

PUBLIC HEARING
CONSIDER ORDINANCE TO AMEND CITY CODE SECTION 9.15 TOWERS;
CASE OF CITY OF RAMSEY
By: Tim Gladhill, Associate Planner

Background:

A moratorium on the construction of cell towers is currently in effect until September 17, 2008. Staff has proposed amendments to City Code Section 9.15 relating to the construction of cell phone towers.

The following items are enclosed for your information:

- a) Proposed edited Ordinance with additions and deletions
- b) Exhibit Depicting Current Tower Overlay
- c) Exhibit Depicting Proposed Tower Overlay District
- d) Exhibit Depicting Current Tower Locations
- e) Minutes from May 27, 2008 City Council Work Session

Notification:

Notification for the Public Hearing was properly advertised per State Statute. Letters were sent to property owners affected by the change in the Tower Overlay District.

Observations:

As the Planning Commission may recall, there has been significant discussion regarding height of towers, placement of towers, as well as some minor revisions needed since the addition of the Public/Quasi-Public and Town Center zoning designations to City Code. Due to the increased demand of cell phone technology, cell phone providers state that additional towers and antennas are required to provide basic, uninterrupted service to customers, especially from within structures or homes. Many cell phone providers have stated that since more people are using cell phone technology as the primary phone, 911 communication on a cell phone from within a structure is especially important. Currently, towers are allowed on residential parcels that are at least ten (10) acres in size within the Tower Overlay District as shown on the official Zoning Map, all church, park, government, school, utility, and institutional sites that are also at least ten (10) acres in size, and all commercial and industrial parcels.

The Telecommunications Act of 1996 states that:

1. Local government regulations may not unreasonably discriminate among providers of functionally equivalent services.

2. Local regulations may not prohibit or have the effect of prohibiting the provision of personal wireless services.
3. Local units of government must act within a reasonable period of time on any request by a provider to place, construct, or modify a personal wireless service facility.
4. A decision by a local unit of government to deny a request must be in writing and supported by substantial evidence.
5. A local regulation may not regulate the placement, construction, or modification of a facility based on the environmental effects of radio frequency emissions to the extent that such facilities comply with FCC regulations.

It appears that the southern half of the community has the ability to be well served based on the current ordinance due to the proximity to industrial and commercial parcels which allow for cell towers. However, various sections of the City show potential gaps in coverage and will require construction of towers on residential parcels in order to achieve basic service needs. The major change as a result is amendments to the Tower Overlay District to allow for coverage within those gaps. Staff studied lot size and site conditions (natural resources, topography, etc.) to determine the new overlay district. Furthermore, there exists an opportunity to co-locate antennas on to existing utility transmission lines in the northern section of the City to enhance coverage in that area.

Attached is the proposed ordinance to amend City Code requirements for cell phone towers. The following is a summary of the proposed changes to the ordinance:

- Antennas may be co-located on existing structures in parks; however, no new towers may be constructed within parks
- Height limits have been adjusted to 100 feet in all zoning districts; an additional 20' may be granted if a minimum of two services are co-located on the tower
- The 10 acre requirement for lot size has been eliminated; lot size will be regulated by setback, which is the height of the tower plus 10 feet
- Towers must still be designed to accommodate three users
- Towers will not be allowed to be constructed in the Critical River Overlay District or Town Center Zoning Districts; however, antennas will be allowed to be mounted on existing structures in these areas
- Towers and antennas will not be allowed to be constructed in the H-1 Highway Business District; this area is reserved for future Highway 10 alignment and construction of towers would result in added relocation costs
- Towers will be allowed to be constructed the Public/Quasi-Public Zoning District

Funding Source:

The code revision is being processed as part of regular staff duties.

Recommendation:

Staff recommends the proposed ordinance amending City Code Section 9.15.

Commission Action:

Motion to recommend that City Council amend the Tower regulations in Section 9.15 of City Code.

-or-

Motion to recommend that City Council deny the proposed ordinance to amend the Tower regulations in Section 9.15 of City Code.

Review Checklist:

Assistant Community Development Director

PC: 07/10/08

ORDINANCE #08-__

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN AMENDMENT TO CHAPTER 9 WHICH IS KNOWN AS THE ZONING REGULATIONS CHAPTER OF THE CITY CODE OF RAMSEY, MINNESOTA.

AN ORDINANCE AMENDING SECTIONS 9.15 (TOWERS) OF CITY CODE

The City of Ramsey ordains:

SECTION 1 AUTHORITY

This ordinance is adopted pursuant to and under the authority of the City Charter of the City of Ramsey.

SECTION 2 AMENDMENTS

Section 9.15 (Towers) shall be amended to read as follows:

9.15 Towers

9.15.01 Definitions. The following words and terms when used in this Chapter shall have the following meanings unless the context clearly states otherwise:

Antenna – Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

Commercial Wireless Telecommunication Services – Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

Tower – Any ground or roof mounted pole, spire, structure, or combination thereof, including supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade.

Communication Tower, Guyed – A tower that is supported, in whole or in part by wires and ground anchors.

Communication Tower, Monopole – A tower consisting of a single pole, constructed without guyed wires and anchors.

Communication Tower, Lattice or Self-Support – A tower that has three (3) or four (4) sides of open-framed steel supports.

Height of a Communication Antenna or Tower – The height of a freestanding communication antenna or tower is determined as the distance from ground level to the highest point on the tower, including the antenna.

Height of a Roof or Wall Mounted Antenna or Tower – The height of a communication antenna that is mounted on a roof or wall shall be measured from the point where the base of the antenna and its supporting structure appends to the roof or wall to the highest point of the supporting structure, including the antenna.

9.15.02 Purpose. In order to accommodate the communication needs of residents and business while protecting the public health, safety, and general welfare of the community, the Council finds that these regulations are necessary in order to:

- a. facilitate the provision of wireless telecommunication services to the residents and businesses of the City;
- b. minimize adverse visual effects of towers through careful design and siting standards;
- c. avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and
- d. maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

9.15.03 Towers in Residential Zoning Districts. Construction of towers to support commercial antennas that conform to all applicable provisions of this Code may be allowed only the following locations:

- a. ~~Parcels at least 10 acres in size within the Tower Overlay District as shown on the official Zoning Map.~~
- b. All church, park, government, school, utility, and institutional sites ~~at least 10 acres in size~~
- c. If the proposed tower is to be located within a residential district, documentation must be included in the application that demonstrates that the tower cannot be reasonably located within a commercial, industrial, or public/quasi-public zoning district.

9.15.04 Towers in Town Center and Critical River Overlay Zoning

Districts. Construction of towers to support commercial antennas shall not be allowed in Town Center and Critical River Overlay Zoning Districts, except that:

- a. Antennas may be attached to existing structures in provided the antenna does not extend more than 20 feet above the highest point of the structure or tower.

9.15.05 Towers in the H-1 Zoning District. Construction of towers to support commercial antennas shall not be allowed in the H-1 Highway Business Zoning District. Antennas may not be constructed on existing structures in the H-1 Zoning District.

9.15.064 Use of City Owned Land for Wireless Telecommunication Antennas and Towers

a. **Priority of Users**

1. City of Ramsey;
2. Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the City of Ramsey and private entities with a public safety agreement with the City of Ramsey;
3. Other governmental agencies, for uses which are not related to public safety; and
4. Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public.

b. **Minimum Requirements**

1. The user must obtain a lease from the City, which shall take the following criteria into consideration:
 - (a) The antennas or tower will not interfere with the purpose for which the City owned property is intended;
 - (b) The antennas or tower will have no adverse impact on surrounding private property;

(c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the City Council after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;

~~(d) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the City Council after considering comparable rates in other cities, potential expenses, risks to the City, and other appropriate factors;~~

(de) The antennas or tower will not interfere with other users who have a higher priority as discussed in Section a;

(ef) Upon reasonable notice, the antennas or tower may be required to be removed at the user's expense;

(fg) The applicant must reimburse the City for any costs which it incurs because of the presence of the applicant's antennas or towers; and

2. The user must obtain all necessary land use approvals, including a conditional use permit from the City.

c. **Special Requirements.** The use of certain City owned property, such as water tower sites and parks, for wireless telecommunication antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of wireless telecommunication antennas or towers on these special City owned sites will be allowed only when the following additional requirements are met:

1. **Water Tower Sites.** The City's water tower represents a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the City's water supply is of prime importance to the City. As access to the City's water storage system increases, so too increases the potential for contamination of the public water supply. For these reasons, the placement of wireless telecommunication antennas or towers on existing or future water tower sites will be allowed only when the City is fully satisfied that the following requirements are met:

- (a) The applicant's access to the facility will not increase the risks of contamination to the City's water supply;
- (b) There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;
- (c) The presence of the facility will not increase the water tower maintenance costs to the City; and
- (d) The presence of the facility will not unreasonably interfere with maintaining the water tower.

2. **Parks.** The presence of certain wireless telecommunication antennas or towers represents a potential conflict with the purpose of some City owned parks. Wireless telecommunication antennas ~~or towers~~ will be considered only in ~~the following parks~~ after the recommendation of the Park and Recreation Commission and approval of the City Council. Antennas may extend a maximum on twenty feet above existing structures:

- ~~(a) Parks adjacent to an existing commercial or industrial use;~~
- ~~(b) Parks in Residential zones that are a minimum of 10 acres in size, except that antennas may be attached to existing structures in parks that are not 10 acres in size provided the antenna does not extend more than 15 feet above the highest point of the structure or tower.~~
- ~~(c) Park maintenance facilities.~~

d. **Application Process.** All applicants who wish to locate a wireless telecommunication antenna or tower on City owned property must submit to the City Administrator, or his/her designee, a completed application and detailed plan that complies with the submittal requirements of the Zoning Ordinance along with other pertinent information requested by the City.

e. **Termination.** The City Council may terminate any lease if it determines that any one of the following conditions exist:

- 1. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use;

2. A user's frequency broadcast unreasonably interferes with other users of a higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis; or
3. A user violates any of the standards in this policy or the conditions attached to the City's permission.

Before taking action, the City will provide thirty (30) days notice to the user of the intended termination and the reasons for it, and provide an opportunity for the user to address the City Council regarding the proposed action. This procedure need not be followed in emergency situations.

- f. **Reservation of Right.** Notwithstanding the above, the City Council reserves the right to deny, for any reason, the use of any or all City owned property by any one or all applicants.
- g. **Use of Revenue.** All revenue generated through the lease of City owned property for wireless telecommunication towers and antennas shall be made payable to the City of Ramsey and transmitted to the City's Department of Finance.

Revenue shall be credited as follows:

1. ~~1.~~—To the specific operating activity using the land upon which the wireless telecommunication towers and antennas are located:
 - a. ~~(for example, To the~~ Water Utility Fund when located on water utility property);
 - b. ~~2.~~—To the Park Improvement Fund if located on park or open space land;
 - c. ~~3.~~—Any revenues not meeting the above criteria shall be applied as general revenues of the General Fund.

9.15.075 Co-location Requirements. All commercial wireless telecommunication towers erected, constructed, or located within the City shall comply with the following requirements:

- a. A proposal for a new commercial wireless telecommunication service tower shall not be approved unless the City Council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or

building within a one (1) mile search radius of the proposed tower due to one or more of the following reasons:

1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified professional and the interference cannot be prevented at a reasonable cost.
 3. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a professional engineer.
 4. In spite of its best efforts, within sixty (60) days, the applicant was unable to obtain approval to co-locate on an existing or approved tower or building.
 5. Other reasons that make it impractical to locate the planned telecommunications equipment upon an existing or approved tower or building.
- b. Shared use of existing communications towers shall be preferred to the construction of a new tower. Any proposed commercial wireless telecommunication service tower shall be designed structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users.

9.15.086 Tower Construction Requirements. All towers erected, constructed, or located within the City, and all wiring therefore, shall comply with the requirements set forth of Chapter 8 of this Code.

9.15.097 Tower and Antenna Design Requirements. Proposed or modified towers and antennas shall meet the following design requirements:

- a. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and design, except in instances

where the color is dictated by federal or state authorities such as the Federal Aviation Administration.

- b. Commercial wireless telecommunication service towers shall be of a monopole design unless the City Council determines that an alternative design is preferred in cases where structural or design considerations, neighborhood compatibility, locational availability, or the number of potential co-locations warrants this consideration.
- c. All towers must be designed so that the tower site and setbacks will contain guyed wires, debris, and the tower in the event of a collapse, except towers of monopole design.

9.15.1008 Tower Setbacks Bulk Standards. Towers shall conform with each of the following requirements:

- a. ~~a.~~ No part of any communication antenna or tower, equipment, guyed wires, or braces shall at any time extend across or over any part of the public right-of-way, public street, highway, sidewalk, or recreation trail.
- b. In Business and Industrial Zoning Districts, towers shall meet the setbacks of the underlying zoning district with the exception of industrial zoning districts, where towers may encroach into the side or rear setback area, provided that the side or rear property line abuts another non-residential zoned property and the tower does not encroach upon any easements.
- c. Towers constructed within the Tower Overlay and Public/Quasi-Public Zoning Residential Zoning Districts shall maintain a minimum setback equal to 1.5 times the height of the tower plus 10 feet from any lot line.
- d. Towers shall not be located between a principal structure and a public street, with the following exceptions:
 - 1. In industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street.
 - 2. On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.
- e. The setback shall be measured between the base of the tower located nearest the property line and the actual property line.

- f. A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device, or similar structure.

9.15.09 Tower Height

- ~~g. a. In residential districts, the height of a communication tower shall not exceed one hundred and twenty (1200) feet. In commercial districts, the height of a communication tower shall not exceed one hundred sixty five (165) feet. In industrial districts, the height of a communication tower shall not exceed one hundred seventy five (175) feet.~~
- h. Multi-user towers may exceed the height requirements as stated above by up to an additional twenty (20) feet provided that two additional users, as stated in Section 9.15.05, have co-located their antennas on the monopole structure. A tower extension requires an amended Conditional use Permit.
- i. The City Council may increase the height of a tower if the applicant is able to demonstrate to the satisfaction of the City Council that the surrounding topography, structures, vegetation, and other factors make the height limit for a complying tower impractical.

9.15.110 Tower Lighting. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower, or if required by the City Council for safety reasons. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

9.15.121 Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

9.15.132 Accessory Utility Buildings. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood, as determined by the City Council.

9.15.143 Abandoned or Unused Towers or Portions of Towers. Abandoned or unused towers or portions of towers shall be removed as follows:

- a. All abandoned or unused towers and associated facilities shall be removed within twelve (12) months of the cessation of operations at the site unless a time extension is approved by the City Council. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application.
- b. Unused portions of towers above a manufactured connection shall be removed within twelve (12) months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new conditional use permit.

9.15.154 Antennas on Roofs, Walls and Existing Towers

- a. The placement of wireless telecommunication antennas on roofs, walls, and existing towers, utility poles and structures is permitted in any district, regardless of parcel size, provided the antenna does not extend more than 2015 feet above the highest point of the structure or tower. The placement of wireless telecommunications antennas on roofs, walls, and existing towers or structures may be approved by the City Engineer, provided the antennas meet the requirements of this Code, after submittal of 1) a final site and building plan as specified by Chapter 8 of this Code, and 2) a report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, and the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.
- b. The replacement of an existing light pole or lighting standard in order to accommodate the placement of an antenna thereon shall be approved by issuance of a building permit based upon administrative review.

9.15.165 Interference with Public Safety Telecommunications. No new or existing telecommunications service shall interfere with public safety telecommunications, in accordance with the rules and regulations of the Federal Communications Commission. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the City at least ten (10) calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.

9.15.176 Additional Submittal Requirements. In addition to the information required elsewhere in this Code, development applications for towers shall include the following supplemental information:

- a. A report from a qualified and licensed professional engineer which:
 1. describes the tower height and design including a cross-section and elevation,
 2. documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas,
 3. describes the tower's capacity, including the number and type of antennas that it can accommodate, and
 4. includes other information necessary to evaluate the request.
- b. For all commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- c. Before the issuance of a building permit, the following supplemental information shall be submitted:
 1. Affirmation that the proposed tower will comply with any applicable regulations administered by the Federal Aviation Administration, and
 2. A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with the aforementioned structural and electrical (but not radio frequency) standards.

9.15.187 Antennas Designed for Private Reception of Television and Radio Signals. Private antennas designed for reception of television and reception and transmission of radio signals, including antennas (less than sixty (60) feet in height if free-standing and fifteen (15) feet in height if roof mounted) used for amateur or recreational purposes, provided they are not located in a front yard and do not infringe upon requirements of the Federal Aviation Administration, shall be exempt from the provisions of Chapter 9.15. Antennas that are intended to be sixty (60) feet or more in height if free-standing and fifteen (15) feet or more in height if roof-mounted shall require a conditional use permit from the City.

9.15.198 Conditional Use Permit Required. Except as otherwise provided for in this Section of the Code, it shall be unlawful for any person, firm, or corporation to erect, construct in place, place or re-erect, or replace any tower without first making application to the City Council and securing a conditional use permit therefore as hereinafter provided. Routine maintenance of towers and related structures shall not require the issuance of a conditional use permit.

9.15.2019 Violations. Any person who shall violate any of the provisions of this Section shall be guilty of a misdemeanor.

9.15.210 Existing Antennas and Towers. Antennas and towers in existence as of July 14, 1997, which do not conform to or comply with this Section of the Code are subject to the following provisions:

- a. Towers may continue in use for the purpose now used and as now existing but may not be replaced or materially altered without complying in all respects with this Section.
- b. If such towers are hereafter damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former use, location, and physical dimensions upon obtaining a building permit therefor, but without otherwise complying with this Section, provided, however, that if the cost of repairing the tower to its former use, physical dimensions, and location would exceed 50% of the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with this Section.

Historical Note

Established by Ord. #97-08, effective July 14, 1997.

Ord #00-13 amended §9.15.03 modified to restrict commercial towers to residential parcels at least 10 acres in size and the area, §9.15.04.c.2.(a) to require park sites to be at least 10 acres in size in order to qualify as a site for a commercial tower, §9.15.05.a and 9.15.05.b, co-location – amend one-half mile to mile search radius and require all towers to accommodate at least two additional users, regardless of the proposed height, §9.15.08.c. Tower setbacks to include language requiring a tower setback from residential dwellings equal to 1.5 times the tower height, §9.15.09 Tower Height – from 75 feet to 120 feet and eliminate language allowing for additional height to accommodate a second user because a design to accommodate 2 additional users will not be required per the amendments to 9.15.05,

§9.15.14 – to include existing structures, §9.15.17 increase private antenna height exemption from 50 feet to 60 feet. Effective February 26, 2001.

Ord. #01-05 amended §9.15.08 (b) and (c) and 9.15.08 (e) – Tower Setbacks has been modified to clarify required setbacks for commercial towers located in Business and Industrial Zoning Districts, to require that commercial towers be set back 1.5 times the height of the tower from any lot line in residential districts, and to remove language allowing a lesser tower setback if a licensed engineer shows that the collapse of a tower can occur within a lesser distance than the required setback. Effective April 9, 2001.

SECTION 3 SUMMARY

The following official summary of Ordinance #08-__ has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

This Ordinance #08-__ replaces the existing tower section in City Code, amends the tower overlay district, includes provisions for towers in the public/quasi public zoning district and adds restrictions in parks as well as Town Center, Critical Area Overlay, and H-1 Highway Business Districts.

SECTION 4 EFFECTIVE DATE

The effective date of this ordinance is thirty (30) days after its passage and publication, subject to City Charter Section 5.07.

Adopted by the Ramsey City Council the 12th day of August, 2008.

Mayor

ATTEST:

City Clerk

Introduction Date:

Posting Dates:

Adoption Date:



Publication Date:

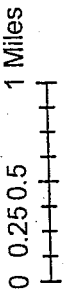
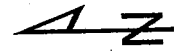
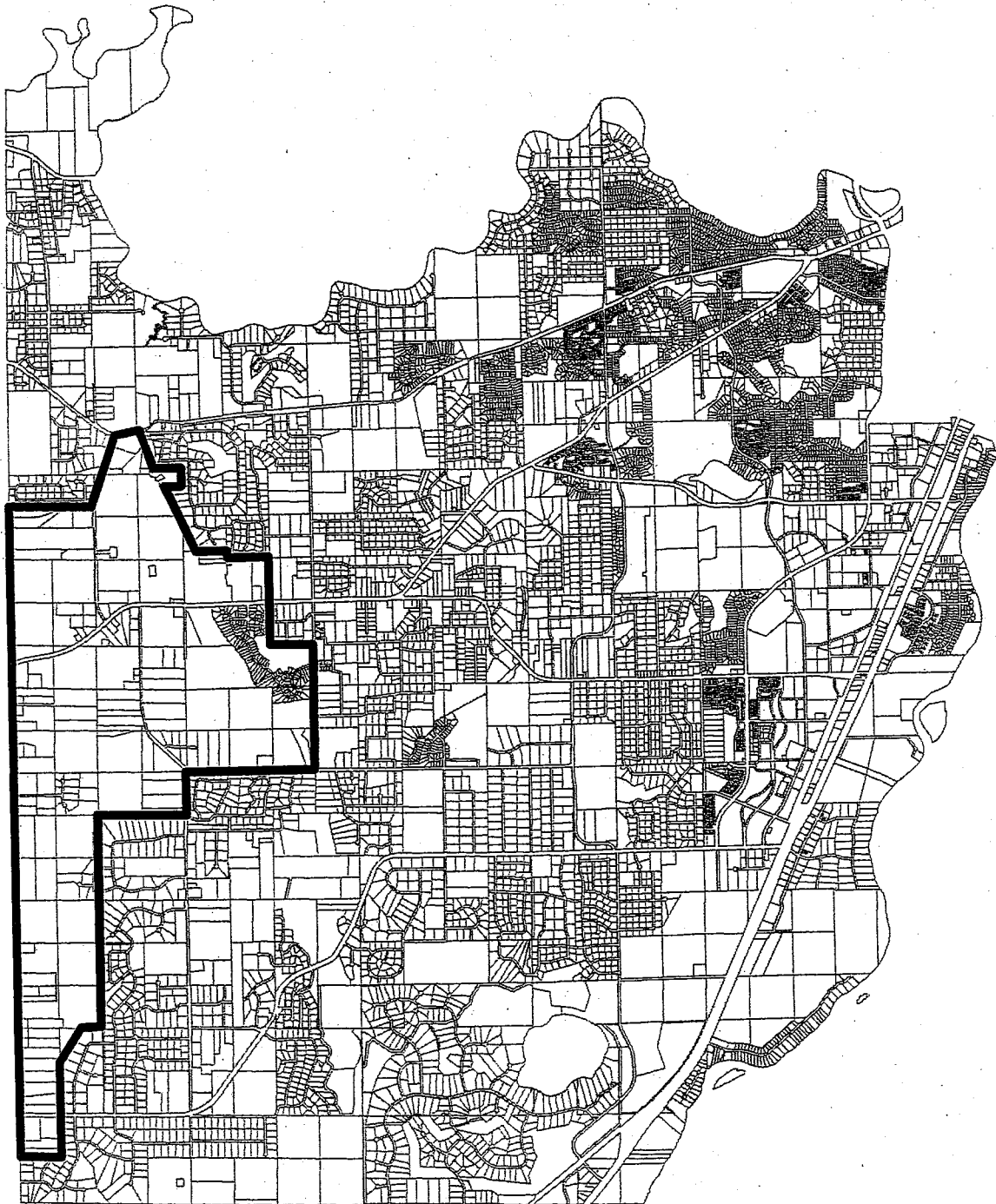
Effective Date:

City of Ramsey
Current Tower Overlay
Districts



Legend




-  Current Overlay
-  Parcels

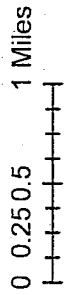
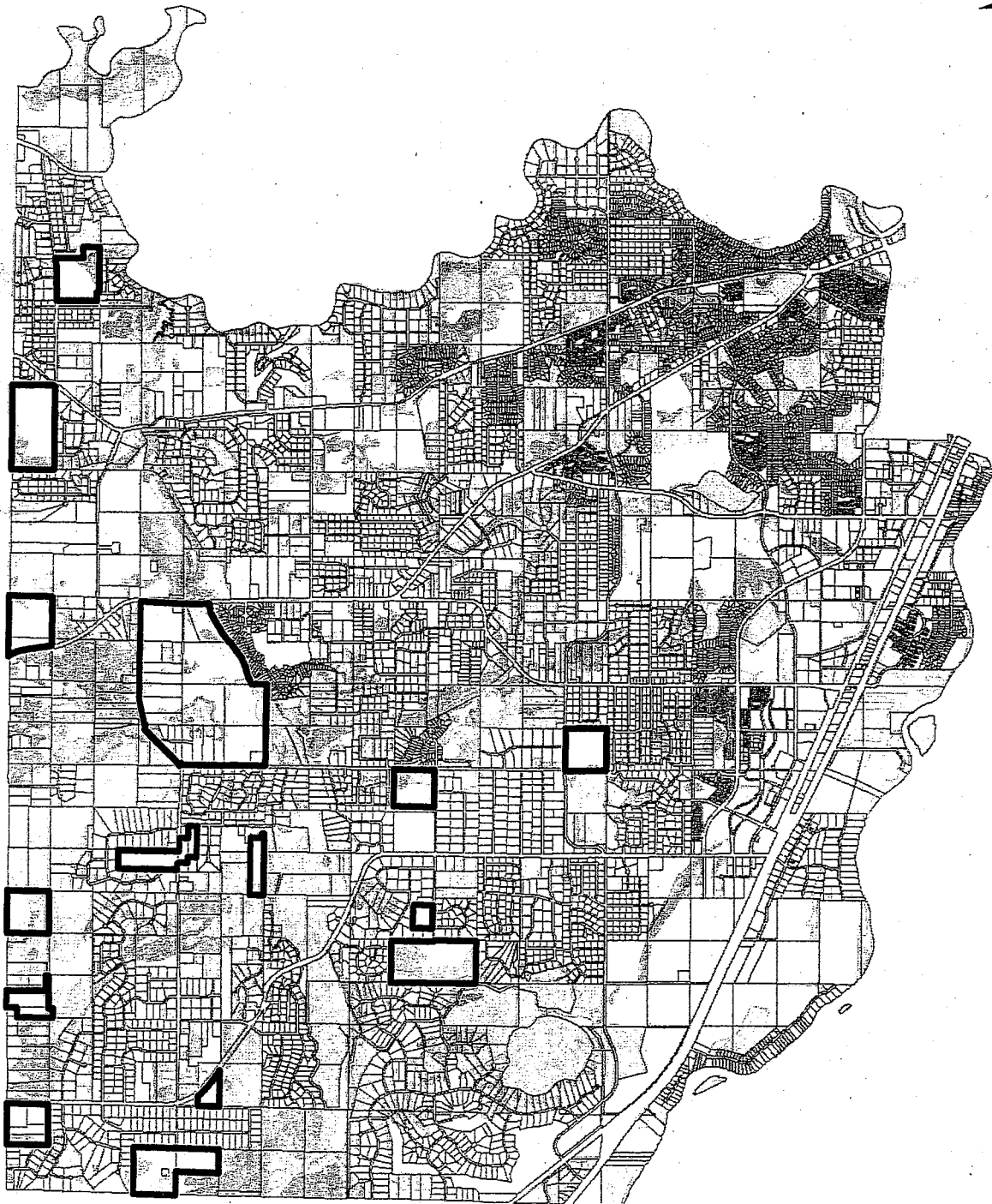


City of Ramsey
Proposed Tower Overlay
Districts



Legend

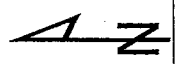
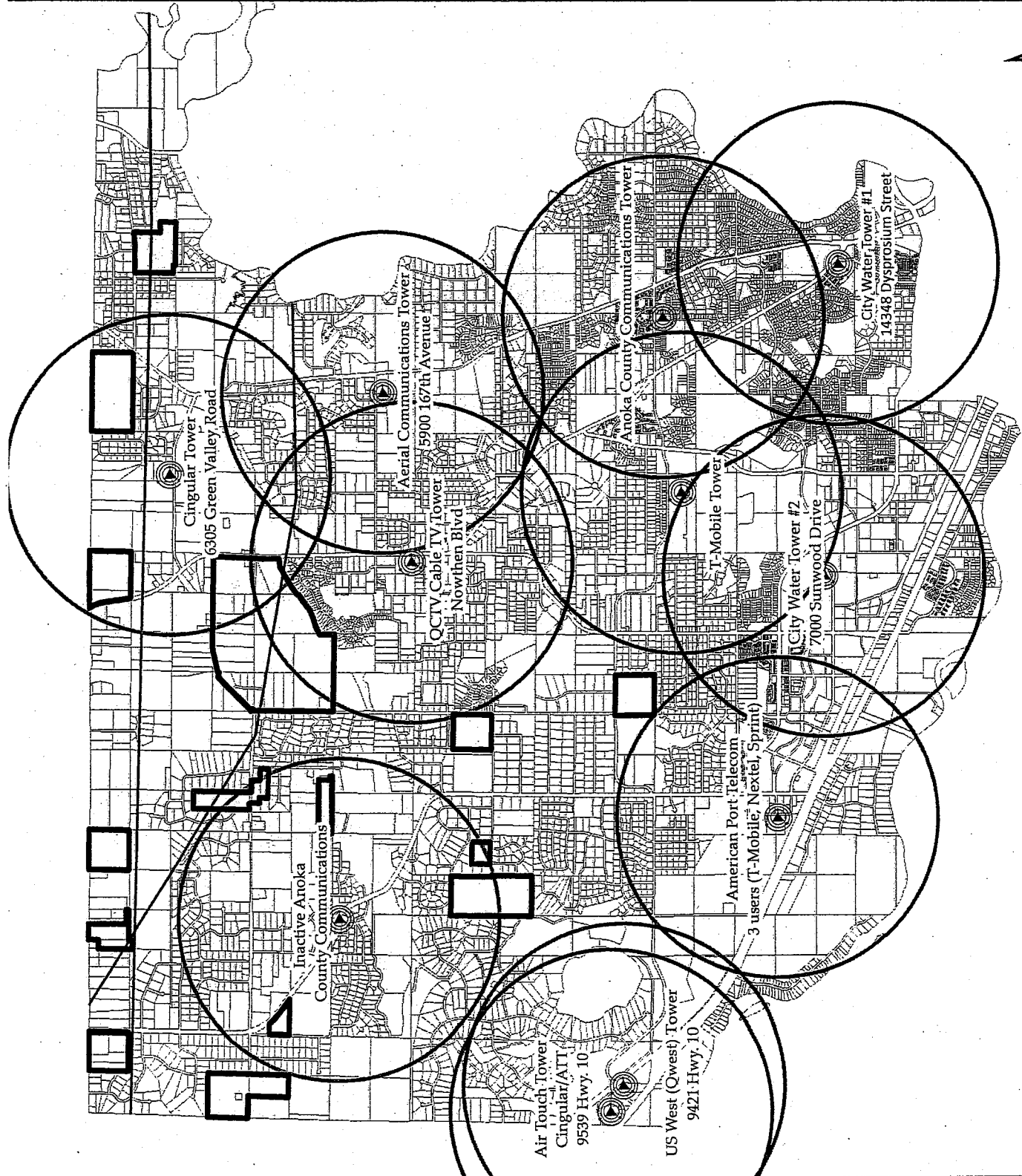
-  Proposed Overlay
-  NW/NRI
-  Parcels



Communications Towers
City of Ramsey



- Legend**
- Tower Locations
 - Proposed Overlay
 - Tower Service Area
 - Power Lines



**CITY COUNCIL WORK SESSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA**

The Ramsey City Council conducted a City Council Work Session on Tuesday, May 27, 2008, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Thomas Gamec
Councilmember John Dehen
Councilmember David Jeffrey
Councilmember Matt Look
Councilmember Mary Jo Olson
Councilmember Sarah Strommen (arrived at 5:58 p.m.)

Member Absent: Councilmember David Elvig

Also Present: City Administrator Kurt Ulrich
Management Intern Timothy Gladhill
Public Works Director Brian Olson (arrived at 6:04 p.m.)
Fire Chief Dean Kapler
Police Chief James Way

CALL TO ORDER

Mayor Gamec called the City Council Work Session to order at 5:46 p.m.

APPROVE AGENDA

The agenda was approved as submitted.

COUNCIL TOPICS FOR DISCUSSION

1) Cell Towers

Management Intern Timothy Gladhill stated that in early 2008, the Council directed staff to begin a moratorium on cell tower construction in the City. He noted that the Council can extend this moratorium for another six months, if necessary. He stated that staff has researched cell tower height and placement in area communities. He stated that both Edina and Bloomington have a shorter tower height requirement because they are a more densely populated community. He stated that they are able to have more numerous towers because they are lower in height. He stated that the shorter towers have a smaller amount of bandwidth on each tower. He stated that for rural communities, the height of the tower really reflects the coverage area. He stated that he had included a summary of our current regulations; information on what surrounding communities are doing; and maps that show the location and coverage areas for cell towers. He

noted that there is not a large inventory of sites available in the City that follow the current criteria. He stated that many cities have regulations based on setbacks because the usual monopoles don't tip over, but collapse onto themselves.

Mayor Gamec stated that requiring a monopole would be an easy change to make.

Management Intern Gladhill stated that that is already in the ordinance, but the Council has the ability to allow other designs if it chooses.

Mayor Gamec stated that he has heard there are problems with coverage in Ramsey because of the height of the landfill.

Councilmember Dehen stated that his concern with the last tower proposed for Alpine Park was that it stuck a big, 165-foot tall tower in the park. He stated that Bloomington has towers that are 60 feet high that they were able to work them into church bell towers and other existing structures. He stated that he recalls the T-Mobile guy saying that their towers could be put onto a light pole, but they weren't high enough. He stated that he would like to see them disguised in something like that rather than having contention with the neighbors every time a tower is put up. He stated he is fine with locating them in a park, but would like to see them incorporated in a light pole or something.

Mayor Gamec stated that he agrees this would be a good plan and has seen where they have built a tower and attached a light to it. He stated that there is a potential for lease income from the towers and feels that if it is located in a park, perhaps that money could go into the parks fund.

Management Intern Gladhill stated that the new water tower could also serve as a site for a cell tower.

Councilmember Look asked if there was still a possibility for a tower at the fire station.

Fire Chief Kapler stated that if the Ramsey Crossings would have gone through, then there would have been a displaced tower that could have moved to the fire station site.

Councilmember Strommen arrived at the meeting.

Councilmember Look asked about locating the cell towers on power lines.

Management Intern Gladhill stated that T-Mobile has stated that there may be a possible opportunity, in the northern end of the City, to do this, but there is no guarantee that Xcel Energy would allow this.

Mayor Gamec stated that Connexus is willing, but then they would take all the lease money.

Councilmember Look stated that he thinks the northern end of the City suffers the most with coverage. He stated that he would encourage the use of the high power lines, if possible, since they are already there.

Councilmember Olson stated that she lives in an area of the City that has limited service and has had many dropped calls. She asked if the tower for Alpine Park would cover that area.

Management Intern Gladhill stated that it will help, but it may not grab the whole area.

Councilmember Olson stated that Minneapolis and St. Paul have smaller receptors that are like repeaters instead of having towers. She asked if that technology could be applied in Ramsey with the use of existing light poles, even though it may be more expensive.

Management Intern Gladhill stated that staff from Bloomington indicated that the cell tower providers probably want taller towers due to cost, because it comes down to density and the number of users per tower.

Public Works Director Olson arrived at the meeting.

Councilmember Dehen asked how high the light poles were in Alpine Park.

Public Works Director Olson stated that they are between 90 and 100 feet.

Councilmember Dehen asked if they could be made higher to incorporate a cell tower.

Management Intern Gladhill stated that some cities have light poles at 100 feet, but allow an additional 15 to 20 feet to locate cell towers on top of those that would be above the lights.

Councilmember Jeffrey stated that he likes the idea of co-location because he is not a big fan of sticking a big pole in the middle of a park. He stated that he would like to find a way to disguise them and make them serviceable.

Public Works Director Olson stated that the space at the base of water towers is valuable for the Public Works Department because they store equipment there. He stated that this is why he would like to build a mezzanine level when the new tower is constructed because he thinks it is just a matter of time before a cell tower will want to locate on the tower and will need a place for their equipment also.

Mayor Gamec stated that he would prefer that the City get the revenue if the towers are located on City property and suggested that perhaps the top of the parking ramp could also be utilized.

City Administrator Ulrich stated that it would be a good policy discussion on whether the revenue would go to the parks department if the tower were located in a park, to the utility fund if it were located on a water tower, for example.

Community Development Director Miller stated that there should also be discussion on whether to allow cell towers on parcels smaller than 10 acres, as is the current requirement.

Mayor Gamec stated that 10 acres seems like a very big area, especially if the tower is a monopole.

Councilmember Strommen stated that this was an issue that came up with the Alpine Park location because the City couldn't look at smaller parcels, even if they would have been more acceptable than the park location. She stated that she is willing to consider location on smaller sites.

Community Development Director Miller asked if the Council felt that location in a commercial area was more appropriate than the tower overlay district, which does include some residential areas, even if it was less than 10 acres.

Mayor Gamec stated that residential areas will give the City problems every time.

Councilmember Olson stated that the coverage maps are what will control the location. She stated that nobody wants a tower in their back yard, but everybody wants good coverage.

Management Intern Gladhill noted that Elk River has a unique tower overlay district that is on a parcel-by-parcel basis distributed throughout the City.

Councilmember Strommen stated that Elk River created theirs based on a coverage map.

Councilmember Dehen asked if the City could do that and find out where there are holes in coverage and then identify spots that are suitable parcels.

Councilmember Olson stated that this is something that should also be done as part of the Comprehensive Plan.

City Administrator Ulrich stated staff can take a look at coverage and spacing requirements, rather than acres so this will be more performance based rather than sticking with strict acreage amounts.

Councilmember Dehen reiterated that he is against having 165 foot tall poles and would like to see a way to limit this.

Mayor Gamec also suggested that staff check into the height of the landfill and how it affects coverage areas.

Councilmember Dehen noted that he took a fishing trip to rural Alaska last summer and had great coverage. He stated that he is amazed that the City has this problem with coverage when he can get perfectly good signals out in the middle of nowhere.

Community Development Director Miller asked if the Council was more comfortable with the pole height of 90 to 100 feet.

Councilmember Dehen stated that allowing poles 100 feet high for lights and then putting the cell tower on top does not seem intrusive to him. He stated that he didn't think an additional 15 or 20 feet would be that big of a deal for people.

There was a Consensus to direct staff to look into co-location, allowing up to an additional 20 feet on top of 100 foot tall light poles for cell tower coverage.

Councilmember Jeffrey stated that he would like to clarify the co-location should be with an amenity and not another provider.

Management Intern Gladhill noted that the moratorium expires on September 17, 2008, so staff will bring more information back to a future meeting this summer.

2) **Police Explorers Program**

Officer Ben Rossum distributed a flyer on the Police Explorer program.

Police Chief Way stated that several officers had been involved in a Police Explorer programs and have expressed interest in starting one in Ramsey.

Officer Rossum gave a short Power Point presentation and reviewed the program. He stated that the program would be eligible for 14-20 year olds that have grades of "C" or better and have had no adverse contacts with the police. He stated that they plan to meet Sunday evenings from 6:00 p.m. to 9:00 p.m. with lectures as well as hands-on learning. He stated that once a month there will be training for things like how to handle firearms. He stated that the Explorers would be treated similarly to the Reserve Officers and they could help with events such as Happy Days, National Night Out, Safety Camp and the Anoka Halloween Parade.

Councilmember Dehen asked what the interest has been in other communities.

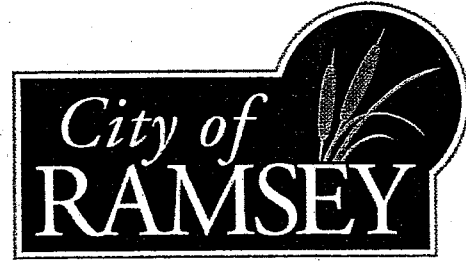
Officer Rossum stated that interest varies, but his goal is to have 10-12 kids in the first year. He stated that they held an informational meeting and 14 kids showed up and he got phone calls from another 3 kids that were unable to attend the meeting. He stated that every other City in the County, except St. Francis, has a post.

Councilmember Dehen asked if there would be a lottery system if there were too many applicants.

Officer Rossum stated that they are still working on those details, but noted that if there are too many, he may send those kids over to Anoka because they have additional room in their program. He stated that he thinks that grades will probably be the cut point and noted that they are not just looking for kids that want to come and shoot guns, but those who are possibly interested in a career in law enforcement. He stated that they will also be involved in fundraising efforts, so the funding is not just coming from the Police Department. He stated that they could also be utilized in missing person searches or a non-dangerous scene where manpower is needed. He stated that they will also take field trips to police related venues, such as the County Morgue.

Memo

DATE: June 27, 2008
TO: Ramsey Planning Commission
FROM: Community Development Staff
RE: Staff Update



City Council Update. The following is a brief summary of actions taken in June that may be of interest to the Planning Commission:

Ronald and Sandy Borell Conditional Use Permit Application. City Council approved Ronald and Sandy Borell's request for a Conditional Use Permit to exceed accessory structure space requirements on June 24th. The applicant has agreed to push the accessory structure further back from the front property line.

Anderson Dahlen, Inc. City Council approved Anderson Dahlen's request for Site Plan and Minor Subdivision (and introduced ordinance to vacate associated drainage and utility easements).

Accessory Structure Code Amendment. City Council introduced the ordinance to amend Section 9.11.04 (Accessory Structures) of the Zoning Code.

Ramsey3 Update. The Ramsey3 Working Group hosted their final OST to discuss the vision and values drafted by the working group. The vision and values drafted by Ramsey3 will be used as a guiding document for the remainder of the Comprehensive Plan Update process.

PC: 7.10.08

INTENTIONALLY LEFT BLANK

CASE # 5

ZONING BULLETIN

By: Interim Community Development Director Sylvia Frolik

Background:

Enclosed for your review are the zoning periodicals.

PC: 07/10/08

INTENTIONALLY LEFT BLANK

Zoning Bulletin

in this issue:

Special Permit—Town denies then subsequently approves revised site plan for indoor riding arena 2

Constitutionality - Equal Protection—City denies organization’s application to operate federal halfway house..... 5

Fee Assessment—Town conditions approval of subdivision on developer’s payment of one-third of cost of road improvements 7

Constitutionality – Vagueness—City denies developer’s preliminary plat applications because they contain flag-shaped lots 9

Special Permit—Town denies then subsequently approves revised site plan for indoor riding arena

Abutting landowner argues arena is an expansion of a nonconforming use, requiring a special permit

Citation: *Richardson v. Zoning Com'n of Town of Redding*, 107 Conn. App. 36, 944 A.2d 360 (2008)

CONNECTICUT (04/15/08)—Candace and Christian Benyei owned property in the town (the Property). The Property was located in a residential zone. Farming was a permitted use in the zone. Their residence was on the Property. They also owned and operated a horse facility on the Property since 1973.

In July 2005, the Benyeis proposed to build a 12,000 square foot indoor horse riding arena on the Property. The proposed arena was to be 60 feet from the boundary line of the abutting property owners, the Richardsons.

The Richardsons opposed the construction of the arena. They insisted that the Benyeis' proposed arena was an expansion of a nonconforming use. In 1986, an amendment to the town's zoning regula-

Contributors

Corey L. Burnham-Howard

For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8600; or West's Copyright Services, 610 Opperman Drive, Fargo, MN 55123; fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Zoning Bulletin is published and copyrighted by Thomson Reuters/West, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526. For subscription information, call (800) 229-2084, or write West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to, Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526 St. Paul, MN 55164-0526.

THOMSON
*
WEST

610 Opperman Drive • P.O. Box 64526 • St. Paul, MN 55164-0526
1-800-229-2084 • email: west.customerservice@thomson.com • west.thomson.com/quinlan
ISSN 0514-7905 • © 2008 Thomson Reuters/West. All Rights Reserved.
Quinlan™ is a Thomson Reuters/West brand.

tions had limited the number of horses allowed for any "animal raising operations" to one per 0.8 acres. The amended regulations therefore had limited the number of horses allowed on the Benyeis' 6.4 acre parcel to eight. At that time, the Benyeis had kept from twenty to twenty-five horses on the Property. Therefore, their use of the Property as to the number of horses on the parcel had become a preexisting nonconforming use. The Richardsons argued that the nonconforming use of the Property was being expanded and therefore it required submission and approval of an application for a special permit.

The town's zoning commission (the commission) initially agreed that a special permit was required. The commission denied the Benyeis' application and required it be submitted through a special permit process.

However, in November 2005, the Benyeis submitted a revised plan to the commission. The revised plan moved the proposed arena more than 100 feet from the Richardsons' property. The Benyeis said the primary use of their land was farming, which was a permitted use in the zoning district where the Property was located. They noted that the zoning ordinance required major structures on a farm be set back 100 feet. They argued that since the proposed arena was now set back more than 100 feet from the Richardsons' property, the arena could be constructed as a permitted use. The Benyeis also argued that since the only nonconformity on the Property was the number of horses and the proposed arena did not increase that nonconformity, they did not need a special permit.

The commission agreed and approved the site plan.

The Richardsons appealed.

The lower court said that the commission should not have considered the Benyeis' revised application. The court said this was because the subsequent application rule applied. That rule generally prohibited zoning boards of appeal from reversing a prior decision unless there had been a material change of conditions. The court determined that the change in location was minor because it was the structure, not its location, which was nonconforming. Accordingly, the court concluded that the commission improperly reversed its initial decision on the first of the Benyeis' applications.

The Benyeis appealed.

DECISION: Affirmed.

The Appellate Court of Connecticut found that the successive application rule did not apply. The court so concluded because it found there was a material change of conditions. The lower court had based

its decision on its finding that the commission had first denied the Benyeis' application because the structure was nonconforming. The appellate court disagreed with that finding and instead found that the commission had not given a collective reason for its decision. Commission members had commented that the proposed arena was an illegal expansion of a preexisting, nonconforming use. However, they had also commented as to the failure of the structure to meet the 100 foot setback requirements in the regulations. Relying on the latter of those comments, the Benyeis had argued that the successive application rule did not apply because the plan was changed substantially in that it brought the proposed structure into compliance with the applicable zoning regulations. The court emphasized that a subsequent permit application made in order to bring a prior application into compliance with applicable regulations was—no matter how minor the work involved would be—clearly not minor in regard to its significance and effect. The court therefore concluded that if, as the Benyeis argued, the revised application satisfied all of the requirements for the use of the arena, the commission was entitled to review the subsequent application and approve the site plan.

Nevertheless, the court also concluded that the Benyeis had to apply for a special permit for the proposed arena. The Richardsons had argued that a special permit was needed because the proposed arena involved the expansion of a nonconforming use. The court did not agree with that argument. Rather, the court found that a special permit was needed because the arena would alter the Benyeis' permitted special use of the property. The court found the Benyeis' use of the property was not, as the Benyeis had argued, primarily for farming; it was for the raising of horses. The court found that "livestock farms" was a permitted special use under the town's zoning ordinance. The court noted that the Benyeis' use of the property was established before a special permit for livestock farms was required. Still, the court said, any enlargement of the use had to conform with the town's zoning requirements. The town's zoning ordinance said a use subject to a special permit could not be "altered" without approval of a special permit application. Finding the proposed arena would require its own septic system, the court concluded that the Benyeis' permitted special use of the property as a livestock farm would be altered by the construction of the arena. Accordingly, the court found that the zoning regulations required them to apply for a special permit for the arena.

See also: *Grasso v. Zoning Bd. of Appeals of Groton Long Point Ass'n, Inc.*, 69 Conn. App. 230, 794 A.2d 1016 (2002).

Constitutionality - Equal Protection—City denies organization's application to operate federal halfway house

Organization argues city's ordinance banning federal halfway houses violates equal protection under the state constitution

Citation: *Community Resources for Justice, Inc. v. City of Manchester*, 2008 WL 1757218 (N.H. 2008)

NEW HAMPSHIRE (04/18/08)—Community Resources for Justice, Inc. (CRJ) was a non-profit organization. It operated “halfway houses” under contracts with the Federal Bureau of Prisons.

CRJ sought approval to use a building it owned in the city as a halfway house.

The city's zoning board of appeals (the city) denied such approval. Under the city's zoning ordinance, federal correctional facilities were not a permitted use in any of the city's zoning districts. The city determined that, under the zoning ordinance, CRJ's proposed use of a halfway house was a federal correction facility, and was therefore not permitted.

CRJ brought a lawsuit, challenging the zoning ordinance. It argued, among other things, that the city's ban of federal correctional facilities, as applied to CRJ, violated its federal and state constitutional rights to equal protection.

The lower court found that the city's ordinance, as applied to CRJ, violated CRJ's equal protection rights under the State Constitution because it did not promote or provide for the general welfare of the community. The lower court granted CRJ a “builder's remedy.” This gave CRJ the right to operate its building in the city as a halfway house.

The city appealed.

DECISION: Affirmed.

The court concluded that the city's zoning ordinance banning the use of CRJ's building as a federal halfway house violated equal protection, as applied to CRJ. The court noted that an equal protection challenge to a zoning ordinance was subject to intermediate scrutiny. This meant that the burden was on the city to demonstrate that the zoning ordinance was substantially related to an important governmental objective. The city had to prove that distinguishing halfway

houses from other similar residential facilities and institutions served an important governmental interest. The court said that to satisfy this burden, the city could not rely upon justifications that were hypothesized. Nor could it rely on overbroad generalizations, said the court.

The city had argued that preventing a concentration of undesirable uses, including correctional facilities such as the proposed halfway house, was an important governmental interest. The lower court had found that the city's actual purpose in banning federal halfway houses was not to prevent a concentration of correctional facilities. Rather, it was to prevent a danger to the community from relapses into criminal behavior by federal prisoners housed at the halfway house. The court found that the city failed to provide any evidence that a federal halfway house presented a danger to the community. Rather, the court found, substantial evidence—including letters from police, community, and religious leaders, as well as law enforcement experts—showed that a halfway house would provide an important social benefit and would not pose any safety risk to the neighborhood. The court found that the city failed to meet its burden of showing that the zoning ordinance's prohibition of federal halfway houses was substantially related to furthering an important governmental interest. Accordingly, the court concluded that the ordinance violated CRJ's equal protection rights as guaranteed by the State Constitution.

The court also concluded that CRJ was entitled to a "builder's remedy," allowing it to use the building it owned in the city as a halfway house. The court noted that a "builder's remedy" was the specific granting to a developer of a right to complete a proposed project. The court said that a party was entitled to a builder's remedy if it: (1) was successful in challenging the validity of a zoning ordinance; and (2) met its burden of demonstrating by a preponderance of the evidence that its proposed use was reasonable. The court found that the lower court had made detailed findings regarding the reasonableness of CRJ's proposed use of a halfway house. Those findings included that: CRJ's building was close to public transportation, support services and job opportunities; and property values would not be adversely affected. Accordingly, the court found that CRJ met its burden of demonstrating that its proposed use of a halfway house was reasonable. The court concluded that it was therefore entitled to a builder's remedy.

See also: *Community Resources for Justice, Inc. v. City of Manchester*, 154 N.H. 748, 917 A.2d 707 (2007).

See also: *Britton v. Town of Chester*, 134 N.H. 434, 595 A.2d 492 (1991).
