall be compatible with the architecture of the building, which would therefore require the petitioner to construct a screening wall having a similar exterior finish as the building and not the outdoor yard screen wall.

Thirty existing trees along the north side of the property will need to be removed to accommodate the expansion of the yard and construction of the new warehouse. The petitioner is proposing to relocate the trees between the new wall and the sidewalks along the south side of 147<sup>th</sup> Street West. Staff will observe these trees for one growing season after replanting and any trees lost to this process will need to be replaced by the petitioner. Staff is recommending that foundation plantings be installed along the proposed north fence and warehouse wall.

The petitioner will be required to install an infiltration area that will need to be designed and constructed to capture the first ½ inch of runoff from any rainfall event generated by the added impervious surface created by this redevelopment project.

Lovelace stated that Commissioner Scanlan had contacted him with a question regarding the entrance/exit of the outdoor garden area, and potential visual concerns of the vehicles exiting and pedestrians on the sidewalk.

Lovelace said he reviewed the materials addressed by the City's traffic consultant Tom Sohrweide and discussed it with the applicant, and it is their recollection that this was addressed with the angle and site lines. He suggested that if it is still a concern, there could be a recommendation from the Commission that Mr. Sohrweide review this concern to provide assurance that there will not be that type of conflict.

Chair Churchill asked if there could be a marking across the entrance/exit area to clearly note that it is a pedestrian walkway.

Lovelace said this could be done.

Commissioner Alwin asked if there is an existing path along the east side of Flagstaff Avenue.

Lovelace said not at this location. He said there is south of County Road 42, but not along this section of Flagstaff Avenue. Lovelace stated that staff is working with the applicant in regards to the sidewalk and who would pay for what. He said that it is staff's expectation that there will be a sidewalk constructed along the east side of Flagstaff Avenue.

Commissioner Schindler recalled that when they were updating the Comprehensive Plan, there was the possibility of a bike path coming through in this location.

Lovelace responded that is correct. Dakota County and their regional trail have identified the pathway farther to the east that bisects the tank farm property and the Hanson property. When the Valley Office Park was approved, which is north of the tank farm, the City required an easement be granted along their east property line for construction of this future pathway. He said it is still expected that a sidewalk be constructed on the east side of Flagstaff Avenue because that is more consistent with the City's plan to try to provide for the bike and pedestrian paths in the city.

Chair Churchill asked what the material is being proposed for the vertical lines on the elevation with the clear polycarbonate panels set into it.

Lovelace said that the elevation is deceiving. It depicts the roof and is white, although the applicant would prefer green. He said that the applicant is willing to work with staff on an appropriate color.

Hearing no further comments from the Commission, Chair Churchill asked the petitioner to step forward.

Tom O'Neil, representing Menard's, stated that they've taken the recommendations of staff and are using a two-tone color of tan and a sienna color perspective. He said they would be agreeable to some sort of color concrete to differentiate where the crosswalk is. Also, he commented that this has been a lengthy process as far as traffic studies and trying to figure out a way that is amenable to their operations as well as protecting the health, safety and welfare of the citizens of Apple Valley when it comes to Flagstaff Avenue. There have been many traffic studies and iterations of the site plan.

Mr. O'Neil said that in conversations with Public Works Director Todd Blomstrom, it is his understanding that Menard, Inc. would be responsible for expanding the cross-section. Also, there are some really difficult grades further to the east and so there would be some pretty substantial retaining walls that they would be constructing at the expense of Menard, Inc., to preserve a corridor that the City's Public Works Department

has identified for the sidewalk area, but he doesn't think they've placed the sidewalk requirement on Menard, Inc.

Lovelace stated that there is a property owner to the east that staff is trying to work with for help with the construction of the retaining wall.

Commissioner Melander commented that he would be comfortable with staff working with the applicant on mixing up the colors of the materials.

Commissioner Scanlan said that at previous meetings there was some public concern regarding outdoor speakers. He asked the applicant if he was agreeable to removing the outdoor speakers.

Mr. O'Neil said they have agreed to dispense with the outdoor speakers. He also stated that the warehouse is taller, larger and has a peaked roof which will cut down on additional glare over the fence line.

Chair Churchill commented that the City has lighting standards in place.

Lovelace agreed and stated that those are already set in place so that they can't have spillovers. He said it is part of the site and building design section of city ordinance.

Hearing no further questions or comments, Chair Churchill asked for a motion.

MOTION: Commissioner Alwin moved, seconded by Commissioner Melander, to recommend approval of the amendment to Planned Development Ordinance No. 646 to allow for a building setback of 20 feet from 147<sup>th</sup> Street West for an accessory structure when constructed in conjunction with a building material sales operation.

The motion carried 6-0.

MOTION: Commissioner Alwin moved, seconded by Commissioner Melander, to recommend approval of site plan/building permit authorization to allow for construction of a 23,250-sq. ft. unheated garden center and 31,107-sq. ft warehouse and shipping area, relocation of an off-peak generator, and entrance into the yard area subject to the following:

- No permits for this project shall be issued until an agreement has been executed where Menards accepts all costs for the reconstruction of Flagstaff Avenue, from Florence Trail to 147<sup>th</sup> Street West, as indicated on their submitted plans, dated June 1, 2010. The plans will include preservation of a corridor for future sidewalk or trail along the east side of Flagstaff Avenue, which sidewalk will not itself be the cost of Menard's.
- The north wall of the warehouse shall meet a minimum building setback of 20 feet from the property line adjacent to 147<sup>th</sup> Street West.
- The north wall of the warehouse building shall be constructed of split face block in a multi-tone design as indicated on the elevation plan dated April 20, 2010; with brick bump outs every 50 feet as indicated on the elevation plan dated June 1, 2010. The actual colors of the split face block will be selected in consultation with city staff.
- The metal panels used for the new garden center and warehouse shall be factory finished.
- The screening materials for mechanical equipment shall be compatible with the architecture of the building. The use of treated wood shall be prohibited except for use as a gate.
- Infiltration shall be provided to sufficiently handle runoff generated by the additional impervious area in accordance with city code.
- Foundation plantings/beds shall be added along the north wall of the warehouse and sales yard fence.

- Colored concrete or similar differentiating material to clearly identify the crosswalk through the driveway to the yard shall be used. Pedestrians shall have clear views of vehicles entering and exiting the yard.
- Outdoor speakers shall not be used in the yard area.

The motion carried 6-0.

- D. Menards Remodeling Project – Consideration of site plan/building permit authorization request to allow for the remodel of the outdoor yard area that will include a garden center and lumber warehouse; and the relocation of the yard entrance from the southeast corner of the site to off of Flagstaff Avenue, which will require the reconstruction/reconfiguration of Flagstaff Avenue, from Florence Trail to 147<sup>th</sup> Street West.**

See Agenda Item 6C, “PD-646” Ordinance Amendments, above.

- E. Apple Valley Transit Station Sign Variance – Consideration of an 8-foot sign setback variance to allow for a monument sign to be located 5 feet from the property line. (Withdrawn at the request of the petitioner).**

## **7. OTHER BUSINESS**

- A. Sketch Plan Review - Sketch plan review of a proposed 55-unit small lot (40 feet wide) single family development on approximately 7.5 acres and 3-4 commercial lot development on approximately 5 acres.**

City Planner Tom Lovelace stated that the applicant is requesting review of a sketch plan for a proposed subdivision of the 12.5-acre Outlot A, APPLE VALLEY EAST FAMILY ADDITION into 55 single family lots on approximately 7.5 acres and three commercial lots on approximately 5 acres. The site is located in the northeast corner of 155<sup>th</sup> Street West and Pilot Knob Road.

The applicant would like to subdivide the north 7.5 acres of Outlot A into 55 single family lots that would have a minimum lot width of 40 feet. The remaining 5 acres will be subdivided into two 1.5-acre lots and one 2-acre lot that will be used for future commercial development. Access to the site will be via three street connections, two full intersections off Embury Path and a right in/right only intersection from 155<sup>th</sup> Street West.

The 2030 Comprehensive Plan guides this property “MD” (Medium Density Residential). Land uses within this designation include townhomes, other attached single-family dwellings, and low-rise apartments and condominiums at densities that range between 6 to 12 units per acre. The proposed single family development would have an overall density of 7 units per acre; however, the land use definition does not include unattached single family dwellings as a designated use. Also, the designation does not include commercial uses as a designated use. Therefore, a Comprehensive Plan amendment may be required as part of any project approval.

The property is currently zoned Planned Development No. 856, which allows for townhouse dwellings, provided no single structure contains more than five (5) dwelling units as a permitted use. Amendments to the planned development ordinance will be necessary that will include addition to permitted uses, area requirements (lot size and width, and setbacks) and performance standards.

The site plan shows the creation of 55 single family residential lots, with the majority of the lot having a 40-foot wide lot width and a 5,000 sq. ft. lot area. A typical single family lot in the "R-3" zoning district has a minimum 80-foot lot width of and minimum 11,000 sq. ft. lot area. However, the minimum lot width and lot area in zone 2 of "PD-703" (Cobblestone Lake) is 40 feet and 4,800 sq. ft. Therefore, the lot width and lot area would be a significant departure from our typical area requirements but would be somewhat consistent with the requirements in the planned development located to the south of the project site.

Access to the residential area would be via public streets with a 52-foot wide right-of-way. These streets will intersect with Embry Path, a minor collector road, which is located along the east side of the proposed development. No access will be allowed from Pilot Knob Road, an arterial road that abuts the property to the west. The proposed right-of-way width for the local streets within this development would be 8 feet less than a typical local street in the city but would again be the same width as the local streets in the Cobblestone Lake development. This would require that on-street parking be limited to one side only. Staff would also propose that sidewalks be installed adjacent to the public streets and pedestrian connections should be made to the pathway along Pilot Knob Road and the commercial area to the south.

The property is adjacent to Pilot Knob Road to the west, which is classified as an A-Minor Arterial with a current traffic volume of 21,500 trips per day; the proposed commercial area and 155<sup>th</sup> Street West to the south, a Minor Collector; Embry Path to the east, also a Minor Collector, which are designed to carry 5,000-15,000 vehicle trips per day; and vacant property to the north, which is zoned "M-6" (Multi-Family Residential/6-12 units per acre). Its location will likely require some sort of berming/landscaping to screen the proposed single family dwellings to these adjacent uses.

This is a cursory review by staff based upon the limited information provided by the applicant. Additional issues or comments will likely arise at the time of any formal submission by the applicant, which would include more detailed plans. No official action is needed. The applicant is seeking input from the Planning Commission regarding their future proposal.

Lovelace asked for the applicant to explain their proposal further.

Jacob Fick, representing the property owner, Tradition Development, said that they have a proposal with K. Hovnanian Homes. He said the latest rendition of the proposal is for 54 single-family residential lots that are owner occupied. It will be priced to meet the medium entry-level homeowner within Apple Valley. He said that he is looking to receive feedback on the plan from both staff and the Planning Commission.

Commissioner Alwin commented as a personal preference that the garages are pretty prominent and was wondering if anything can be done to soften it. He stated that he does like the architectural variation on the home designs.

Mr. Fick displayed a color rendering of a streetscape. He stated that there will be multiple elevations with porches that stick out, recessed entryways, bump-outs on the garages, although it is inevitable with a product that sits on a 40 ft. wide lot, there is going to be some of the issue of the garage.

Commissioner Alwin asked if there is a walking path through the back of the homes.

Mr. Fick said there are sidewalks on both sides of Embry Path, on the interior streets, and also they are proposing on the final grading of making a connection out to the regional trail system on Pilot Knob Road on the north side of the pond. He said the sidewalks will connect to the trail system on 155<sup>th</sup> Street West.

Commissioner Melander asked how many models and colors there will be.

Mr. Fick said there are five building plans and three elevations with each plan as proposed right now. He said the builder, Mr. Ach, has some samples of the vinyl siding and the color palette that are available.

Commissioner Melander asked if there is going to be a provision for non-redundancy.

Mr. Fick said there would be a monotony clause with the builder.

Commissioner Scanlan asked if there will be sidewalks in front of each of the units.

Mr. Fick replied that is correct. He said there are sidewalks proposed on both sides of the interior loop road.

Mr. Scanlan asked if there will be restricted parking.

Mr. Fick said that is correct. They are proposing a 52 ft. wide right-of-way that allows for sidewalks on both sides of the street, a 5-6 ft. boulevard and a 28 ft. wide driving surface, that will allow parking on one side of the street.

Commissioner Scanlan stated that he has an issue with the density of the units and the narrow dimension of the lots and the restricted parking. He also would like to see the garage design minimized.

Mr. Fick stated that he doesn't want to compare this to a townhome layout, but on a typical townhome scenario there is a garage forward design in almost every situation. Also, he said this is not a custom product where a person would see the ability to customize the design and build the house in front of the garage. He said the builder does a good job of masting over the garage and trying to diminish how far the garage does stick out.

Commissioner Scanlan asked about the demographics for this product.

Mr. Fick said he will let Mr. Ach speak to that.

Commissioner Burke asked if there would be room to park in front of the garage on the driveway.

Mr. Fick said yes, they're proposing 25 ft. setbacks to the garage to allow for two cars in the driveway.

Chair Churchill asked for the builder to step forward to address comments.

Steve Ach, representing K. Hovnanian Homes, passed out color elevations to the Planning Commission. He displayed a streetscape that he said is a fair representation of what would be seen if they were to develop the site. It has been scaled out to represent what the neighborhood would look like. He said with a 26 ft. wide home it is tough to do a lot of things architecturally. The garage is 20 ft. wide and if the entryway is pulled forward to have living space a long hallway would be created which is tough to maneuver. He said as Mr. Fick mentioned earlier, townhomes are typically 22-26 ft. wide. He stated that this is really a townhome pulled apart to give customers an owner occupied single-family opportunity.

Mr. Ach said that this type of home is being seen more in the market; no one is building townhomes today. They have greater interest to provide a single-family entry level home. He said national builders and smaller local builders are doing it and even reverting back to split-entry homes. These are still two-story homes, not split-entry homes. They range in size from 1,900-2,300 sq. ft. with 3-5 bedrooms with the basement finished. They are respectably sized homes that provide single-family living for the first time homebuyer, single parents, etc. It is an opportunity for those looking for an alternative to townhome living.

Mr. Ach passed handouts to the Planning Commission members depicting a matrix to provide the color palette for the homes. He said they have pre-packaged the colors for the customer to choose from and in turn it helps them control some of the architecture throughout the neighborhood. They do that through their self-imposed monotony clause. He displayed and explained a tool that they use to control diversity down the streetscape. He also displayed the palette of basic and upgrade color selections.

Mr. Ach stated that this is a new product for them in this marketplace. They do have it proposed in two other communities. They're really excited about it. He said it meets a price point that is in demand. He believes the price will be in the \$250-260,000 range.

Commissioner Schindler asked if the 1,900-2,300 sq. ft. included the basement.

Mr. Ach replied no, so if the basement was finished, there would be additional square footage on top of that.

Commissioner Schindler asked how they plan to set the association up.

Mr. Ach said that they are not planning on an association. They are single-family owner occupied homes. The customer will own the lot and maintain it and landscape it. They will offer a landscape package as an option. He stated that there will be no common area and no private streets. It will be just like a regular single-family neighborhood with a narrower lot.

Commissioner Scanlan asked for some examples in the community where the vinyl siding has been used for 5-10 years and has some history to it.

Mr. Ach said that they purchase similar products of all the other national builders and the standard siding material has a mil of .042 which is pretty typical among all the national builders. He said anything you see being built with vinyl siding is a fair representation. The premium color moves up to a .044 mil so it is a little heavier duty. It has a 25 year warranty on the siding. He said he will try to find some in the community that have been around a while that Commissioner Scanlan can look at.

Commissioner Scanlan said he has concerns with vinyl siding and its long-term viability.

Mr. Ach said it has received a lot of scrutiny over the years and it has improved a lot because people are looking for maintenance-free living.

Commissioner Scanlan asked Mr. Ach if he could clarify the landscaping options.

Mr. Ach said he will follow up on that because they're not sure yet if they will include it as a standard feature, which is typically a sodded yard, shrubs, and a front yard tree, or if they're going to include that as an option package. He said it is an entry-level point so they have to be sensitive to price point also.

Commissioner Scanlan asked Mr. Lovelace what would need to happen for there to be parking on both sides of the street.

Lovelace responded that it would require that the road be widened. He said a typical right-of way is 60 ft. with a 32 ft. road surface. He stated that although this is not in Cobblestone Lake, the typical street in Cobblestone is also 52 ft. wide with a 28 ft. road surface.

Commissioner Scanlan said that the density is not the same here as it is in Cobblestone Lake. He said that the ability to have extra parking on the street will be minimal.

Lovelace stated that staff did speak with the applicant about the 25 ft. parking driveway that would be able to accommodate at least two vehicles in addition to the two-stall garage. That would allow on-street parking on one side of the road.

Mr. Fick said that this proposal is as dense or more dense than areas within Cobblestone Lake with the same size streets. He stated that the 52 ft. road is a standard within Cobblestone with the parking on one side as well.

Commissioner Scanlan said maybe the applicant could provide an example of where that is located when they come back with the application.

Commissioner Schindler asked if there would be a park area.

Lovelace said this is a 7.5 acre development and staff would not have an expectation for dedication of public park land. The City would take cash in lieu of park dedication. He said there is a lot of park land in the Cobblestone Lake development, of which some is private and some is public. Also, he stated there is a community park, Quarry Point, which is located along 160<sup>th</sup> Street. Lovelace said that there is an expectation of a park being constructed in the Fischer Sand and Aggregate property that is located to the northeast of this proposal. Also directly east of the site along 155<sup>th</sup> there is also a neighborhood park that is 5-10 acres in size. Lovelace said that there are parks existing or planned for this area.

Commissioner Scanlan stated that it looks like the backs of the homes will accommodate a deck. He asked if this will be incorporated into the design or if it will be an option.

Mr. Ach said that they will provide the ledger board for the deck. They will build lower decks instead of patios. He said that the deck will be an option for the customer and their standard deck is 8' x 10'.

Commissioner Scanlan said he is concerned that if the customer opts not to add the deck, the ledger board could remain there for 10-15 years and that is not an aesthetically pleasing look. He also commented that there is a lack of window space on the side elevations.

Mr. Ach said that sometimes when you see the large areas of siding, the window and the wall are in that location for a reason. He said adding a window could take away an opportunity to put in a bed, dresser, etc. He said he would take a look at the rooms and see if there was anything he could do there.

Chair Churchill commented to Lovelace that staff may need to look at the painted boards and whether that is consistent with code.

Lovelace said that generally the City does not have restrictions on painting or not painting in the single-family zoning district. He said restrictions are mainly in the commercial zoning district. Lovelace said that the painting of boards would be acceptable in this development.

Chair Churchill asked if the siding has the insulation glued to the back of it.

Mr. Ach said no, it is siding that is adhered to the OSB and sheathing on the outside.

Chair Churchill asked for a sample cut piece of the siding to be brought back at application.

Mr. Ach agreed.

Commissioner Melander commented that it is great to see someone building again.

Mr. Ach said that they're excited also.

Community Development Director Bruce Nordquist commented that some of the elevations provide for walk-outs or look-outs type of basements. He said he doesn't recall the elevation on that site accommodating anything but a standard elevation. He asked the applicant to expand on that.

Mr. Fick said they're just starting to get into the nuts and bolts of creating the grading plan. He said that is relatively flat. It will be primarily full-basement lay-outs with probably a few look-outs. He said that there will not be any walk-out scenarios in this location. The majority of the homes will sit on a full basement with an egress pit and egress window wells for a bedroom.

Chair Churchill said that she is happy to see this type of development. She said it is getting back to an old, inner-city feel. The smaller lot size lends a neighborhood feel to it. She said she would recommend backyard fencing limitation or design, so that people are not installing 6 ft. high cedar fencing that you can't see through. She said it walls off areas that can become problem areas and it also restricts the ability for neighbors to get to know each other.

Commissioner Scanlan asked if there is a minimum landscaping plan that the developer or the builder plans to do.

Mr. Fick said that as the developer they will have a landscape plan. He said they will have to do some berming and screening along Pilot Knob Road as well as the common property line to the north.

Hearing no further comments from the Planning Commission, Chair Churchill thanked the applicant and the builder.

## **B. Review of the Upcoming Schedule and other Updates**

Community Development Director Bruce Nordquist reminded the Commission that there is only one meeting in July on the 14<sup>th</sup> of the month.

## **8. ADJOURNMENT**

Hearing no further comments from the Planning Staff or Planning Commission, Chair Churchill asked for a motion to adjourn.

MOTION: Commissioner Schindler moved, seconded by Commissioner Scanlan, to adjourn the meeting at 9:48 p.m. The motion carried 6-0.