

CITY OF APPLE VALLEY  
PLANNING COMMISSION MINUTES  
MAY 5, 2010

**1. CALL TO ORDER**

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

Members Present: Tom Melander, David Schindler, Ken Alwin, Tim Burke, Keith Diekmann, and Paul Scanlan

Members Absent: Chair Jeannine Churchill

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

**2. APPROVAL OF AGENDA**

Acting Chair Melander asked if there were any changes to the agenda. Hearing none he called for a motion.

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

**3. APPROVAL OF MINUTES OF APRIL 21, 2010**

Acting Chair Melander asked if there were any changes to the minutes. There being none, he called for approval of the minutes.

MOTION: Commissioner Alwin moved, seconded by Commissioner Schindler, to recommend approval of the minutes of the April 21, 2010, meeting. The motion carried 5-0. Commissioner Burke abstained.

**4. NEW BUSINESS**

**A. Trail and Sidewalk Study – Introduction and Update**

Associate City Planner Kathy Bodmer reviewed her memo. She stated that the City of Apple Valley received a \$25,000 grant from the Dakota County Public Health Department to hire a consultant to prepare a Trail and Sidewalk Plan for the City. The study will involve analyzing the existing non-motorized network and preparing a plan for improving the system.

An important task that will be done for the study will be to solicit input from the City's elected and appointed officials and the general public. The feedback will be used to help define the City's goals for the trails and sidewalks. The study must be completed in a couple of months, so the consultant has developed a work plan that will help move the study along quickly. At its April 22, 2010, meeting, the City Council authorized the formation of a task force that will act as the steering committee for the study. The task force will be made up of 2 members each from the Planning Commission, Parks and Recreation Advisory Committee, and the Traffic Safety Advisory Committee; in addition, key individuals representing Apple Valley businesses, organizations and user groups will also be invited to participate. Although the task force will be limited to

11 members, it is hoped that all who may be interested in biking and walking in Apple Valley will attend the meetings and provide input into the process.

The study will be kicked off with an Open House on May 17, 2010, at 6:30 p.m. at the Municipal Center. The meeting is open to the public and will take broad input from residents and others interested in biking and walking.

The Trail & Sidewalk Study Task Force will have its first meeting on Wednesday, May 26, 2010, at 7:00 p.m. It is expected that the group will have one or two additional meetings between May and July, 2010.

Bodmer introduced Michael Schroeder, Project Manager with LHB, Inc. and Jack Broz with Howard R Green Company.

Mr. Schroeder and Mr. Broz provided a brief overview of the process via a PowerPoint presentation.

Bodmer stated that Chair Churchill and Commissioner Scanlan stated an interest in participating on the task force.

Acting Chair Melander hearing no other interested parties, thanked Commissioner Scanlan for his participation. He also thanked Mr. Schroeder and Mr. Broz for their presentation.

## **5. CONSENT ITEMS**

### **A. Dick's Valley Service C.U.P. – Consideration of an amendment to the existing conditional use permit to allow for the expansion of the current outdoor storage area.**

The applicant is requesting an amendment to an existing Conditional Use Permit (CUP) for outdoor storage of vehicles on the subject site. The "I-2" (General Industrial) zoning district allows for the outdoor storage of vehicles provided the items to be stored outside are screened. The City approved a CUP for outdoor storage of vehicles in 2004 and approved an amendment to the CUP in 2005. The original approved plans indicated a future outdoor vehicle storage area with 84 parking spaces that would be constructed on the northern portion of the lot. The applicant is now requesting to amend the CUP because he wishes to expand the existing outdoor storage area to accommodate a growth in businesses.

The outdoor storage area is proposed to be expanded 130 feet to the north, and an additional 84 parking spaces would be added. The storage area meets all required setbacks. The applicant has submitted revised plans that show the storage area will be screened with a four foot (4') high berm and an eight foot (8')-tall opaque vinyl fence on top of the berm. This meets the requirements of the original CUP. The combination of berming and fencing will meet the screening requirements stated in the Code, which requires a minimum six foot (6') tall opaque screen surrounding industrial property that abuts residentially zoned lots. The plan also shows a mix of Amur maples and Black Hills spruce on the north and east sides of the expanded storage area to help further screen and soften the area. This is the same mix of trees that has been used around the existing storage area.

Jeff Kehrler, the City's Natural Resources Coordinator, has reviewed the plan and is concerned about the use of Black Hills spruce on the north side of the site because there is an overhead power line that sits in the 10-foot wide drainage/utility easement on the north side of the property. Black Hills spruce can reach a height of 30-60 feet at maturity and the spruce would interfere with the power lines. Therefore, Mr. Kehrler is advocating the use of techny arborvitae on the north side of the property to help soften the fence/berm screen. Black Hills spruce can be used on the east side of the property without impact to existing utilities.

As part of the original plan review, a sightline study was submitted showing the view for residents of the townhouses in the Midtown Village development, who will be located approximately 130 feet from the outdoor storage area. The study showed that with the fence constructed on top of the berm, the majority of outdoor storage area would be screened. The new storage area will be approximately 140 feet from the closest residents located in the Cedar Isle development. The applicant has submitted a sightline study that indicates the majority of the storage area will be screened from these residents as well.

The City Engineer has reviewed the plan and states that an infiltration area must be constructed to accommodate the additional impervious surface. An erosion control plan is also necessary. These will be required as part of the Natural Resources Management Permit review, which is standard.

Acting Chair Melander asked the Planning Commission if they had any questions or concerns regarding the proposal. Hearing no comments, he called for a motion.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Burke, to recommend approval of an amendment to Resolution #2004-171 and Resolution #2005-206 to allow for outdoor storage of vehicles as shown on the site plan received in City offices on April 20, 2010, at Lot 1, Block 1, Apple Valley Industrial Park Fifth Addition (6781-146<sup>th</sup> Street W.), in accordance with all applicable City codes and standards, and subject to the following requirements:

1. The expanded outdoor storage area shall be screened with a combination of an 8-foot tall fence constructed on top of a 4-foot high berm on the north and east side of the area to match the existing berm/fence screen surrounding the existing storage area.
2. There shall be no more than 84 parking spaces in the expanded storage area.
3. A stormwater infiltration device shall be installed to the satisfaction of the City Engineer.
4. The property owner shall install 15 four-foot (4') tall techny arborvitae on the north side of the property, and 7 six-foot (6') tall Black Hills spruce on the east side of the expanded storage area to the satisfaction of the Natural Resources Coordinator.

The motion carried 6-0.

**B. Lindstrom Variance – Consideration of a 4 ft. front yard setback variance to allow for an attached garage.**

The Lindstroms reside at 14537 Elysium Place, located on the southwest corner of 145<sup>th</sup> Street West and Elysium Place. The front setback requirement in this zoning district is 20'. The applicant is proposing a 450 sq. ft. addition to the home and a 240 sq. ft. garage addition attached to the existing garage. On April 21, 2010, the Planning Commission reviewed a variance request for a second attached garage. The Commission stated they could not recommend approval of the request because it did not meet the hardship test required by state statute and the City's zoning code. The Commission asked the Lindstroms to work with staff and revise the plan. The applicant has done so and submitted a revised plan. The plan shows the existing 2-stall garage (20'x22') will be expanded into a 3-stall attached garage. A portion of the garage addition will encroach 4' into the required 20' setback. By moving the garage forward, the applicant does not have to make costly structural adjustments to the house, specifically, moving an interior staircase. Besides the 4' encroachment into the 20' setback, the house complies with all other zoning regulations and no other variances are needed. The driveway is 28' wide, which complies with the zoning code, and the impervious surface coverage is 35% of the lot area, which also complies with the code.

The applicant states they need a third stall on their garage to accommodate their family needs. Their children will reach driving age soon, and they want to have a place for the vehicles. The applicant would prefer not to construct a detached garage on the back side of the house because the back yard is relatively small, and they would like to preserve the open space. The elevations show a mix of Hardie panel lap siding and stone veneer.

The state statutes and the City's zoning code require that in order to approve a variance, the City must find that "special conditions applying to the structures or land in question are particular to such property, or immediately adjoining property; do not apply generally to other land or structures in the district; ...and that the variance will not merely serve as a convenience to the applicant, but is necessary to alleviate demonstrable hardship or difficulty."

The house was constructed in 1987. The applicant would like to make a significant investment in the house in order to stay in the neighborhood. The City has approved variances for front porches, covered entries, house additions and the like all with the goal of encouraging homeowners to reinvest in their homes, create street presence, add architectural elements, and the like. Additionally, the granting of the front setback variance will not have a significant impact on the neighboring properties. The applicant has revised the plans so that only a small variance is needed, and the location of the garage addition is the only viable alternative. Therefore, staff believes the variance is justified.

Acting Chair Melander asked the Planning Commission if they had any questions or concerns regarding the revised proposal. Hearing no comments, he called for a motion.

**MOTION:** Commissioner Alwin moved, seconded by Commissioner Burke, to recommend approval of a variance for the single family residence located at 14537 Elysium Place (Lot 6, Block 3, Delaney Park Second Addition) to reduce the front yard setback from the required 20' to 16' for the construction of a 10' x 18' garage as shown on the submitted plan received in City offices on April 28, 2010, subject to all applicable City codes and standards in order to improve the front appearance of the house, and because it is in keeping with the spirit and intent of the Comprehensive Plan.

The motion carried 6-0.

## **6. PUBLIC HEARINGS**

### **A. Miss Marie's Learning Center Expansion – Consideration of an amendment to the existing conditional use permit to allow for the expansion of an existing daycare facility.**

Associate City Planner Margaret Dykes stated that the applicant is asking for an amendment to an existing Conditional Use Permit for expansion of a daycare facility in "LB" (Limited Business) zoning district.

In 2008, the City approved a CUP for a daycare facility in the Von Hanson's office building at 14510 Pennock Avenue. The existing daycare occupies approximately 1,500 sq. ft. of the approximately 3,500 sq. ft. building. The applicant would like to use approximately 980 sq. ft. of space of a former tenant's space to expand their facility; the daycare would then occupy a total of 2,480 sq. ft. Von Hanson's will continue to occupy the remaining 1,000 sq. ft. The center will be licensed to serve a maximum of 35, though the applicant expects there to be about 25 children in the center at any one time. There will be 2 teachers and 2 aides. The facility will operate from 7 a.m. to 6 p.m. with school starting at 9 a.m. The hours are staggered so that there are not significant traffic peaks for morning drop-offs and afternoon pickups.

The site is generally south of the intersection of Pennock Avenue and 145<sup>th</sup> Street West, which are both collector roads. The expanded child care facility could generate up to 175 average daily trips (ADT) (5 trips per student). The remaining office area could generate about 10 ADT; the total ADT from the site could be 185 ADT. An average daily trip is the average of traffic volume over a 24-hour period. A trip is a one-way vehicular movement from one point to another. The average daily trips include a parent dropping off a child in the morning, picking up a child in the afternoon, daycare workers arriving and leaving work, field trips for

children, delivery trucks, and the like. Staff is comfortable that the site and surrounding roads can accommodate the expanded child care center.

There are 20 parking spaces on the site. The daycare requires 15 spaces, and Von Hanson's requires 7 parking spaces. The site is 2 parking spaces short. However, the Von Hanson's office manager says that there are usually only 3-4 people in the office. Because of the staggered start times for the child care facility, and the relatively low use of the remaining office space, staff is comfortable with the parking arrangement. The daycare has been operating in this location for the last 18 months, and the City has not received any complaints about parking or traffic congestion at this site.

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

Hearing none, Acting Chair Melander asked for comments from the petitioner.

Marie Zurick, owner of Miss Marie's Learning Center, stated that her center is more of a school and that she teaches in the Montessori method. Most of her business is by word of mouth and she has a lot of support from the families of her students. She said they have helped her with the fenced-in play area, business signage, and her website. Her business has increased 50% since January. She is very excited about her business and welcomes the Commission members to stop by and see her "miracles" as she calls her students. She said the average age of her students is four and out of 27 this year, she only had three children that could not read.

Acting Chair Melander thanked Ms. Zurick for her comments. He opened the hearing to comments from the public.

Hearing no comments from the public, Acting Chair Melander closed the public hearing. He said that although it is not the policy of the Planning Commission to act on an item the same night as its public hearing, there are no outstanding concerns from the public and the Commission. Acting Chair Melander called for a motion from the Commission.

**MOTION:** Commissioner Alwin moved, seconded by Commissioner Diekmann, to recommend approval of a Conditional Use Permit for a 2,480 sq. ft. child care facility in a "LB" (Limited Business) zoning district at 14510 Pennock Avenue (Lot 7, Block 2, Valley Commercial Park 2<sup>nd</sup> Addition) as shown on the plans received in City offices on April 12, 2010, in accordance with all applicable City codes and standards, and the following conditions:

- a) The child care facility shall only occupy 2,480 sq. ft. of floor area.
- b) There shall be no more than 35 children in the facility.

The motion carried 6-0.

**B. "PD-409" Ordinance Amendment – Consideration of an ordinance amendment to allow medical office uses in a planned development.**

City Planner Tom Lovelace stated that the petitioner is requesting to make an 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 planned development zoning district is generally located along the east side of Galaxie Avenue, between 145<sup>th</sup> and 147<sup>th</sup> 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”.

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.

Concerns were raised by the Commission regarding loss of industrial space, shifting existing medical uses from another area of the city to this location, parking, and traffic flow; with parking and traffic congestion being the biggest issues. Ms. Grant completed a parking study and came back to the City with the results, which was presented to the Planning Commission at their April 7, 2010, meeting.

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 our consultant concluded that subject to some slight modification of the on-site parking numbers as pointed out by our consultant, 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 have 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.

Lovelace asked for comments and questions from the Planning Commission.

Commissioner Diekmann asked which zones medical and dental offices are currently allowed within the City.

Lovelace stated they would generally be allowed in limited business and retail zoning districts. Some of the existing planned development districts would also allow for medical and dental offices.

Commissioner Scanlan asked for numbers showing 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.

Lovelace said that can be obtained.

Commissioner Scanlan asked if it would apply to both sites.

Lovelace said yes, all of the area within the development. He said there is an opportunity, if there was concern, to go deeper into the planned development ordinance and create two sub zones and identify the types of uses, although the property owner may not have that interest as they always want flexibility.

Acting Chair Melander asked if this use would be okay in Apple Valley Commons.

Lovelace said yes.

Acting Chair Melander agreed with Commissioner Scanlan in regards to current occupancy spaces by medical and dental offices.

Commissioner Diekmann commented that he is somewhat opposed to this since this may create a favorable tax advantage for this property over other zoning districts within the City. He said he would like to see as much information as staff can get.

Lovelace stated that is a question for the petitioner to provide an answer for at the next meeting.

Acting Chair Melander opened the hearing for public comment. Hearing none, he closed the public hearing.

Acting Chair Melander opened the public hearings for all four of the telecommunications conditional use permits – Wildwood Park, Hayes Park, Galaxie Park and Christ Church. He stated the following:

- Each of us on the Planning Commission is an appointed, unpaid volunteer. We are serving on this Commission out of a sense of civic duty. We applied and were appointed by the City Council to serve, not to further our own agendas.
- We have each sworn an oath to obey the laws of the City and State regardless of any personal feelings on an item. Although we appreciate that for many of you this is an emotional issue, we are bound to vote based on law, rules, and logic. Please frame your comments with that in mind.
- We review, evaluate and decide on each item independently. Most of us do not even talk to or see each other outside of these chambers. As a matter of fact, if more than a couple of us want to get together it has to be announced ahead of time as getting together constitutes a public meeting by law. The general public has the right to be there at those public meetings and you are always invited.
- We are fortunate to live in a democratic society, and this process tonight is an exercise of that right. It is the job of the Planning Commission to gather information, sometimes provided by staff or secured on our own, solicit comments from our fellow citizens, and finally to make a recommendation to your duly elected City Council, who has the authority to make the final decision.

We make recommendations, they make the decision. We hold public hearings to ensure our recommendation has received information from the affected public. Any applicant has the right to initiate an application and review by the City, just as Clearwire has done. The City is a co-applicant to allow this process to fully receive input, listen, and discuss. The City has taken no action to approve of this installation. City staff has organized the information and will present it this evening. We will ultimately make a recommendation based on the law, your comments, and our best judgment. It may take multiple meetings to finalize that recommendation. Just as our recommendation may or may not always follow staff's recommendation, neither does the City Council have any obligation to agree with our recommendation.

- Since it is our responsibility to listen, gather all the information and identify all the questions and concerns we can tonight, I will ask that if another speaker has presented your concerns, to please refrain from repeating those comments.
- I will not allow this meeting to become raucous. Comments to the Commission are to be made from the podium, not the floor. Cheers, boos, and the like will not be tolerated. I will use the gavel and I will remind a person once of this. I expect us all to be civil and respectful of each other as we proceed this evening. Thank you in advance.

Acting Chair Melander asked City Attorney Sharon Hill, to cover the legal issues present.

City Attorney Sharon Hills stated that the Commission had received a memo prepared by their office outlining the standards and considerations for the Planning Commission and City Council in considering all four conditional use requests. The Planning Commission is bound by standards and considerations under both Minnesota law and federal law. Under Minnesota law the requested conditional use by the applicant is a permitted use on all four sites under its zoning but it is subject to a conditional use permit. Under Minnesota law the applicant must submit information and documentation establishing that it has met all of the conditions of the zoning regulations for the conditional use permit. If staff, the Planning Commission, and the City Council find that the applicant has met all of the requirements for the conditional use permit, the law does mandate that the permit be issued.

Hills stated that under federal law, because it is a communications tower, the City is not allowed to simply prohibit a tower within the City. Three of the four properties are owned by the City; one is owned by a private party. In the case of Christ Church, the City is bound by the federal statute for the Telecommunications Act as well as Minnesota, meaning that the Planning Commission cannot simply prohibit it if the property owner wishes to have the conditional use permit. With respect to the three properties owned by the City, despite the federal law, the City still owns the property. So the City can decide whether it wants that use on its land.

A conditional use permit would not be issued to Clearwire. The permit runs with the land and authorizes that use on the land. In regard to the Planning Commission's considerations or standards, the Commission must make a reasonable and not an arbitrary capricious decision. The Commission's decision must be based on facts, it cannot be based on mere comments, mere opinions, that are without any basis in fact. They can listen to neighborhood opposition, but their decision cannot be based solely on opposition. That opposition must be based on facts. The Planning Commission must have concrete facts to support the opposition.

Acting Chair Melander thanked Hills for her comments and asked Lovelace to proceed with the hearings.

**C. Wildwood Park Telecommunications Tower C.U.P. – Consideration of a conditional use permit to allow for construction of a 145 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 145-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 and any structure exceeding forty (40) feet in “P” (Institutional) zoning district. 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 145-foot tall telecommunications monopole and ground equipment in an 800 sq. ft. (20 ft. x 40 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 in the park.

The petitioner has provided a site plan that shows the location of the monopole and the 218-foot fall zone radius, which encroaches 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. Revisions to their site plan or tower height will be needed to bring their proposal into conformance with the fall zone requirements.

A note on their enlarged site plan identifies a 200 sq. ft. of area to be used to construct the monopole and ground equipment; however the dimensions of the area identify an 800 sq. ft. area.

The area surrounding the park has rolling terrain with significant grade changes and the tree canopy appears to be at an average height of 50-60 feet. Based upon their general siting requirements, the petitioner has not provided the City with specific information on why the proposed telecommunications tower at this location needs to be 145 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.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to hold the public meeting open. The motion carried 6-0.

**D. 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 145<sup>th</sup> Street West and Hayes Road. The zoning code requires that a conditional use permit be approved for wireless communication towers and any structure exceeding forty (40) feet in “P” (Institutional) zoning district.

The applicant is proposing to erect a 90-foot tall telecommunications monopole and ground equipment in an 800 sq. ft. (20 ft. x 40 ft.) area which will be sandwiched between two ball fields, approximately 200 feet north of the Hayes Ice Arena. No paved access is available to the site.

The Parks and Recreation staff has reviewed the proposed site plan and would like the petitioner to consider two other options. The first option would be to co-locate on an existing skating rink light pole in the park. If that location would move them out of their site ring, the second option would be to locate closer to the Hayes Ice Arena, particularly, along the north side of the building.

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.

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 not provided a landscape plan with their application. The petitioner should consider landscaping around the perimeter of the site.

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.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to hold the public meeting open. The motion carried 6-0.

**E. 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 and any structure exceeding forty (40) feet in “P” (Institutional) zoning district.

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 an 800-sq. ft. area (20 ft. x 40 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 plans do not show the distance from adjacent properties and buildings, in particular the property and dwelling unit located at 7097 Upper 139<sup>th</sup> Street West. The petitioner will need to provide the monopole

setback from the nearest adjacent properties and distance from the nearest structures on adjacent properties to ensure that the monopole location meets the minimum required setbacks.

The 90-foot tall telecommunications monopole will replace an existing 50-foot tall skating rink light standard. The lights will be replaced with stadium lights 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.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to hold the public meeting open. The motion carried 6-0.

**F. 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 and any structure exceeding forty (40) feet in “P” (Institutional) zoning district.

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. The petitioner indicates that the fence will match the exterior building, but they have not indicated the height of the fence.

The placing of the tower and equipment will require the loss of a minimum of two parking spaces. The petitioner should provide the City with assurances that the loss of parking spaces will not reduce the number of spaces below 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.

Lovelace asked for comments and questions from the Planning Commission.

Acting Chair Melander asked for clarification of what the fall zone is.

Lovelace stated that the fall zone is the tower height. The City requires 1.5 times the fall zone to the property line and 2 times the fall zone to any building on adjacent property.

Commissioner Alwin stated that the initial design appears to have all the wires imbedded within the tower and the ordinance states that if someone else comes along and wants to collocate, they can. He asked if it will be possible for them to mount additional antennas on the outside of the monopole.

Lovelace replied that could happen. He stated if the current proposals are approved, they would have to come back to the City for an amendment to the conditional use permit (CUP).

Commissioner Alwin stated that because it starts out without any antennas on the outside, doesn't mean that is how it will always look.

Lovelace replied that is correct.

Commissioner Diekmann asked if the reason the petitioner is applying for the towers is because there were no other towers in the regions that could be collocated on.

Lovelace replied that is correct.

Commissioner Diekmann requested a map of the City showing all cell towers and antennas on buildings, reservoirs and otherwise.

Acting Chair Melander asked if there are any in church steeples.

Lovelace stated that he is not aware of any.

Acting Chair Melander agreed with providing a map with current antenna locations. He said that would be an important piece of information to have.

Commissioner Scanlan asked to see photos of the pole base and ground equipment.

Lovelace said that he could obtain those.

Commissioner Scanlan asked why none of the current locations of towers within the City were chosen for collocating.

Lovelace said that the applicant could expand on that, although he remembers from discussions, that the applicant was concerned about meeting the setback requirements of the fall zone.

Acting Chair Melander asked for the applicant to step forward.

Steven Kenny, with FMHC Corporation, representing Clearwire said they are looking to provide wireless internet service to the City of Apple Valley for a cost of \$29.99. He stated that due to staff's concerns of setbacks from the right-of-way, they have reduced the height of the pole at Wildwood Park and are now looking at construction of a 125 ft. monopole. In regards to Hayes Park, he said they could not locate at the ice rink because of setback requirements, although if the City would allow a variance, that would be a better location for them. Mr. Kenny stated that they are requesting a variance and a conditional use permit at Galaxie Park.

Acting Chair Melander asked legal counsel if the City could provide a variance on the fall zone.

City Attorney Sharon Hills said that the setback issue is a condition of the conditional use permit.

Commissioner Diekmann stated that when the petitioner spoke of Hayes Park, he spoke of a structure that would require a variance. He asked if that is a structure that already exists on the park or a structure outside of the park.

Mr. Kenny said he thinks it is both. It is close to the Community Hayes Center and also the homes outside of the park. He said there would be a setback to the nearest residential structure.

Mr. Kenny stated that he has staff with him: David Austin, Project Manager; Jim Susag, Attorney with Larkin Hoffman (representing Clearwire); Julio Hernandez, Radio Frequency Engineer; and Jay Gustafson, Backhaul Engineer.

Acting Chair Melander stated that staff may be needed to answer the public's comments.

Commissioner Scanlan asked if there was a landscaping plan.

Mr. Kenny stated that as far as he understands, that is part of the process with the City. If the City would like them to provide landscaping, they are willing to do so.

Commissioner Scanlan asked if they could work with staff to present a landscaping plan.

Mr. Kenny said definitely.

Commissioner Burke asked what the loss of 20 feet in tower height would do to the coverage area.

Mr. Kenny said it won't hurt their coverage area that much.

Commissioner Burke asked the petitioner how much shorter they could go.

Mr. Kenny said they could not go any shorter; they are at the threshold. He said they have to be above the trees.

Acting Chair Melander stated that they received a thick packet of information on what the FCC parameters are for towers and the frequencies for each location.

Mr. Kenny stated that Clearwire is a wireless internet service provider which is 51% owned by Sprint. From Sprint's perspective, the internet will be much faster on a cell phone than it currently is. Clearwire would market for wireless internet service for residential homes and laptops, speeding up data.

Acting Chair Melander, hearing no further comments, opened the hearing for public comment.

Dan Christopher, 6110 Falcon Ridge Trail, stated that Hagermeister has one monopole in it already. He thinks the pole should go at the other side of the hockey arena at Hagermeister rather than at Christ Church. He also has a concern about the power lines along Johnny Cake Ridge Road and how they might interfere with the monopole's fall zone.

David Lindroth, Sr., 8150 137<sup>th</sup> Street West, stated that he has a degree in physics with over 20 years experience as a research physicist in the area of electro magnetic wave interaction with materials, mainly dielectrics. He asked the Planning Commission members to obtain answers to the following points:

- Microwave Frequencies
  - What frequency will be emitted?
  - What is the absorption of this frequency in materials, humans, and animals?
  - What are the current FCC safety standards for humans? In the U.S.? In Europe?
  - What does the latest biophysical research data show for effects produced in this frequency range?
- Beam Patterns
  - What type of antenna will be used?
  - What is the beam pattern per antenna?
    - Altitude?
    - Azimuth?
    - Side lobes?
- Power Emitted
  - CW or pulsed?
  - Power level at antenna, watts?
  - Intensity at antenna, W/cm squared?
  - Intensity decrease as a function of distance out to ½ mile?
- Lightning
  - Grounding?
  - EM pulse effects on surroundings?
- Guy Wires
  - How many?
  - Length?
  - Bird kills?
  - Coyotes?

Mr. Lindroth requested the public that was watching that evening, to call into the City, and weigh in on the issue. He said the public's opinion is important. In conclusion, he stated that with his experience and education, he does not want this.

John Hessburg, 13650 Havelock Trail, Director of the Wildwood Park Alliance, stated that Wildwood Park is wrapped on all sides by two main developments, Palomino Woods with 261 homes and Wildwood Park Townhomes with 93 units. The Alliance has contacted over 90% of the residents in Palomino in person or by leaflet in the last two weeks. He stated that 207 residents of Palomino Woods have signed their petition to defeat the disgraceful telecomm proposal. He stated that their battle is not against the Apple Valley Planning Commission or the City Council or any of its employees'; their battle is against a telecomm goliath.

He stated that there are four major items of concerns that the neighbors have:

- 1) The tower will be a ghastly eyesore.
- 2) It may pose serious health risks 10-15 years from now.
- 3) Property values will be severely harmed by an estimate of 10-15% immediately upon construction of the towers.
- 4) The microwave tower will likely fall outside of many key provisions of Apple Valley City code.

Mr. Hessing asked on behalf of the Alliance for the park to be left alone.

Kristopher Lee, 8295 137<sup>th</sup> Street West, attorney with Winthrop & Weinstine stated he is there to speak to the proposal at Wildwood Park. There is a lot of community opposition and federal law states that the Commission can't base their decision solely on community opposition. He stated that the City code provides the Planning Commission with the means to make their decision beyond community opposition. He said he wanted to focus on two City code provisions, one of which are the setback requirements, although after listening to Mr. Lovelace and Mr. Kenny that has apparently been taken care of and met.

Mr. Lee stated the second City code provision is the conditional use permit. He said there are permitted uses and conditional uses within institutional districts which is what Wildwood Park is zoned. Permitted uses include things like elementary schools, public libraries and recreation buildings. He stated that Mr. Lovelace said conditional uses within this area are structures over 40 feet, but what the provision in Section 155.248 actually says is any structure otherwise permitted but exceeding 40 ft. in height. Mr. Lee said that the permitted structures do not list monopoles or towers of any kind.

Mr. Lee continued to say that the applicant, for a conditional use permit, has the burden to prove that this use is appropriate in the area. He said there are a lot of standards listed in Section 155.399 and that it is the applicant's burden to show that this use is suitable and all of these standards are satisfied. Mr. Lee said the standard he would like to focus on is Section D, subpart 3. He said it reads in part, the structure, whatever is proposed for a conditional use to be granted has to be designed, constructed, operator-maintained so as to be compatible or similar in an architectural and landscape appearance with the existing or intended character of the general vicinity and will not change the essential character of that area nor substantially diminish or impair property values within the neighborhood. Mr. Lee said that by that provision alone, he doesn't see how it is possible for a 125 ft. tower to be designed to be compatible or similar in an area where Wildwood Park is located. He asked that the Planning Commission not recommend this tower to the City Council.

Bill Tschohl, 8130 137<sup>th</sup> Street West, stated that he has lived in Apple Valley since 1979. He is a real estate agent. He talked about not changing the character of the neighborhood, the resident's concerns about the effects of the property values and activities being affected by the wireless tower. He stated that if the tower has any possibility of falling over and coming close to the homes, homeowners probably won't get FHA financing. He said that today that is 90% of the industry's financing in this price range. He said FHA uses the same guideline in evaluating this as they do for power lines.

Mr. Tschohl said the tower was voted down in Andover and also voted down in Blaine. He showed the Commission his copy of Healthy Parks, Healthy People, provided by the City and stated that the mission statement reads, "To preserve and hold for the future our natural environment to ensure freedom of choice and recreational experiences". He asked that the Planning Commission not change the character of the neighborhood and give the resident's back their peace of mind and don't make them worry about lower home values and what possible effect the tower will have on their lives.

Father Mark Boulos, 13801 Gladiola Way, stated that he is the pastor of St. Elizabeth Orthodox Church and a new resident of Apple Valley. He said that public space and community space is precious and it is at a premium in other places in the country and sooner or later it will be that way here. He said this is about taking space from a park that does not beautify the area but for something that serves commercial interests. He said he is also an IT manager and has AT&T, Verizon, and T-Mobile devices that can connect to the internet, as well as through Charter Cable in his home. He doesn't see why the City would take away precious community space to provide access for yet another carrier. He said that it has no value. He asked the Planning Commission to consider how precious the City's green space is and cancel this proposal.

Jan Miller, 13650 Garrett Avenue, stated that she lives near Galaxie Park. She said she wanted to know how this would impact the flight path of airplanes over Galaxie Park. She also wanted to know if they could be installed on the sirens as they are pretty tall. Lastly, she wanted to know if there would be anything published in the newspapers for the community to understand all the pros and cons of how Clearwire came to want to put up the poles in the parks. She would like to know if the company came to the City and said they wanted to put these up. Ms. Miller said that she already has interference on her radio and TV from the airplanes overhead.

Chuck Hauwiller, 13645 Harwell Path, asked if the FAA radar bubble located in the neighborhood would be affected by the towers at all.

Kathy Aschenbrener, 8343 Upper 138<sup>th</sup> Court, asked who would be responsible for removing the towers if the company fails. She also asked how long the lease is and how long the permit will be good for. She commented that \$30/month is not a good enough rate for her to switch.

Gerald Rue, 8163 137<sup>th</sup> Court, said that if the City allows this to be built, he asked what is next. He said this will open the door for something else to be built and soon there will be commercial and industrial in the middle of residential areas. He asked the Commission members to not permit this to start otherwise it won't stop.

Cliff Habeck, 13647 Harmony Way, said he has lived in Apple Valley for 37 years. He said he would like to see the petitioner provide to each property owner, who can see the tower, a visual of what the tower will look like from their premises.

Steve Langseth, 8235 Havelock Court, asked if the guidance, given by counsel to the Planning Commission of the 1996 Telecommunications Act, would be published.

Hills replied that the Attorney's office would not be publishing the actual law provisions. She said they are published in the federal statutes and are accessible to the public.

Community Development Director Bruce Nordquist stated that the summary provided by the Assistant City Attorney is a memo within the Commissioner's packets and it is public information. Anyone can request it from the Planning Department.

Van Vorhis, 13675 Harwell Path, asked why the proposed tower cannot be located near the Apple Valley High School. He said it is a wide open area and the school could get some extra revenue.

Hearing no further comments from the public, Acting Chair Melander asked Lovelace if he had anything to add.

Lovelace commented that staff is requesting for the hearings to be held open until the next meeting of the Planning Commission.

Acting Chair Melander called for a motion to hold the public hearing open until the next meeting of the Planning Commission.

MOTION: Commissioner Diekmann moved, seconded by Commissioner Alwin, to hold the public meeting open. The motion carried 6-0.

Acting Chair Melander thanked the public for their kindness and respect. He said he appreciates the organization of the community's presentations.

Lovelace also advised the public that a lot of comments and questions were received. He stated that staff will do their due diligence to acquire the information as quickly as possible, although it may require additional time. He said staff may not be ready by the meeting of May 19<sup>th</sup>. Lovelace requested that the interested parties keep in contact with the City of Apple Valley in case the public hearings need to be extended.

## 7. LAND USE/ACTION ITEMS

- A. **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 and reconfiguration of Flagstaff Avenue, from Florence Trail to 147<sup>th</sup> Street West (*Tabled at the request of the petitioner*).**

## 8. ADJOURNMENT

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

MOTION: Commissioner Alwin moved, seconded by Commissioner Burke, to adjourn the meeting at 9:35 p.m. The motion carried 6-0.