

CITY OF APPLE VALLEY
PLANNING COMMISSION MINUTES
MAY 19, 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, Keith Diekmann, and Paul Scanlan

Members Absent: Tim Burke

Staff Present: Community Development Director Bruce Nordquist, City Planner Tom Lovelace, Associate City Planner Kathy Bodmer, City Attorney Sharon Hills, Assistant City Engineer David Bennett and Department Assistant Barbara Wolff

2. APPROVAL OF AGENDA

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

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

3. APPROVAL OF MINUTES OF MAY 5, 2010

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

Commissioner Melander said that page 13 of the minutes indicate he commented on the thick packet of information provided by staff relating to the communications towers. He clarified that the information provided was background on the communications towers, answers about frequencies that they emit, and scientific information. He wanted to make sure that the public knew this information was available to them.

Chair Churchill hearing no further changes called for approval of the amended minutes.

MOTION: Commissioner Schindler moved, seconded by Commissioner Diekmann, to recommend approval of the amended minutes of the May 5, 2010, meeting. The motion carried 6-0.

4. CONSENT ITEM

A. Leach Garage Variance – Consideration of a height variance to allow for the replacement of an existing non-conforming accessory building.

Daniel and Michele Leach, 5230 – 132nd Street West, have an existing accessory building on their property that has fallen into disrepair and needs to be replaced. According to the property owners, the accessory building has structural issues that make it impossible to repair the building as it is today. The petitioners are requesting consideration of a variance which would allow them to tear down and replace the accessory building with a same-sized, though taller, accessory building in the same location as it is today.

The home was constructed in 1975 with an attached garage. The building inspections street file indicates that the detached garage was constructed in 1978 and met the setback requirements at that time. It appears the right-

of-way was expanded at some point after the accessory building was constructed. The taking of additional right-of-way would have resulted in the building no longer meeting the setback requirements. An ordinance governing setbacks was recently adopted to address the issue of a parcel being rendered out of compliance with the zoning code as a result of a change to the right-of-way line. The new ordinance states that if a building was constructed so that it complied with the setback requirements in place at the time the building permit was issued, the building continues to comply with the setback requirements.

The accessory building is currently 26.5' x 38.5' or 1,020 sq. ft. Because the code currently limits the size of accessory buildings to 750 sq. ft., the existing building appears to be a legal nonconforming use. According to the zoning code, the petitioner may replace the building at its current size, but may not expand or increase the nonconformity.

The zoning code limits the height of accessory buildings to 16'; the petitioner is requesting a variance so that he can build a 23' tall accessory building. The petitioner seeks a variance so that the building may be constructed with 12/10 storage trusses that allow for storage and better match the roof pitch and design of the home.

Staff has found that the petitioner is entitled to replace his existing non-conforming building in its existing location and at the same size as the existing building. The zoning code requires that an accessory building must be compatible with the primary structure on the site. The design of the accessory building with a proposed 12/10 roof pitch and dormer windows will match the roof line of the home. The building will be screened from adjacent properties by trees along the east property line and 132nd Street, which will help off-set any impacts resulting from the taller structure. Staff recommends approval of the variance.

Chair Churchill asked the Commission if they had any concerns or questions. Hearing none, she called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to recommend approval of a variance from the maximum accessory building height requirement of 16' to allow the replacement of the existing accessory building with a 23' tall accessory building at the same location, no larger than the current building.

The motion carried 6-0.

B. Site Plan Review of fenced outdoor play area.

Intermediate School District 917 requests site plan review/building permit authorization to construct a 60' x 17' fenced-in play area behind the office/warehouse building located at 6950 146th Street West, Suite 116.

ISD 917 conducts a school in the Apple Valley Business Center building. Children attending the school range in age from 6 to 21. The property is zoned PD-409 and the school is a permitted use in the zoning district. The outdoor play area is requested in conjunction with the operation of the school.

The proposed outdoor area would be 17' x 60' (1,020 sq. ft.) and surrounded by a 6' high white PVC fence. A play system swing set would be located inside the fenced-in area. The building is located 42' from the rear property line. A 25' drive aisle would remain available after the construction of the play area, which can accommodate two-way traffic. The play area is not expected to interfere with delivery traffic.

The south side of the Apple Valley Business Center building serves as a delivery area. The area is not an ideal location for an outdoor play area. There is limited area available on the site to create an outdoor play area. Given the fact that the delivery area is not heavily used, it may function adequately for an enclosed outdoor play space.

Chair Churchill asked for any questions or concerns from the Commission.

Commissioner Scanlan asked if there were any concerns about added barriers for car movement around the fenced-in play area.

Associate City Planner Kathy Bodmer stated that there is a similar outdoor enclosed area on the end of the building. She said after taking the depth of the play area, there will be a 24' wide aisle remaining so that should be sufficient for two-way traffic.

Hearing no further questions or comments, she called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to recommend approval of the site plan and give building permit authorization to allow the construction of a 17' x 60' fenced-in play area with swing set play system.

The motion carried 6-0.

5. PUBLIC HEARING

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.**

Community Development Director Bruce Nordquist addressed the Planning Commission with some comments. He stated that generally the City has advanced higher speed and better connection and services in telecommunication. This is also a shared vision of both the community and business leaders.

He stated that Clearwire initially made contact with the City in June 2009. Clearwire presented their proposal at an informal session of the City Council in November 2009. At the request of the City Council, they also presented at the Parks and Recreation Advisory Committee in January 2010 because Clearwire expressed an interest in locating at park locations. Also, they've been introduced to the Economic Development Authority and the Telecommunications Committee. However, it was not until Clearwire submitted formal application on April 6, 2010, that a review process began. Minutes of all the public meetings are available on the City's website.

Nordquist stated that Clearwire proposed the three park locations. The applications are co-signed by the City so that the process of studying the locations proposed can begin. Nordquist commented that City code regulates towers and the City is following the process provided by the Code.

City Planner Tom Lovelace stated that the applicant is requesting approval of a conditional use permit to allow for the installation of 125-foot telecommunications tower in Wildwood Park, a 9.6-acre city park, which is located between 137th Street West and Herald Way, approximately ¼-mile north of 140th 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 137th 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 in the park.

The original site plan showed the location of the monopole and the 218-foot fall zone radius, which encroached into the 137th 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.

The site plan is not indicating a perimeter fence around the site, per the code requirements. The information provided by the applicant stated that the City would prefer not to have fencing around the site. Planning checked with Parks and Recreation staff and they agreed that they would not like to have this facility fenced. They expressed their concern about errant balls going inside the fenced-in area and kids climbing over the fence to retrieve them.

Steve Kenny, representing Clearwire, stepped forward to address the Commission. He said Clearwire is 54% owned by Sprint and their company is publicly traded on NASDAQ. They are trying to provide wireless internet to the greater metropolitan area as well as the City of Apple Valley. They are trying to offer competition to the in-service providers that already exist. He said wireless internet has a lot of capabilities. Clearwire would provide the infrastructure and the customer would pay for the service. Their service starts at \$29.99 and have download speeds of 9 megabytes/second.

Mr. Kenny said that Clearwire is looking at a total of 11 sites in Apple Valley, five of which are municipality owned. Seven of the 11 sites were chosen because of existing locations/structures. Sites are picked according to existing locations/structure sites. In order to provide coverage to the City as a whole, Clearwire had to look at proposing some telecommunications towers.

Mr. Kenny stated that he has staff with him: Peter Coyle, Attorney with Larkin Hoffman Daly & Lindgren, Ltd.(representing Clearwire); Michael O'Rourke, Market Manager; Julio Hernandez, Radio Frequency Engineer; Jay Gustafson, Backhaul Engineer; and Connie Lamberes, Project Manager.

Commissioner Diekmann stated that most of the towers proposed are 90' in height. He asked if that is a standard size pole.

Mr. Kenny said that the height of the pole is based off of the topography of the land. They need to get above the trees, which they refer to as "clutter".

Commissioner Diekmann asked if any of the poles could be shorter than 90'.

Mr. Kenny said no.

Commissioner Alwin asked if the height of the towers is based on the current performance of the current technology.

Mr. Kenny said it is the network design.

Commissioner Alwin asked if the design network of today has evolved from the network design of a couple of years ago.

Mr. Kenny said that they are at the infancy stage. He said it is based off of the design now. Mr. Kenny stated that he cannot compare where it was in the past or where it will be in the future.

Commissioner Alwin asked that at the rate that technology advances, could the towers be shorter or perhaps no towers in the future.

Michael O'Rourke, Market Manager for Clearwire, said that the height of the towers could not be lower because the height is based on reaching above the trees. If the height was below the tree canopy, communication would be ineffective. He stated that it is also unlikely that the need for the towers would go away. The only other substitute may be a satellite based one, but satellite communication doesn't work very well because it cannot reach the inside of a building.

Commissioner Alwin asked if Mr. Kenny thought it would be probable for the towers to be taller in the future.

Mr. Kenny said he didn't know.

Commissioner Alwin asked if Clearwire would still locate in the City without the four proposed towers.

Mr. Kenny said they would like to provide coverage to the whole City and cover as much population as they can.

Mr. O'Rourke stated that the company would not pull out of the market of Apple Valley without the four proposed towers, but they would not be covering a lot of the population of the City.

Commissioner Scanlan asked if the proposed location at Wildwood Park was possibly being moved to the high school.

Mr. Kenny said he spoke to Jeff Solomon, Finance Director at Apple Valley High School today, and he said no. He said that the Finance Director told him he wanted it on an existing structure and did not want Clearwire to extend the height of the structure. Mr. Solomon told Mr. Kenny that the School Board wants to remain with the original CUP that was approved at that location. Mr. Kenny said this is the same answer they received last fall and that is why Clearwire pursued the location at Wildwood Park.

Commissioner Scanlan said that a variance is being asked for at the Galaxie Park location. He asked if there was an alternative so that the variance would not be necessary.

Mr. Kenny said that Galaxie Park was at the center of Clearwire's initial search ring. He said they looked at alternative locations and one of those was Greenleaf Elementary School. Representatives of Greenleaf Elementary School said they were not interested and were not in the tower business.

Commissioner Scanlan asked if Clearwire has tried to collocate with the current pole at Hagemeister Park for the proposed Christ Church tower.

Mr. Kenny said that they contacted T-Mobile to collocate and extend the pole to 90'. He said that T-Mobile told Clearwire that T-Mobile will extend the pole, but that T-Mobile would take the 90' and Clearwire could locate at 70'. Mr. Kenny said that the height of 70' will not work for them.

Commissioner Melander asked for Mr. Kenny to explain line of sight for the benefit of the audience.

Mr. Kenny said that typically when a person makes a phone call from their cell phone, it goes to a tower and down the tower to a transmitting base station. That base station is connected to a T-1 or a phone line, which is how one site connects to another and so on. Clearwire is essentially "cutting the cord" and communicating tower to tower, which is line of sight. Line of sight means that the towers need to "see" each other in order to communicate. If they don't, it doesn't work.

Chair Churchill said that residents have contacted her saying that they already have service in their neighborhood surrounding Wildwood Park. She asked if Mr. Kenny could elaborate on some of the residential applications.

Mr. Kenny said that there is the ability for homeowners to communicate with their home when they are away, small businesses within homes will benefit, and it creates competition. He said that Clearwire is providing wireless internet, not wired line internet.

Chair Churchill asked if Clearwire has any public health and safety uses currently being provided, such as enhancing the ability to provide health and safety services in the neighborhoods.

Mr. O'Rourke answered that they are not tied into the infrastructure in emergency situations where lines could go down. They have the ability to provide high-speed data for most any situation much more so than a wired network.

Commissioner Diekmann asked if the line of sight is just so that the towers can communicate to each other, not homeowners communicating to the tower.

Mr. O'Rourke said line of sight is required for both the system getting to the people's homes as well as the connection of the system back to the switching office. The frequencies are so high that if the towers were below the tree lines, the trees would absorb the signal.

Commissioner Diekmann asked if this system ties into another system and where is the home office?.

Mr. O'Rourke replied that the system ties in with all the sites that surround Apple Valley and it ends up at one of the switching offices that is located in Eagan. The Eagan location ties into their main one in downtown Minneapolis and from that point it ties into the internet. To provide broadband services it must have either the backhaul antennas or fiber-optic cable going to all of the sites. Fiber-optic cable is disruptive to streets and communities. Clearwire provides the service with no cabling.

Commissioner Diekmann asked how this service differs from the wireless broadband card that he can put in his personal computer.

Mr. O'Rourke said that it is 10-15 times higher speed than the current 3G technology.

Commissioner Alwin asked if there would be a dead zone or slower speeds in an area where there is a gap in coverage.

Mr. O'Rourke said that if a person is outside of the coverage area, they might be able to pick it up out on the street, but probably not inside of a home.

Commissioner Scanlan asked if there was anything a homeowner needs to have installed to have this service.

Mr. O'Rourke said it is a small router, measuring 6" x 6" x 8", inside of the home.

Commissioner Scanlan stated that Minneapolis introduced a wireless system two years ago and they've had lots of issues with homeowners not receiving reception. He asked Mr. O'Rourke if he foresees any issues with this service.

Mr. O'Rourke said that the City of Minneapolis uses wi-fi and it is a low power network that allows users to access their laptop while at a coffee shop. Clearwire's wi-max is a further distance network. In Minneapolis, they normally put their sites on light poles at 20-30' high, and only serve a street corner or maybe a half a block.

Commissioner Scanlan asked if there are sites outside of Apple Valley or adjacent to the City.

Mr. O'Rourke said that they are building a total of 600 sites over the greater metro area. Eagan has 12-13 sites and there are a similar number of sites in surrounding communities. He said that Apple Valley is one of the more difficult areas to cover because of the rolling topography and dense foliage. Mr. O'Rourke stated that Clearwire always takes an existing location/structure to site to first rather than building a tower.

Commissioner Scanlan asked if the adjacent communities can cover the area of the proposed towers.

Mr. O'Rourke said the frequency doesn't travel that far. The frequencies that Clearwire purchases from the FCC don't travel that far.

Commissioner Scanlan asked if homeowners would have the option of some sort of booster at their home to enable the service if the poles were not located at these four sites.

Mr. O'Rourke said that is not an option because of interference implications.

Chair Churchill asked if they are certain that the tower in Wildwood Park would give them the service they need in that neighborhood beyond the immediate fringe of the park because of the foliage.

Mr. O'Rourke said yes because the spacing of their sites is so close together. He said they have advanced methods to determine how far the play will be through the leaves.

Chair Churchill asked Mr. Kenny to review the seven other sites that Clearwire will have other than the four tower proposals.

Mr. Kenny said that they have five municipal sites that they have leases on right now and have received building permits for. They have a lease with T-Mobile and a building permit for T-Mobile's tower. They are currently working with staff and the city attorney on the lease for the Apple Valley Central Maintenance Facility (CMF) location. They also have a lease and have completed construction on the Merchants Bank.

Chair Churchill asked if the four proposals tonight complete the gaps in coverage.

Mr. Kenny said yes and the tower owned by AT&T at CMF.

Chair Churchill recognized Mr. Peter Coyle.

Peter Coyle, Larkin Hoffman Daly & Lindgren Ltd, zoning counsel for Clearwire, stated that he wanted to put into record some documents that build on information that has been provided to staff. The documents respond to some of the questions that were raised at the previous public hearing of the proposals.

Mr. Coyle made three points for the Planning Commission:

- 1) He agreed substantially with the advice in terms of the legal framework that the City Attorney has provided to the Planning Commission.
- 2) The Telecommunications Act is clear in stating that Congress wants to stimulate competition wherever and however they can accomplish it. Clearwire is licensed through the FCC.
- 3) Neighborhood opposition alone is not a legally sufficient to reason to say no to an otherwise compliant conditional use permit application.

Mr. Coyle also commented on the concern from some residents that these facilities devalue properties. He's worked on these projects for more than a dozen years and has been involved in the preparation of real estate evaluations where wireless facilities have been involved. He's heard both public and private appraisal representatives say consistently and routinely that the installation of these sites do not have a negative impact on property values. He said that it is the desire of most communities to see these facilities pursued because cities want to provide reliable in-home service to suit the needs of our economy and our society.

Community Development Director Bruce Nordquist clarified that the information Mr. Coyle provided to staff was received just prior to the start of the meeting this evening. He stated that this information will be made public to anyone that requests it.

Chair Churchill asked Lovelace to review the public comments from the previous meeting with staff's responses.

Lovelace reviewed the questions and staff response to each for the Planning Commission.

Before opening the hearing to the public, Chair Churchill asked City Attorney Sharon Hills if the City was running up against any deadlines with the applicant.

Hills stated that it is a 60 day deadline, although letters have been sent to the applicant on all four applications to extend the deadline by another 60 days.

Chair Churchill opened the hearing to the public.

Reuben Lopez, 13515 Hemlock Court, lives near Wildwood Park, said he is concerned with the effects of the microwaves on children.

Rick Lyrek, 13680 Harwell Path, lives near Wildwood Park, said he is concerned that once a pole goes up, others may. He is concerned whether the poles are going to be shared or the companies would fight over who gets the top of the pole.

Wendy Derricott, 13600 Havelock Trail, lives near Wildwood Park, stated that this won't bring in jobs to the City of Apple Valley. She also wondered if Clearwire had done their marketing research and seen if there was a market for the service here.

Chair Churchill stated that the Planning Commission is not concerned with the financial aspects of a business; it is not a valid consideration of the Planning Commission.

Gerald Rue, 8163 137th Court, lives near Wildwood Park, stated that the applicant said that the schools were not interested in being in the tower business. Mr. Rue said the neighbors of the park don't want to be in the tower business either. He said that as residents of the community, they should have the right to say no. Mr. Rue stated that the pictures that Clearwire submitted are misleading as to the true height of the proposed towers.

Dan Vreyens, 5574 Emerald Way, said that the parks are not intended to be used as leased land.

Bonnie Gagliardi, 13678 Harmony Way, lives near Wildwood Park, asked who would be responsible for the maintenance of the plantings around the equipment and any graffiti. Also she asked if there would be any lighting because she would be concerned that it may impact the migration of birds through the area.

Bill Tschohl, 8130 137th Street West, lives near Wildwood Park, said that all the neighbors think their homes will be affected negatively. His information was submitted for the record.

Matt Schlosser, 13660 Harmony Way, stated that the neighbors do not want the towers. He stated that he wants to know more about the zoning, the legal issues and legal responsibility for competition and the loopholes for the City Council. He is concerned that the towers will go through and the residents won't get a say.

Peter Blewett, 13964 Herald Way, is concerned that interests are shifting more towards businesses and less towards community concerns. He said that he feels the City needs to create a Comprehensive Plan for broadband services. His comments were submitted for the record.

Commissioner Melander stated that the Planning Commission recently completed the 2030 Comprehensive Plan and worked on it for two years. The City solicited comments from the citizens and received very little public input.

Chair Churchill explained that the Planning Commission is responsible for updating the City's Comprehensive Plan every 10 years and the City solicits public input throughout the entire process. The Comprehensive Plan looks at all aspects of the City and is a planning guide for the City and is submitted to neighboring communities and the Metropolitan Council. The Comp Plan is available in the Planning Department and it is also posted on the website. She also stated that the City Council initiates committees.

Bob Anklam, 8435 137th Street West, lives near Wildwood Park, stated that if people do not buy homes near the towers because of them, the home values go down, and the City will lose tax money.

Rob Briody, 13727 Fordham Avenue, lives near Galaxie Park. He asked if the public hearings could be continued so that the distance for the notifications could be extended beyond the 350 ft. He stated that he is against the tower for all the reasons already stated.

City Attorney Sharon Hills said that the distance of 350 ft. is statutory per state law for zoning requests. The City goes beyond that by posting the sign notifications on the property, posting it on the website and also posting at City Hall.

Community Development Director Bruce Nordquist stated that with the newspaper coverage, information about the towers have received broad distribution. Also public hearings are advertised in the local newspaper.

Van Vorhis, 13675 Harwell Path, lives near Wildwood Park, stated that the towers will have a negative aesthetic quality to the park. He said they're ugly. He asked if the tower could be located on the perimeter of the park and constructed so it telescopes onto itself if it should collapse.

Kristopher Lee, 8295 137th Street West, lives near Wildwood Park, attorney with Winthrop & Weinstine, referred to the City Attorney's memo. He stated that he doesn't think the landscape design and pattern of the park is compatible with the tower. He submitted photos that he took of Wildwood Park.

Terryl Truesdell, 8375 Lower 138th Court, asked if the tower would eliminate the volleyball area.

Lovelace responded no.

Steve Langseth, 8235 Havelock Court, cited many court cases from around the country that support the denial of the conditional use permit. His information was submitted for the record.

Gerald Morgan, 13545 Harvest Court, lives near Wildwood Park, asked why the tower can't be hidden in the trees.

Jarrod Yamanaka, 13612 Harwell Court, asked if the service would be affected or influenced by weather.

Mr. O'Rourke said no.

John Hessburg, 13650 Havelock Trail, Director of the Wildwood Park Alliance, cited statistics from information that he and volunteers gathered. His information was submitted into the record. Mr. Hessburg stated that he and his neighbors do not want the tower in Wildwood Park.

Hearing no further comments from the public, Chair Churchill closed all four public hearings. She stated that the Planning Commission will not be taking action this evening and that the issues will come back to the June 2, 2010 meeting of the Planning Commission.

Mr. Coyle asked the Chair if the applications that have the issues resolved, could be advanced to the City Council, unless the Planning Commission feels they are not ready to do so.

Chair Churchill replied that there were concerns raised about Galaxie Park. She stated at the next meeting, the Commission can identify each site and see if they are comfortable taking action.

Commissioner Diekmann stated there was also a concern raised about Christ Church, and the collocating at the tower located in Hagemester Park that needs to be resolved.

Lovelace added that the Hayes Park site is a different location than what was originally proposed. There may be new concerns because of that relocation.

Chair Churchill stated to the petitioner that there are a lot of items brought up this evening that staff needs to address. She said staff and the Commission will continue working on all four applications until they're ready to make a responsible recommendation to the City Council.

Hills stated that this matter is subject to a 60 day deadline with one 60 day extension. The application was April 6, 2010. So there are 120 days from the date of application, per City Council's decision.

Nordquist stated that the City Council would be compelled to make a decision at the meeting of July 22, 2010.

Chair Churchill called a 5 minute recess.

B. Hayes Park Telecommunications Tower C.U.P. – Consideration of a conditional use permit to allow for construction of a 90 ft. tall telecommunications monopole in Hayes 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 Hayes Park, a 24.2-acre city park located at

the southwest corner of 145th Street West and Hayes Road. The zoning code requires that a conditional use permit be approved for wireless communication towers.

The applicant originally proposed to erect a 90-foot tall telecommunications monopole and ground equipment in a 200 sq. ft. (20 ft. x 40 ft.) area sandwiched between two ball fields, approximately 200 feet north of the Hayes Ice Arena. Revised plans have been submitted that now proposes the location of the tower and equipment at the northwest corner of the most easterly outdoor hockey rink. The applicant would propose removing the existing light pole currently used to illuminate the outdoor hockey 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 Parks and Recreation staff reviewed the original site plan and requested that the petitioner consider two other options. The first option would be to co-locate on an existing skating rink light pole in the park and the second option would be to locate closer to the Hayes Ice Arena, particularly, along the north side of the building. The applicant has revised their plans and is now proposing to install a 90-foot tall telecommunications monopole that will replace an existing skating rink light standard, along with the equipment cabinet in a 200-sq. ft. area. The monopole and equipment will be located between the northwest corner of the most easterly outdoor hockey rink and the south wall of the Hayes Community Center.

The site plan is not indicating a perimeter fence around the site, per the code requirements. The information provided by the applicant stated that the City would prefer not to have fencing around the site. Planning checked with Parks and Recreation staff and they agreed that they would not like to have this facility fenced. They expressed their concern about errant balls/hockey pucks going inside the fenced-in area and kids climbing over the fence to retrieve them.

The supplemental information submitted by the petitioner states that the pole will be constructed of or treated with a corrosive resistant material as required. The petitioner has not stated what the color of the pole will be.

The elevation drawing shows stadium lights attached to the pole. There are currently no lights at this location and the Parks staff has not identified a need for lights at this location.

The petitioner has indicated on their revised landscape plan the installation of four deciduous trees along the north and south side of the tower site. The plan will need to be reviewed by Parks and Recreation staff to ensure that the locations do not interfere with the use of amenities in the park.

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.

See Agenda Item 5A for public hearing comments.

Chair Churchill closed the public hearing.

C. 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 140th Street West. The zoning code requires that a conditional use permit be approved for wireless communication towers.

The applicant is also requesting a variance from the minimum tower setback requirement from the property line. The proposed pole's fall zone will encroach up to 45 feet beyond the south property line that abuts the residential property at 7097 139th 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 139th 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 35 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 not provided a landscape plan with their application. The petitioner should consider landscaping around the perimeter of the site and at a minimum will need to restore all disturbed areas to the satisfaction of the City.

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.

See Agenda Item 5A for public hearing comments.

Chair Churchill closed the public hearing.

D. Christ Church Telecommunications Tower C.U.P. – Consideration of a conditional use permit to allow for construction of a 90 ft. tall telecommunications monopole in the church parking lot.

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 on the Christ Church property, a 6.4-acre site located at 12925 Johnny Cake Ridge Road. The zoning code requires that a conditional use permit be approved for wireless communication towers.

The applicant is proposing to construct a monopole along with an equipment cabinet in the east end of the church parking lot, which will be located in a 100-sq. ft. area (10 ft. x 10 ft.).

Access to the antenna site will be via the existing paved parking lot.

The monopole will be located approximately 18 feet from the east edge of the parking lot; and 137 feet from the north and east property line, and 167 feet from the south property line. The nearest residential structure is 197 feet from the monopole. The proposed tower location meets the minimum required fall zone distances from neighboring structures and setbacks from property lines.

A vinyl fence will be constructed around the lease area but the applicant did not submit examples of the proposed fence with the original submission.

The placing of the tower and equipment will require the loss of a minimum of two parking spaces. The petitioner has indicated that there are currently 248 parking spaces, which will provide parking for 868 parishioners. They have stated that the loss of two spaces should not have an impact and the parking will meet or exceed the zoning code's minimum requirement.

The supplemental information submitted by the petitioner states that the pole will be constructed of or treated with a corrosive resistant material as required. The petitioner has not stated what the color of the pole will be.

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.

See Agenda Item 5A for public hearing comments.

Chair Churchill closed the public hearing.

E. "PD-646" Ordinance Amendments – Consideration of amendments 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.

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 147th 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 147th 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 and gray smooth concrete block along the north elevation. The metal panels shall be integrally colored and not painted and the use of the gray smooth block is not an approved material and should be replaced with a decorative block, brick or treatment such as stucco or EIFS.

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 147th 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.

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 asked for any comments or questions from the Planning Commission.

Commissioner Alwin said that he has a concern that customers leaving the yard will enter onto Flagstaff Avenue and their load may not be tied down correctly and may need to be adjusted. He said they will already be on a main artery and won't be able to adjust the load.

Lovelace replied that if the City sees that as an operational deficiency with the roadway, the City could approach Menard's and stress that they need to be more active in assuring that their people have loaded the vehicles correctly and are tied down.

Assistant Engineer David Bennett commented that, at a staff level, it was discussed that when the traffic is leaving the yard the City could restrict the exit to a right-out only and not allow a left movement, which would result in less time delay to exit the yard.

Lovelace stated that the City could monitor it by having a traffic consultant take a look at it six months to ensure that there is not a traffic problem related to the operation.

Commissioner Scanlan stated that the traffic study was done in April. He stated that he thinks the traffic flow in and out of Menard's would be a higher percentage from May through September.

Lovelace said that April is a peak time for garden products.

Commissioner Scanlan asked what the building material of the east side of the wall would be.

Lovelace said that it would continue to be the pressure treated wood that is currently there.

Commissioner Schindler asked if there would be parking allowed in the yard.

Lovelace replied no.

Commissioner Diekmann asked if the intersection of 147th and Flagstaff would be controlled in the future as Flagstaff Avenue is extended north.

Lovelace said that it is a two-way control now. He said he would need to speak with the traffic consultant to see if that would be the case.

Bennett said it depends on what happens to the east of Flagstaff Avenue. It would probably be controlled in all four directions in the future.

Lovelace said that the City previously approved a plan for the multi-tenant buildings of Valley Business Park which would generate a significant amount of traffic. He said he could look at that report to see if there was anything mentioned in regards to that intersection.

Commissioner Diekmann said that his concern is that if Flagstaff goes through to Eastview High School, it could become a main thoroughfare for high school students. He would be concerned about the speed along that road with someone exiting the yard. Commissioner Diekmann said his other concern was the backside elevation of the storage shed. He said the drawing states it is gray, smooth concrete block. He asked if that was unpainted CMU block. In his opinion, that would be unacceptable.

Lovelace said that staff agrees and suggested an EIFS or stucco product. He said the petitioner can clarify.

Commissioner Melander is concerned about the maneuvering of vehicles inside of the yard because of the entrance and exit at the same location.

Lovelace said that they've used templates to allow tractor trailers to bring the product in and maneuver.

Commissioner Alwin said that the detached building appears to have a drive-through. This may relieve some of the turning issues.

Chair Churchill asked if an exit onto 147th Street has been considered.

Lovelace stated that the applicant would need to have two guard stations and the applicant is not interested in that. Also, an offset would need to be provided on the northeast corner and that would cut into the storage building to provide for that offset.

Hearing no further questions from the Planning Commission, Chair Churchill asked for the petitioner to step forward.

Mr. Tom O'Neil stated that April is as busy as May and June. He said they are a garden and home improvement merchant and particularly this year, with an early spring, weather has been uncommonly decent and it was a good start to the season. He said that he believes it was a misstatement on the elevation plan for the block on the north elevation. It is a split face that is integrally colored with contrasting blocks. He said they can use gray, tan or a reddish brick. He said he will provide updated elevations to Lovelace.

Hearing no further comments, Chair Churchill opened the meeting for the public to speak.

Leo Morretto, 14590 Florissant Path, stated he lives right behind Menard's. He said when he gets up in the morning, he can hear "Save big money at Menard's," and it echoes along with the noise from the forklifts. He is concerned that if a driveway was added to the back it would be very loud. He thinks a the block wall may tone down the noise, although he is still concerned about the lighting. He said the light reflects across the field directly into the condos and townhomes. Also, Mr. Morretto stated that 147th behind Menard's is used by people as a shortcut and it is a speedway.

Mr. O'Neil said the warehouse is a block construction on the north side which should mute the sound concerns. Also, because it will be taller it should internalize some of the lights to the yard. It should work as a screening structure to further block light from escaping the yard. He said if there are lights bothering the neighbors, he thinks it's on the back side of the store itself. He said he will drive over there after the meeting and see what lights are problematic and see what they can do.

Chair Churchill said that the roof overhang appears that it would tend to reflect some of that sound back down.

Mr. O'Neil agreed.

Lisa Morretto, 14590 Florissant Path, asked what the tentative start and finish date of the construction would be. She also wanted to know what hours the construction would be allowed to take place each day. She stated that Kohl's is currently remodeling and they work 10 p.m. to 6 a.m.

Mr. O'Neil said they would not be proposing any overnight construction. He said they would follow city ordinance on the hours of construction. As part of a remodel like this, they will be changing stuff inside the store as well, and that may be done in the overnight hours to alleviate impact on guests during the day. But, that would all be done internal to the store.

Lovelace stated that staff has made Kohl's aware of the overnight noise issue. They are doing an internal remodel of the store and so that is after hours. Generally the City allows construction between the hours of 6 a.m. and 10 p.m., but that is external construction.

Felipe Sisuentes, General Manager of the Apple Valley Menard's, 1025 Baldwin Drive. He said the height of the block wall would deaden the sound. He said they have external speakers that operate in the yard and they would be willing to remove them to be as compliant as they can. He said that the expansion of the store and materials being moved from the external drive-throughs to the interior of the store will minimize the traffic in the yard because the materials would leave via the front of the store. He stated that the traffic won't be as extensive as what it is currently in the parking lot. Mr. Sisuentes also stated that the expansion of the store will be creating 50-75 more jobs in the community.

Chair Churchill hearing no further comments from the public closed the public hearing. She stated that the Commission is uncomfortable taking action on the remodeling project until the first meeting in June. Both items will be brought back at that time and acted on together. Chair Churchill commented to Lovelace that the Commission would like to see better drawings and a better definition of the back wall. She said it would

be helpful to see a colored drawing of what it will look like. She stated because the wall is so long and massive the Commission wants to make sure it is attractive. Chair Churchill asked Lovelace if there are landscaping requirements.

Lovelace stated there will be landscaping required with the site plan authorization. He said he would look at the PD-646 for the requirements, although it will be similar to the 2 ½% means construction cost that the City typically uses.

Chair Churchill said she would like the applicant to provide a landscape plan.

Lovelace stated that the petitioner will be relocating some of the existing trees, but a more detailed landscape plan would be beneficial.

6. LAND USE/ACTION ITEMS

- A. Menard's 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 147th Street West.**

See Agenda Item 5E for public hearing comments.

- B. "PD-409" Ordinance Amendments – Consideration of amendments to allow medical office uses in the planned development.**

City Planner Tom Lovelace stated that the applicant is requesting a proposed amendment to Chapter 155, Appendix F, Article 16 of the City Code of Ordinances to add medical or dental office uses as permitted uses in Planned Development Designation No. 409. The amendments would remove the prohibition on medical or dental office uses by adding them to the list of limited business office uses subject to meeting the existing restrictions placed on the amount of building area that can be devoted to limited business office and retail uses in the planned development. The proposed deletions are indicated on the draft with a ~~striketrough~~ and changes are underlined. The planned development zoning district is generally located along the east side of Galaxie Avenue, between 145th and 147th Streets West. Located within the zone are three multi-tenant buildings totaling 76,854 sq. ft., a 9,676 sq. ft. self-service car wash and auto repair facility, and a 14,198 sq. ft. auto body shop with an outdoor storage yard on approximately 8 acres and a 12-acre storm water pond.

The planned development district allows several types of uses, including limited industrial, general business, retail business and limited business uses. While some retail business and limited business uses, which would be described as office and professional use, are permitted in the development, the planned development district was primarily intended to provide for light industrial and general business uses, which are described as uses that tend to serve other business and industry. The planned development district restricts retail and limited business office by limiting the amount of retail uses or limited business uses to 35% of the building floor area and when combined cannot exceed 50% of the total floor area of a building. Finally, the planned development ordinance specifically states that "medical or dental office uses are specifically prohibited".

Lovelace stated that this item was brought before the Planning Commission as a discussion item at their December 16, 2009, meeting. The applicant indicated, via a letter, that the purpose of their request is due to the current economic conditions that have impacted the commercial real estate market, which has left their property

at 14690 Galaxie Avenue at 74% occupied. They also indicated that their building has historically seen average occupancies between 95-100%.

In their memo to the Commission, staff indicated that they did not believe that the applicant had provided any reason other than current economic conditions that would warrant an amendment. Staff expressed concerns about the ability of properties within the planned development to provide parking for medical uses and a shift of retail and office uses from other areas of the community to property intended primarily for industrial uses. Therefore, staff was reluctant to recommend amendments to Planned Development Ordinance No. 409 to allow for medical offices as a permitted or conditional use.

The applicant provided additional information at the meeting about absorption rates of industrial/commercial/office property in Dakota County. Dawn Grant of Towle Properties indicated that vacancy rates in these categories continue to rise. However, she pointed out that current employment statistics from the Minnesota Department of Employment and Economic Development (DEED) state that the health care related industry is one of the few currently seeing employment increases.

At a previous meeting, the Commission was concerned about the loss of industrial space; shifting existing medical uses from another area of the city to this location; parking, traffic flow and traffic congestion. Ms. Grant suggested that they do a parking study and come back to the City with the results, which they completed and presented to the Planning Commission at their meeting of April 7, 2010.

The parking study identified three different scenarios for one multi-tenant building within the planned development that offer different percentages for medical, office and warehouse uses, which was reviewed by the City's Traffic Consultant. Results of the study and review by the City's consultant concluded that, subject to some slight modification of the on-site parking numbers, the parking would be able to accommodate a certain percentage of medical office use within the planned development, likely at the limited business office/retail use percentages already identified in the planned development ordinance.

Therefore, staff has prepared amended language that would include medical and dental office uses as a permitted use subject to the condition that when combined with retail and other limited business uses it would occupy no more than 35% of the building floor area within the planned development and when combined would not exceed 50% of the total floor area of a building. This amendment could create up to approximately 26,900 sq. ft. of leaseable space for medical and office uses in the planned development, which represents about 3.5% of available office space in the city. It would not increase the current amount of space in the planned development that could be used for limited office uses, but simply provide the property owners with another group of users that could lease space.

A public hearing was held at the Planning Commission meeting of May 5, 2010. No comments were received from the public; however, there were several comments from the Commission. The following is a synopsis of the Commission's comments followed by any staff comments as appropriate.

A question was asked regarding what zoning districts are medical and dental offices currently allowed. *Staff response – Medical and dental office uses are currently allowed in the “LB” (Limited Business), “NCC” (Neighborhood Convenience Center), “BP” (Business Park), and “RB” (Retail Business); as well as Planned Developments No. 144, 244, 290, 341, 507, 532, 646, 679, 703, 716, and 739.*

A question was asked on the numbers of current medical and dental spaces available or in use in comparison to the industrial space that the City is looking at taking away with this proposal. *Staff response – CBRE, a commercial real estate company, has provided the following vacancy statistics for Apple Valley:*

- 338,000 sq. ft. of multi-story/multi-tenant office space with 111,204 sq. ft. vacant (32.9%)

- *441,510 sq. ft. of industrial/office warehouse/office showroom/single story office space with 44,328 sq. ft. vacant (10.04%)*
- *1,959,560 sq. ft. retail space with 80,914 sq. ft. vacant (4.13%)*

CBRE does have numbers for medical office buildings but the 2005 Apple Valley Office/Industrial Market Potential Study identified 205,850 sq. ft. of medical office buildings in the city. Most of the buildings are single story therefore; they were likely included with the industrial/office warehouse/office showroom/single story office space.

A concern was raised regarding the favorable tax advantage that this property will have over properties in different zoning districts. *Staff response – Staff contacted the Dakota County Assessor’s Office to inquire about assessed values and tax rates. The simple answer is that the tax rate is roughly the same but the valuation would generally be higher on single or multi-tenant office space than office showroom space such as the subject buildings. Therefore, because of the higher valuation on office property the taxes would likely be higher than it would be on office showroom property.*

Lovelace asked for any comments or questions from the Planning Commission.

Commissioner Melander stated that there are plenty of places for a medical place to be with 100,000 sq. ft. vacant space currently available. He is concerned about losing industrial space.

Commissioner Alwin questioned the proposed ordinance amendment language of “nonsurgical and noninvasive surgery.”

City Attorney Sharon Hills stated that nonsurgical and noninvasive surgery are two separate procedures. A person can have surgery, with it being noninvasive, such as a root canal. She suggests leaving the two words in as distinctive words.

Commissioner Alwin said the language permits anything that is nonsurgical and if they want to do surgery, it can’t be invasive. He stated he is okay with the language.

Commissioner Diekmann questioned the ordinance language of “total floor area of existing buildings within the district”. He asked if this means existing buildings today or existing buildings in the future. And, if so, he asked if the City can limit it to the existing total areas of the existing buildings today with a number. He said that a multi-story building could be built.

Lovelace said that in theory that could be done, but in order to meet the area requirements and performance standards such as setback and parking requirements, the lots would not allow for a multi-story building unless a parking garage was built.

Commissioner Diekmann said his concern is that according to his calculations there are 236,000 sq. ft. of vacant space available now for this type of use.

Lovelace stated that he is not advocating for this project, although he reminded the Commission that limited business uses are already allowed on this property thought medical and dental uses are excluded.

Commissioner Schindler stated that regardless of the building size, the 35% and 50% would limit how much can be medical. He said they would just be adding different types of businesses that can take advantage of the space; it won’t change the amount that is industrial uses.

Commissioner Scanlan said his concern is making changes like this just for economic reasons. He commented that if the Commission makes a change here, it may give cause to be making changes like this for other areas and he is also concerned about the potential loss of industrial space.

Lovelace stated that there is a certain percentage of limited office space allowed currently. The request would just be adding the medical and dental component to it.

Commissioner Scanlan said that he also has concerns about parking because it would be an industrial space intermixed with medical. He said that the way the property is set up, he feels it doesn't seem like the right mix.

Commissioner Diekmann asked what the ordinance language of "50% maximum" uses this would include.

Lovelace said that would be 50% in combination with retail or limited office uses.

Commissioner Diekmann asked how much of this one particular building is retail or limited office uses right now.

Eddie Rymer with Marketplace Commercial said that it is approximately 1,000-1,200 sq. ft.

Lovelace stated that the building is approximately 15,000 sq. ft. total. AVR occupies most of the building.

Dawn Grant with Towle Properties said that the building she represents is a total of 23,500 sq. ft., of which retail or limited office uses currently is 2,349 sq. ft. She said they currently do not have any true industrial tenants.

Chair Churchill asked Hills if immunizations and injections would be prohibited.

Hills said no because it is nonsurgical and noninvasive treatment. She said the goal is to have true offices and not a clinic or a hospital.

Commissioner Diekmann said that he is comfortable and does not think that adding these two uses are going to negatively impact industrial land use in the City.

Commissioner Scanlan asked if the Commission should limit it to any of the properties that are outlined.

Lovelace said that it could be divided up into zones, although it would require reworking of the planned development ordinance in order to do so.

Chair Churchill said that if they want these buildings to be multi-purpose then they must allow for the possibility that there may be an office use next to something that a person wouldn't normally consider appropriate next door.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Schindler, to recommend approval of the following amendments by changing A16-2(20)(c) of Article 16 to read as follows:

(c) Any medical or dental office use, for purposes of this Clause, shall be limited to outpatient examination and nonsurgical and noninvasive surgery treatment for human care provided by a medical doctor, dentist, orthodontist, optician, psychologist or psychiatrist, chiropractor, or other licensed health provider. The use shall not operate as an emergency care or "urgent care" center or clinic and shall not operate between the hours of 8:00 p.m. and 7:00 a.m.

The motion carried 4-2. Commissioners Melander and Scanlan dissented.

7. OTHER BUSINESS

A. Review of the Upcoming Schedule and other Updates

Community Development Director Bruce Nordquist stated there was no further review.

8. ADJOURNMENT

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

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to adjourn the meeting at 11:29 p.m. The motion carried 6-0.