CITY OF APPLE VALLEY
PLANNING COMMISSION MINUTES
JANUARY 19, 2011

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: None.

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

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

3. APPROVAL OF MINUTES OF DECEMBER 15, 2010

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

MOTION: Commissioner Burke moved, seconded by Commissioner Schindler, to recommend approval of the minutes of the December 15, 2010, meeting. The motion carried 5-0. Commissioner Diekmann abstained.

4. CONSENT ITEMS

--NONE--

5. PUBLIC HEARINGS

--NONE--

6. LAND USE/ACTION ITEMS

--NONE--

7. OTHER BUSINESS

A. Sign Code Discussion.

Associate City Planner Margaret Dykes stated that staff presented information to the City Council at their meeting of January 13, 2011, on several sign code issues. The presentation was prompted by concern about the following issues:

1. Political Signage: location, number, size, enforcement of ordinance.

2. Off-Site Directional Signs for Public Gathering Areas: authority to place directional signs on Municipal State Aid (MSA) streets; if so, establish content-neutral standards to allow directional signage for places such as Hayes Community and Senior Center, LaGrand Conference Center, Old Chicago Conference Center, Enjoy! restaurant, and Kelley Park.

In addition to those two issues, staff also brought forward information about other potential code amendments, related to dynamic signs, menu boards, and various "housekeeping" issues.

Political Signage
The 2010 election brought over 100 complaints related to political signs; the complaints were taken by the Code Enforcement division from September through November. The majority of the complaints related to the number, location of signs on public property, duplication of signs in one location, and setback of the signs.

The Code defines political signs as "A temporary sign which displays information pertaining to an upcoming governmental district, city, county, state or national election." In this report, the term "political sign" is used interchangeably with "campaign sign". The City Code does not expressly prohibit non-commercial signs from being located within the City ROW, but the Code requires political signs, garage sale signs, and promotional signs for City events to be set back a minimum of 18 feet from the edge of the roadway. Furthermore, the sign code does not prohibit signs from being placed on City-owned property, but they are prohibited under Section 96.06 of the Code.

The City Attorney has compiled a synopsis of the issues related to the regulation of political/campaign signs followed by the citation in the City Code, as well as a series of alternative responses to address the sign complaints:

A. Issue: Political/Campaign signs placed on either City-owned ROW or property

City Code Requirement: The sign code does not prohibit campaign (or any noncommercial) signs within a ROW, but requires such signs be set back 18 feet from the back of the curb. The setback provisions effectively permits the signs within the ROW depending on the ROW width. Note: Section 154.05 (G) prohibits commercial signs within ROW.

Section 96.06 of the City Code prohibits obstructions or objects within the public ROW or "public grounds." This section also applies to signs. NOTE: These two sections are in conflict.

Alternative responses:

1. Do not amend Code, leaving 18 ft. setback in place.

Staff response:
Staff has concerns about continuing to allow the signs within the ROW because they may interfere with buried utilities and reduce sightlines for motorists. This was a particular concern this year because of the number of signs, and the fact that some of the larger signs used metal braces and poles that could cut private

utility lines. Additionally, sign volume may be excessive depending upon area size of ROW. Please note: Minnesota law protects all "noncommercial" signs, including political, during the election period. If the City continues to regulate based on setback only, and a political sign meeting the setback is within the ROW, then the City cannot restrict the number or size of these types of signs. This may continue to be a concern in future election years. However, the state law prohibiting the city from regulating the size or number of a noncommercial sign during the election period does not apply to a city's absolute ban of signs within its ROWs. In other words, if the city prohibits signs in its ROW, the statute does not override and allow the signs during the election period because the statute deals with size and number - not location.

2. Amend Code for absolute ban on campaign signs within any city ROW or property.

Staff Response:

- This action is consistent with state law that prohibits sign(s) within any municipal state-aid street. (Minn. Stat. Ch. 160), as well as Dakota County regulations.

- If the Code is amended to prohibit campaign signs from the ROW; then the Code must then prohibit all signs from the ROW. The City cannot permit a sign with a message for garage sale, but prohibit a same size and location sign with a message for "Joe for Congress." Likewise, the city cannot exempt a garage sale sign placed by Suzie resident, but prohibit a "50% sale" sign placed by Suzie's apparel store. It is the sign itself that would be considered a public safety and welfare issue and not the "content" of the sign. A sign regulation cannot be content-based.

- As a consistent policy, if signs are to be prohibited on city property, then it should be prohibited from all city property (parks, easements, ROW, municipal facilities/buildings). Thus, permitting signs in a specific city space is not advisable by the City Attorney as it is not consistent with the overall prohibition of placement of objects and structures within city property - one location is no different than any other location as far as the rationale goes for prohibiting signs within city property.

3. Amend Code to prohibit signs within ROW, except for "temporary" signs. This must be applicable to any type of sign, i.e. garage sale signs, open house real estate signs, weekend sale at Suzie's apparel store or pancake breakfast at the Legion.

Staff Response:

- The definition of "temporary" is complicated. What is "temporary"? How many days? Enforcement as to "temporary" is also an issue. How would the sign be tracked to ensure it falls within the "temporary" definition? Requiring permits is very burdensome for the purpose of the regulation and monitoring the days the sign was actually located at a site will be difficult, if not impossible in some cases.

- This would allow anyone or any business to place any signs within the ROW, provided the sign falls within the definition or regulation of "temporary." Thus, a garage sale or open house sign or the American Legion's pancake breakfast sandwich board sign, as well as a campaign sign could be permitted, if they meet the definition of "temporary".

- This option will not resolve staff's concern regarding signs interfering with buried utilities or street sight-lines. Temporary signs can pose the same concerns.

- For consistent application of the rational basis for prohibiting signs in the ROW or city property, the basis for the ban is the same if it is there permanently or temporarily, three days or three months.

4. Amend Code to prohibit signs within ROW, except in designated areas.

Staff Response:

- If certain areas are permitted for signs, including campaign signs, than any sign must be permitted in the area. This does not alleviate the clutter of signs on a corner or area, and may be worse because all signs then are placed in one spot.

- Option to limit designated areas to a time period during a calendar year. This will not stop individuals from placing signs elsewhere, which city staff will still need to enforce.

- For consistency in regulations, the one location is no different than any other location as far as the rationale goes for prohibiting signs within ROW. The reason for prohibiting signs within the ROW is the same regardless of the location of the ROW.

B. Issue: Identification on Political signs

City Code: Requires name and address of person responsible for placement

Staff Response:
If the City allows the placement of signs within the ROW, then the City can require identifying information as a reasonable "time, place, manner" provision. However, political signs placed on private property cannot be required to have identifying information. The Code must be amended to delete the requirement in accordance with the U.S. Supreme Court and Minnesota federal court declaring such requirement (under state law) to be unconstitutional. This update can be done along with any other amendments to the Code.

<u>Public Purpose Off-Site Directional Signage</u>
Over the last few years, there have been requests to allow off-site signs to be located in the ROW advertising specific businesses. State statutes prohibit commercial advertising in the ROW. Additionally, in 2005, the City Attorney wrote an opinion that stated signage identifying tenants within certain areas of the City was in conflict with state regulations pertaining to Minnesota State Aid (MSA) funding requirements. The statute prohibited the display of any commercial advertising within a City ROW, and any such advertising could risk future funding of improvements within that ROW. The City has never installed such signage on MSA-funded ROW because of that potential risk.

However, the City still receives requests for clear directional signs that provide information to visitors wishing to go to certain popular larger public gathering areas, including private establishments. Gathering areas that seem to need additional signage include Central Village locations like Kelley Park, LaGrand Conference Center, and Enjoy! restaurant (due to the large meeting area regularly used for public events). Other gathering areas where directional signage could be used include Hayes Community and Senior Center, and the American Legion.

City staff and the City Attorney are researching the City's authority to locate directional signs within MSA-funded ROW. If permitted, there are standards required by the state, but additional standards for such signs would need to be drafted so that they addressed the following: size, location, and materials used for the signs. Additionally, criteria will be needed in order to determine which particular gathering areas could be placed on the signs; these could be the size of the venue, and the venue location relative to major roads (less visible areas may need signage).

Other Code Amendments

In the past, there have been informal requests for the following sign code amendments:

- Allow for LED dynamic signs on pylon or ground signs.
- Allow additional menu boards for Class II restaurants with dual drive-thru lanes.
- Expand the time frame for temporary signs from 30 days to 45 days.
- Create more specific standards for temporary signs (size, material, number).
- Allow some smaller temporary signs to be located on commercial property without need of a temporary sign permit.
- Base allowable building and pylon signage on total building façade area rather than on retail floor area. The City Attorney has advised staff that basing allowable exterior signage on the building façade is a more rational nexus than basing it on floor area.

In addition, there are several "housekeeping" changes to the Code that need to be done in order to clarify and organize certain sections.

Dykes commented that no action is needed this evening. Staff will continue to discuss these items at City Council meetings, and will bring any formal actions back to the Planning Commission for further review and action at a later date.

Acting Chair Melander commented that he recently attended the Chanhassen Dinner Theatre and noticed a directional sign for the establishment along Highway 5 on the way there.

Dykes asked if it was a lit sign.

Acting Chair Melander said it was just a regular road sign.

City Attorney Sharon Hills stated that with regard to MSA funded highways and the statute that applies, there are exceptions in the statute and exceptions for certain types of restaurants, hotels, and campgrounds that may get directional signage on roads; for example the blue signs seen on roadways. She said the establishments must meet certain requirements before they can have those roadway signs, which are distinct and separate from city municipal streets.

Acting Chair Melander thanked Dykes for her presentation.

B. Appointment of Commissioners to the American Institute of Architects (AIA) Sustainable Design Assessment Team (SDAT) Program Steering Committee.

City Planner Tom Lovelace stated that on December 27, 2010, the American Institute of Architects (AIA) notified the City that they had been selected to the AIA Sustainable Design Assessment Team (SDAT) Program. This program provides pro bono services and up to $15,000 (with a required one-time minimum

payment by the City of $5,000) that will "bring together multidisciplinary teams of professionals to work with community decision-makers and stakeholders through an intensive planning process" with the purpose of helping communities develop a vision and framework for a sustainable future. The goal of the program is to help communities create a sustainable relationship between cultural, environmental, and economic systems.

The focus of the assessment will be on the Cedar Avenue corridor and the changes and sustainable transit oriented development (TOD) opportunities associated with inclusion within the corridor of the first Bus Rapid Transit (BRT) system in the state. The AIA asked that participating communities consider at least two topics in three areas of study: environmental, social, and economic. In the application, staff identified the following topics to be analyzed during this assessment:

Environmental
- Water quality/quantity
- Transit and land use
- Energy efficiency

Social
- Demographic/income shifts
- Sense of community/place
- Pedestrian/bicycle options
- Access to jobs/housing

Economic
- Revitalization
- Jobs
- Transportation

Other important components of the assessment are securing an educational partner and creating a steering committee made up of representatives from the public and private sector. We have received confirmation from the University of Minnesota Humphrey Institute that they will provide graduate students who will assist us with the SDAT program, while at the same time preparing a sustainable master plan for a specific area within the SDAT study area as part of fulfilling a graduation requirement.

The SDAT team is expected to make a preliminary visit to the city sometime in February. The preliminary visit is usually 1-1.5 days, is very informal, and the overall goal is simply to familiarize the team with our community and to meet with a few key stakeholders and steering committee members. Their goal is to leave the preliminary visit with a list of the types of multi-disciplinary volunteers that they would like to bring back with them for the full team visit.

The next step for the City is to establish the steering committee. Staff proposed in the application that the steering committee be comprised of the following:

- Planning Commission (3)
- City Council (2)
- Chamber of Commerce (2)
- Corridor Businesses (2+)
- Corridor Residents (2+)

- Other Stakeholders:
  - Transit Services (MVTA)
  - County Transit
  - University of Minnesota Students
  - County Planning
  - City Staff
  - Local Architects
  - Blue Cross/Blue Shield Active Living Representative

Lovelace stated that the Commissioner's packets included AIA information that identifies the SDAT program phases, proposed charette schedules and a sample agenda. This will be a very intense process requiring committee members to commit 3-4 days of their time to this project, although the rewards could be significant. Apple Valley is the first community in Minnesota to be chosen for this program which has been in existence since 2005 and is an offshoot of the Regional/Urban Design Assistance Team (R/UDAT) program, which began in 1967. Also, this process and its end product should provide the City with a framework for successful TOD development/redevelopment in a suburban bus rapid transit corridor, which can be used as a model for other suburban communities.

With the expectation of the preliminary visit expected in February, staff anticipates that the charette would likely happen during the month of April, with some meetings with the steering committee and various subcommittees (if needed) during the month of March. Lovelace stated that this is a very tentative schedule and expects that a firm schedule would be determined once the steering committee is established and has participated in the preliminary visit with the SDAT team.

Lovelace asked if there were any questions or comments from the Planning Commission.

Commissioner Diekmann asked Lovelace to explain more about the commitment.

Lovelace replied that until the memorandum of understanding is approved by the City Council, he would not have a definitive timeline. He stated that at a minimum it will be 3-4 solid days and then perhaps occasional times/evenings when the committee would break into sub-committees. Also, there may be some time spent brainstorming before the charette takes place.

Acting Chair Melander asked if the Planning Commission members would be notified ahead of time.

Lovelace said that he is hoping to provide two weeks to a month notice of meeting dates.

Commissioner Diekmann asked when the charette is anticipated to happen.

Lovelace replied perhaps late April/early May. He said they would like to get things done before summer because of the wide range of people involved.

Acting Chair Melander asked for at least three volunteers to sit on the Apple Valley Sustainable Design Assessment Team Steering Committee.

Commissioners Burke, Scanlan, Diekmann, Schindler, and Acting Chair Melander all volunteered to be participants on the Sustainable Design Assessment Team (SDAT) Program Steering Committee and its subcommittees.

Lovelace stated that the various subcommittees will branch off on different aspects. He thanked the Commission members for their participation.

C. Review of the Upcoming Schedule and other Updates.

Community Development Director Bruce Nordquist reminded the Commission and audience that there still is an additional Planning Commission member seat available. He stated that the deadline for application submission is Friday, January 21st at 4:30 p.m. and applications can be found on the City's website or by contacting the City Clerk.

8. ADJOURNMENT

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

MOTION: Commissioner Schindler moved, seconded by Commissioner Alwin, to adjourn the meeting at 7:25 p.m. The motion carried 6-0.

Respectfully Submitted,

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Barbara L. Wolff, Planning Department Assistant

Approved by the Apple Valley Planning Commission on _____.