City of Ramsey
Agenda
Regular Planning Commission
Thursday March 5, 2015
7:00 pm
Council Chambers, 7550 Sunwood Drive NW

1. Call to Order

2. Citizen Input

3. Approve Agenda

4. Approve Minutes

1. Approve Planning Commission Meeting Minutes Dated February 5, 2015

5. Public Hearing/Commission Business

1. PUBLIC HEARING: Consider Request for Variances to Side Yard Setback for an Existing Pool and to Minimum Lot Size in the Critical River Overlay District on the Properties Located at 14255 and 14235 Bowers Dr. NW; Case of Travis and Bridgette Richard and Lucas Hase

2. PUBLIC HEARING: Consider Ordinance #15-07 Amending City Code Section 117-428 Entitled Towers

3. PUBLIC HEARING: Consider Request for Conditional Use Permit for 199 Foot Communications Tower; Case of Connexus Energy

4. PUBLIC HEARING: Consider Ordinance #15-06 to Amend City Code Sections 117-111 (R-1 Residential District) and 117-349 (Accessory Uses and Buildings)

5. Zoning Bulletins

6. Commission/Staff Input

- General Development Updates
- Update on Harvest Estates (15153 Nowthen Boulevard Redevelopment); Case of N.I.K. Management
- Joint Meeting with Environmental Policy Board (EPB) on April 20, 2015

7. Adjournment

Regular Planning Commission **4. 1.**

Meeting Date: 03/05/2015

By: JoAnn Shaw, Community Development

Information

Title:

Approve Planning Commission Meeting Minutes Dated February 5, 2015

Purpose/Background:

N/A

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

02.05.15 Minutes

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	JoAnn Shaw	02/27/2015 03:09 PM
Form Started By: JoAnn Shaw		Started On: 02/25/2015 11:51 AM
Final Approval Date: 02/27/2015		

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, February 5, 2015, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Gary Levine Commissioner Randy Bauer Commissioner Ralph Brauer Commissioner Matthew Maul Commissioner Cindy Nosan Commissioner Gary VanScoy
Members Absent:	None
Also Present:	Community Development Director Timothy Gladhill City Planner Chris Anderson

1. CALL TO ORDER

Chairperson Levine called the regular meeting to order at 7:00 p.m.

2. CITIZEN INPUT

None.

3. APPROVAL OF AGENDA

Motion by Commissioner VanScoy, seconded by Commissioner Brauer, to approve the agenda as presented.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners VanScoy, Brauer, Bauer, Maul, and Nosan. Voting No: None. Absent: None.

4. APPROVE PLANNING COMMISSION MINUTES

4.01: Approve the Following Planning Commission Minutes:

4.01.1: Planning Commission Meeting Minutes Dated January 8, 2015

Motion by Commissioner Brauer, seconded by Commissioner VanScoy, to approve the following minutes as presented: Planning Commission Meeting Minutes dated January 8, 2015.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Brauer, VanScoy, Bauer, Maul, and Nosan. Voting No: None. Absent: None.

5. PUBLIC HEARINGS/COMMISSION BUSINESS

5.01: Public Hearing: Consider Request for a Variance to the Minimum Front Yard Setback Requirement on the Property Located at 16877 Feldspar Street NW; Case of 21st Century Bank

Public Hearing

Chairperson Levine called the public hearing to order at 7:01 p.m.

Presentation

Community Development Director Gladhill presented the staff report stating the City has received an application from 21st Century Bank requesting a variance to the minimum front yard setback on the property located at 16877 Feldspar Street NW. As the Commission will recall, a public hearing was recently held to consider a Preliminary Plat for Brookfield 5th Addition to convert the subject property from an outlot to a buildable lot. On January 27, 2015, the applicant received Council approval of both the Preliminary Plat and Final Plat for Brookfield 5th Addition. This variance request is an attempt to mitigate a concern raised at the previous public hearing regarding the position of a new home on the subject property in relation to the existing home on the lot to the north. Staff reviewed the request in further detail and recommended approval.

Citizen Input

None.

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, VanScoy, Brauer, Maul, and Nosan. Voting No: None. Absent: None.

Chairperson Levine closed the public hearing closed at 7:04 p.m.

Commission Business

Motion by Commissioner Bauer, seconded by Commissioner VanScoy, to recommend that City Council adopt Resolution #15-02-031 adopting Findings of Fact #0940.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, VanScoy, Brauer, Maul, and Nosan. Voting No: None. Absent: None.

Motion by Commissioner Bauer, seconded by Commissioner Maul, to recommend that City Council adopt Resolution #15-02-32 granting a variance to the front yard setback requirement.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Maul, Brauer, Nosan, and VanScoy. Voting No: None. Absent: None.

5.02: Review Sketch Plan of Harvest Estates Located at 15153 Nowthen Boulevard NW; Case of N.I.K. Management, Inc.

Presentation

Community Development Director Gladhill presented the staff report stating the purpose of this case is to review the Sketch Plan for Harvest Estates, a proposed 45-lot detached, single-family subdivision on the former municipal center campus located at 15153 Nowthen Boulevard NW. Sketch Plan Review is a process outlined in City Code that provides an opportunity for the Planning Commission to review compliance with the Comprehensive Plan as well as Zoning and Subdivision Codes before an applicant spends resources on detailed civil engineering drawings. This step is not required by Minnesota Statute Chapter 462; however, it provides for a more proactive and collaborative design approach in an effort to avoid issues at a later date. He discussed the access issues to the site and explained that staff was recommending that the Nowthen Boulevard drive access point be closed and that focus be placed on Helium and Alpine. Lot sizes and the concept plan for the proposed development was discussed. Staff reviewed a letter from the developer, along with the Sketch Plan further with the Commission and requested feedback.

Commission Business

Commissioner Brauer thanked staff for their efforts in addressing the traffic concerns for the proposed development.

Chairperson Levine requested the public come forward at this time with comments.

Al Kempf, 15220 St. Francis Boulevard NW, explained he was a 42 year resident of Ramsey. He encouraged the Commission to consider how the proposed development would impact the neighborhood to the east and the increased traffic levels that would be created on 152nd. He expressed concern with the narrow width of the frontage road.

Commissioner Bauer stated he served with Mr. Kempf on a subcommittee when the data center was being considered. He commented that the proposed access point for the data center would have been Nowthen Boulevard. It was noted that the new plan was to alter the access points, which would impact the surrounding neighborhoods, as traffic would be forced to the east. He proposed a right in/right out access onto Highway 47. He had real concern with the proposed Sketch Plan and suggested Harvest Estates have access to Nowthen Boulevard.

Commissioner VanScoy questioned if access at 149th could be closed and then opened at 152nd. He inquired if this would be a viable, less costly option for the development.

Community Development Director Gladhill discussed the proposed access points for TH 47 and commented staff could explore this option further.

Chairperson Levine did not want to see TH 47 overburdened with traffic and encouraged staff to keep this in mind while routing traffic to this new development. He feared that there would be a choke point on TH 47 with the current design. He suggested that traffic be routed to Nowthen Boulevard.

Commissioner Bauer agreed with this recommendation and stated he would not support the Sketch Plan without access to Nowthen Boulevard.

Commissioner Nosan did not understand why staff was recommending the access point on Nowthen Boulevard be eliminated. She commented that she avoids TH 47 at all cost.

Community Development Director Gladhill explained the proposed land use differed from the current land use and had different traffic patterns and numbers. In addition, the current driveway does not line up with a public street.

Commissioner Brauer indicated he was majorly delayed in getting to the meeting due to an accident along TH 47. He further discussed how traffic on Waco Street was increasing in speed due to the fact it was a through street.

Ron Christensen, 5782 152nd Way, he recommended that the Nowthen Boulevard access be closed. He did not want traffic from the new development impacting the neighboring school. He then discussed his slow commute to work each day along TH 47 to Bunker Lake Boulevard.

Community Development Director Gladhill requested the Commission make a motion on how to handle the access point on Nowthen Boulevard.

Motion by Commissioner Bauer, seconded by Commissioner Brauer, to recommend that staff work with the applicant to redesign Harvest Estates to provide a full access point onto Nowthen Boulevard.

Further discussion

Commissioner VanScoy believed that when he first looked at the sketch plan he thought access onto Nowthen Boulevard was necessary. However, after reviewing the comments from the County, he did not believe this to be true. He believed there were traffic issues on both 5 and TH 47 that needed to be addressed. He was concerned with traffic getting in and out of the new development without a signalized intersection on Nowthen Boulevard.

Commissioner Nosan was against putting more traffic onto TH 47.

Commissioner Brauer expressed concern with how the elementary school would be impacted by the proposed development. He believed that the County should reconsider the safety and access concerns to the elementary school.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Brauer, Maul, and Nosan. Voting No: VanScoy. Absent: None.

Community Development Director Gladhill requested the Commission now discuss the buffer issues and direct staff on how to proceed.

Mr. Christensen discussed the promises that were made to him when he purchased his lot and expressed concern how the development of the lots behind his home would impact the adjacent wetland. He requested the Commission reconsider the placement of the lots. He recommended that a buffer area be considered.

Community Development Director Gladhill explained he received an email from Steve and Leah Swenson, 5734 152nd Way, stating the same concerns and requested a buffer area be placed between the new development and the existing homes. He discussed an option to redesign the development eliminating the cul-de-sac, creating a larger buffer zone and noted this would reduce the revenue for the developer but this was an alternative for the Commission to consider.

Motion by Commissioner Bauer, seconded by Commissioner Maul, to recommend that staff work with the Harvest Estates developer to redesign the plat with the portion south of the blue line and north of the orange line be retained by the City as an outlot for utility easement.

Further discussion

Commissioner VanScoy requested further information on the size of the holding pond. He asked if a small park could be located near the pond.

Community Development Director Gladhill discussed the location and size of the holding pond. He indicated the park would be landlocked, but this possibility could be further considered by staff.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Maul, Brauer, Nosan, and VanScoy. Voting No: None. Absent: None.

5.03: Consider Forwarding New Policy for the Sale of City Owned Land to the City Council

Presentation

Community Development Director Gladhill presented the staff report stating with the recent dissolution of the Ramsey HRA, it was being recommended by the Council that the City consider

a new policy for selling City-owned land. This policy outlines the Ramsey EDA's role in the sale of City-owned land. Staff reviewed the policy further with the Commission and requested comments or questions.

Commission Business

Commissioner Brauer believed this process was valuable.

Commissioner VanScoy agreed.

Chairperson Levine explained the consensus of the Commission was to recommend staff proceed.

5.04: 2040 Comprehensive Plan Update: Consider Preliminary Framework for Citizen Engagement and Formation of Steering Committee

Presentation

Community Development Director Gladhill presented the staff report stating the purpose of this case is to consider a Preliminary Framework for Citizen Engagement for the 2040 Comprehensive Plan Update. Staff reviewed the proposed framework in detail, requested feedback from the Commission and recommended approval.

Commission Business

Commissioner Brauer understood it would be difficult to change the composition of the steering committee. However, he suggested one or two more citizens be added to the committee to balance out the group.

Commissioner Bauer agreed stating there should be an equal number of citizens to Commission members.

Chairperson Levine feared that too many people on the steering committee could make it difficult for the group to make decisions.

Community Development Director Gladhill did not object to adding several more residents to the steering committee. He commented that at least one community wide workshop would also be held to gain feedback from the residents. He stated that he could seek interested from the public prior to making any determination as to the size of the steering committee. The Commission supported this recommendation.

Motion by Commissioner Brauer, seconded by Commissioner Bauer, to recommend that City Council adopt the Preliminary Framework for Citizen Engagement for the 2040 Comprehensive Plan Update adding two residents to the steering committee.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Brauer, Bauer, Maul, Nosan, and VanScoy. Voting No: None. Absent: None.

6. COMMISSION / STAFF INPUT

6.01: Staff Update

The Staff Update was noted.

Commissioner VanScoy suggested the Commission hold a worksession meeting to discuss the vision for the COR.

6.02: Zoning Bulletins

Zoning Bulletins were noted.

7. ADJOURNMENT

Motion by Commissioner Bauer, seconded by Commissioner Brauer, to adjourn the meeting.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Bauer, Brauer, Maul, Nosan, and VanScoy. Voting No: None. Absent: None.

The regular meeting of the Planning Commission adjourned at 8:48 p.m.

Respectfully submitted,

_____

Tim Gladhill
Community Development Director

ATTEST:

_____

JoAnn Shaw
Community Development Assistant

Drafted by Heidi Guenther
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission **5. 1.**

Meeting Date: 03/05/2015

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING: Consider Request for Variances to Side Yard Setback for an Existing Pool and to Minimum Lot Size in the Critical River Overlay District on the Properties Located at 14255 and 14235 Bowers Dr. NW; Case of Travis and Bridgette Richard and Lucas Hase

Purpose/Background:

The City has received an application for a variance to minimum lot size standards in the Critical River Overlay District to accommodate an Administrative Subdivision that would resolve an encroachment of an existing swimming pool across a property boundary. In reviewing the request, it became evident that the Administrative Subdivision, as proposed, would correct the encroachment but would not fully address the minimum required setback for a pool from an adjoining property. The request involves two (2) adjacent properties, 14235 Bowers Dr. NW and 14255 Bowers Dr. NW.

Notification:

Staff attempted to notify all Property Owners within a 350 foot radius of the Properties of the Public Hearing via Standard US Mail. The Public Hearing was also published in the City's official newsletter, the Anoka County Union Herald.

Observations/Alternatives:

In 1985, a Building Permit was issued by the City for an in-ground swimming pool to be installed at 14255 Bowers Dr. NW. The Site Plan submitted with the Building Permit application indicated the swimming pool would be at least forty (40) feet from the side property boundary (exhibit attached). The property located at 14235 Bowers Dr. NW recently sold and as part of the title work for that transaction, it was discovered that the swimming pool affiliated with 14255 Bowers Dr. NW actually encroached onto 14235 Bowers Dr. NW by almost ten (10) feet.

The most reasonable way to address this encroachment, which has now existed for nearly thirty (30) years, is to process an Administrative Subdivision to realign the common lot line between these two parcels to eliminate the encroachment. However, both parcels are located within the Critical River Overlay District, which has a minimum lot size requirement (for those parcels located within the Rural Service Area) of 2.5 acres. Both parcels are approximately one (1) acre in size and are considered lawful, non-conforming relating to lot size as they were platted in 1973, prior to the adoption of this overlay district. The Administrative Subdivision would result in the reduction of acreage from 1.01 acres to 0.89 acres for the property located at 14235 Bowers Dr. NW.

Under City Code Section 117-590 (Administrative Subdivision), the Zoning Administrator cannot approve the realignment of lot lines if doing so would circumvent other zoning regulations and City Code Section 117-57 (b) prohibits expansions of non-conformities. Thus, after reviewing the information with the City Attorney, it was advised that an application for a variance to minimum lot size be processed and, if approved, that would allow the property owners (or their representatives) to proceed with an Administrative Subdivision to realign their common boundary without creating any new buildable lots.

In an attempt to minimize the enlargement of the non-conformity, and to maintain what had been perceived as the boundary between the two properties, the realigned boundary is proposed to be one (1) foot off the existing privacy fence that encloses the in-ground swimming pool. This proposed location results in the existing swimming pool being located approximately six (6) feet from the 'new' lot line, which is deficient of the minimum required setback

of ten (10) feet. Thus, a variance to the minimum required setback for swimming pools is also being processed as part of this request.

When contemplating a variance request, there is a three (3) factor test for practical difficulties that must be met by the Applicant. The following are the three (3) factors:

1. Is the property owner proposing to use the property in a reasonable manner?
2. Is the landowner's problem due to circumstances unique to the property and not caused by the landowner?
3. If granted, would the variance alter the essential character of the locality?

Swimming pools are considered to be a reasonable accessory use of residential properties. Neither of the current fee title owners of the two properties were responsible for the encroachment that exists and both parties are working to resolve the matter in a reasonable manner. Both property owners, and likely the majority of the neighboring property owners, had thought the property line between the two parcels was just beyond the privacy fence. That, coupled with the fact that the request does not propose any new structures or uses, would result in no alteration to the essential character of the locality.

As a reminder, the Planning Commission acts in a quasi-judicial capacity when considering variances rather than a providing a recommendation.

Alternatives

Option 1: Adopt Resolutions #15-03-063 and #15-03-064 approving a variance to minimum lot size requirements in the Critical River Overlay District and adopt Resolutions #15-03-065 and #115-03-066 approving a variance to minimum setback standards for an existing in-ground swimming pool. The encroachment has existed now for nearly thirty (30) years and was only recently discovered. Processing an Administrative Subdivision to realign the common boundary between the two parcels is the most reasonable way to address this matter. In an attempt to limit the increase in non-conformity (further reducing the size of 14235 Bowers Dr. NW), the proposed new lot line was positioned just outside the fence, necessitating the need for a variance to pool setbacks as well. As this only impacts these two parcels and the 'new' lot line will be located where both parties thought it was, Staff supports this option.

Option #2. Adopt Resolutions #15-03-063 and #15-03-064 only and require the proposed line be adjusted to eliminate the need for the variance to pool setbacks. While this may be possible, it would even further reduce the lot size of 14235 Bowers Dr. NW. Furthermore, the proposed lot line is positioned where both parties had believed the boundary already existed. Staff does not support this option.

Option #3. Do not approve either variance. This action would result in the need to remove the in-ground swimming pool and/or require the two property owners to execute some form of an agreement for the encroachment. The former action would result in requiring the removal of a pool that has been in place since 1985. The latter would likely lead to issues with home owners insurance policies and may be a red flag in the future if either property were listed for sale. Staff does not support this option.

Funding Source:

All costs associated with this request are the Applicant's responsibility.

Recommendation:

Staff recommends approval of both variances.

Action:

Motion to adopt Resolutions #15-03-063 and #15-03-064 approving a variance to minimum lot size on the property located at 14235 Bowers Dr. NW.

-and-

Motion to adopt Resolutions #15-03-065 and #15-03-066 approving a variance to pool setbacks on the property

located at 14255 Bowers Dr. NW.

Attachments

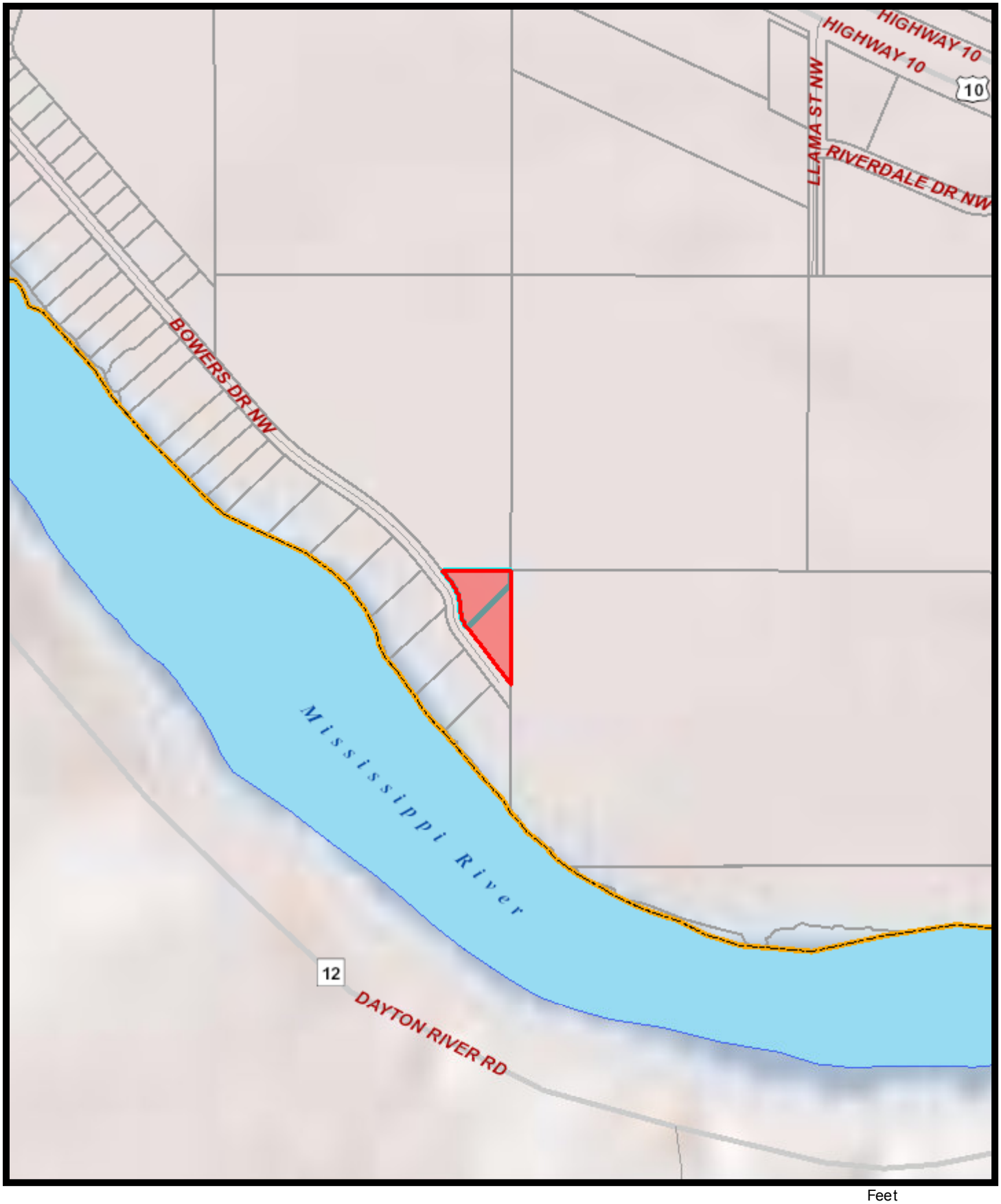
Site Location Map
Site Plan for Swimming Pool from 1985
Administrative Subdivision Exhibit
Resolution #15-03-063: DRAFT Findings of Fact for Lot Size
Resolution #15-03-064: DRAFT Variance for Lot Size
Resolution #15-03-065: DRAFT Findings of Fact for Swimming Pool Setback
Resolution #15-03-066: DRAFT Variance for Pool Setback

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	02/27/2015 03:01 PM
Form Started By: Chris Anderson		Started On: 02/20/2015 01:49 PM
Final Approval Date: 02/27/2015		

29-32-25-33-0006
14255 BOWERS DR NW

Site Location Map

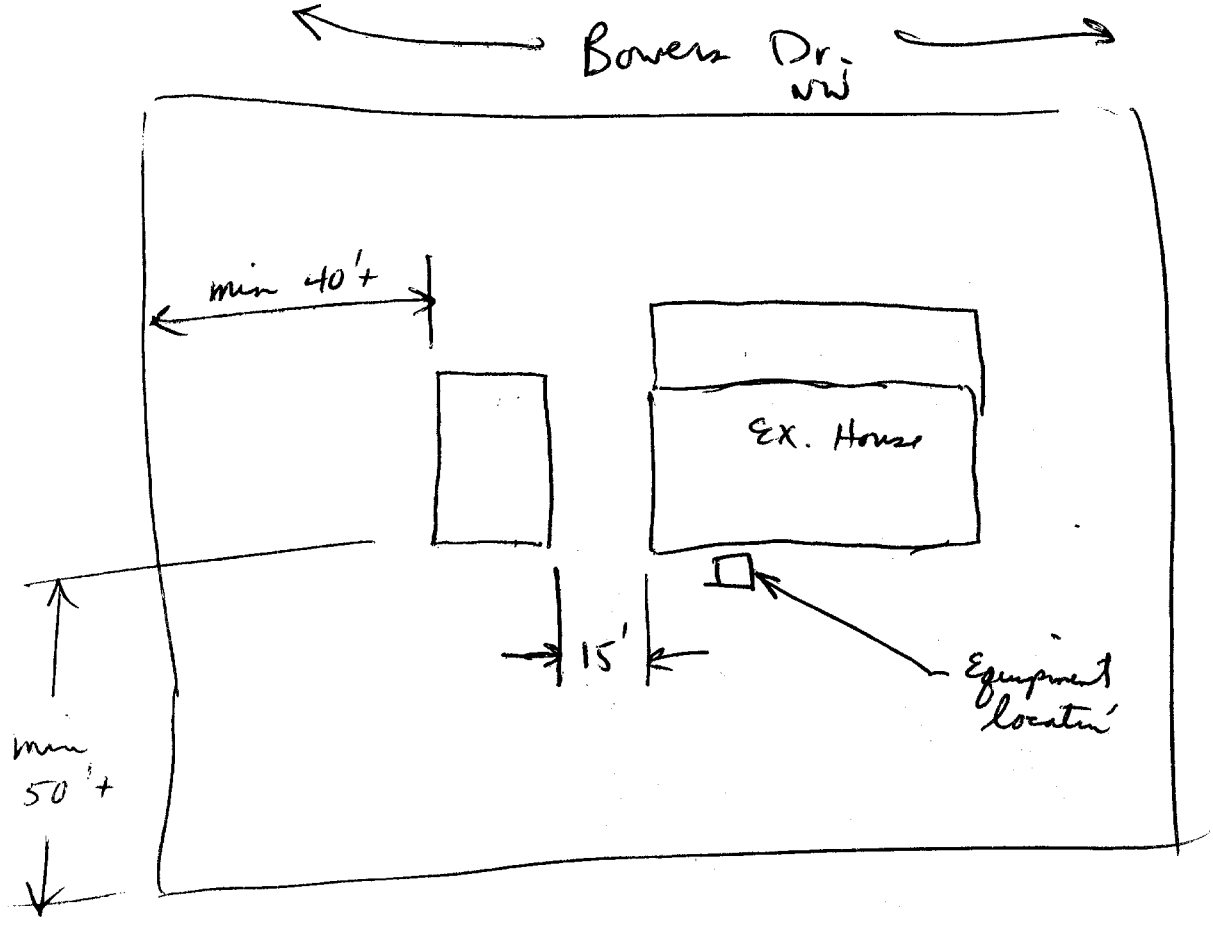


Feet
0 145 290 580 870 1,160

Print Date: February 11, 2015

ABC POOLS ETC...

6/8/85



Pool for: Del Westman
14255 Bowers Dr. NW
Anoka (Ramsey) MN.

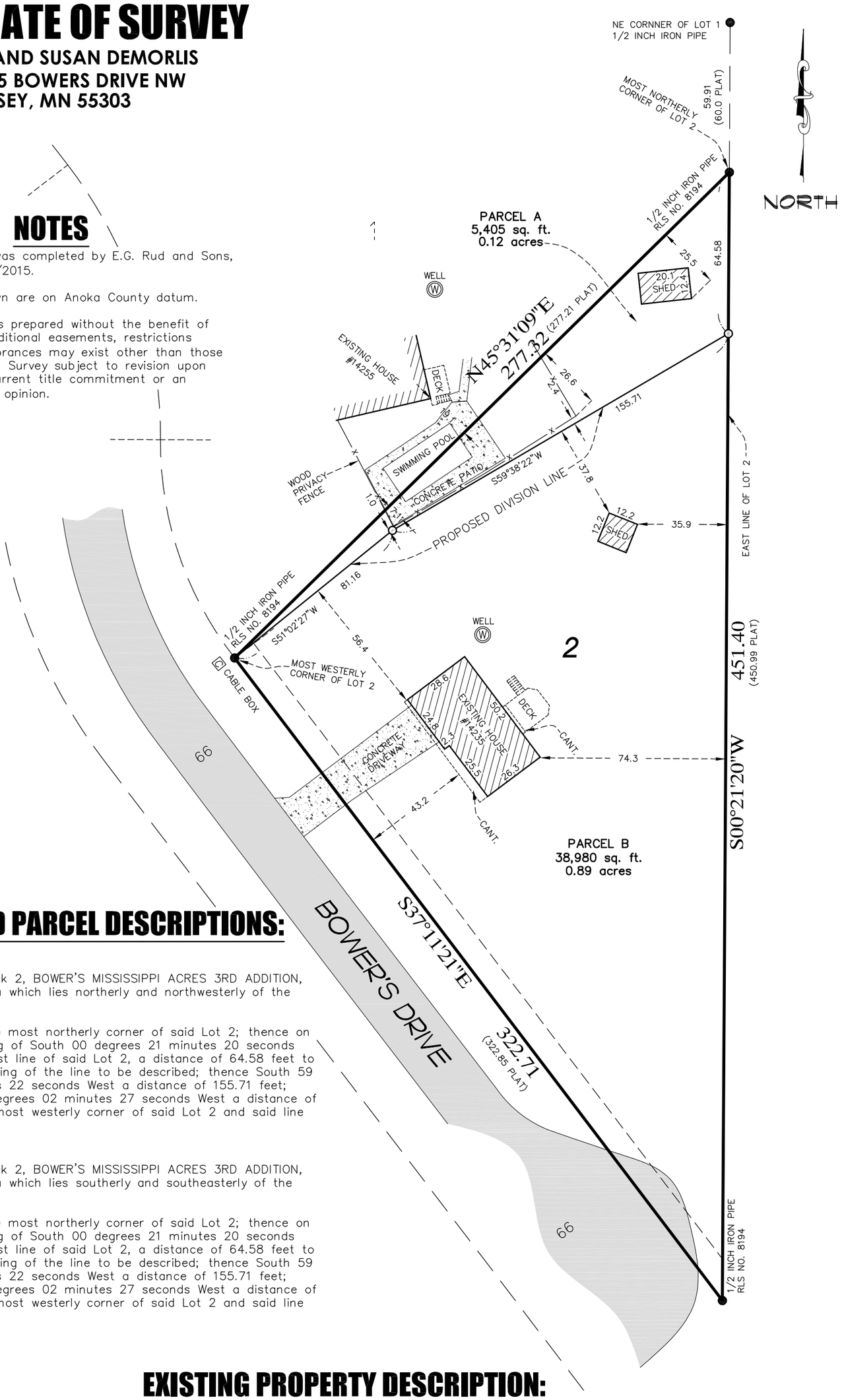
1806 - 133rd Lane Northeast • Anoka, Minnesota 55303 • Telephone: (612) 757-6339

CERTIFICATE OF SURVEY

~for~ STEVE AND SUSAN DEMORLIS
~of~ 14235 BOWERS DRIVE NW
RAMSEY, MN 55303

NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 1/26/2015.
- Bearings shown are on Anoka County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.



PROPOSED PARCEL DESCRIPTIONS:

Parcel A:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies northerly and northwesterly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

Parcel B:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies southerly and southeasterly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

EXISTING PROPERTY DESCRIPTION:

Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota.

Location: SEC. 29, T.32, R.25 – CITY OF RAMSEY			
Scale 1"= 40'	Drawn By: BAB	Project Manager: JER	Job No.: 15048LS
○ Denotes Iron Set	● Denotes Iron Found	Bearings shown are on Anoka County datum.	

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota. Dated this 28th day of January, 2015.

License No. 41578

E. G. RUD & SONS, INC.
EST. 1977
www.egrud.com
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel. (651) 361-8200 Fax (651) 361-8701

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-03-063

RESOLUTION ADOPTING FINDINGS OF FACT #0941 RELATING TO A REQUEST FROM STEVEN LITTLE FOR A VARIANCE TO LOT SIZE REQUIREMENTS IN THE CRITICAL RIVER OVERLAY DISTRICT TO ALLOW AN ADMINSTRATIVE SUBDIVISION TO ELIMINATE AN ENCROACHMENT OF AN IN-GROUND SWIMMING POOL.

WHEREAS, Steven Little, hereinafter referred to as "Applicant," has properly applied for a variance from Section 117-148 (Critical River Overlay District Development Standards) of the Ramsey City Code regarding minimum lot size to facilitate an Administrative Subdivision to eliminate an encroachment of an existing in-ground swimming pool that partially encroaches on the property generally known as 14235 Bowers Drive NW and legally described as follows:

Lot 2, Block 2, Bower's Mississippi Acres 3rd Addition, Anoka County, Minnesota

(the "Subject Property").

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-53 (Variances) of the Ramsey City Code on March 5, 2015, and that said public hearing was properly advertised, and that the minutes of said public hearing are hereby incorporated as a part of these findings by reference.

2. That the Subject Property is zoned R-1 Residential (MUSA) and is approximately 1.01 acres in size.

3. That the Subject Property is surrounded by properties also zoned R-1 Residential (MUSA) and of similar sizes, with the exception of the parcel to the east which is approximately seventy-eight (78) acres in size.

4. That the Subject Property is located within the Mississippi River Corridor Critical Area and the Rural Service Area as defined in MN Statutes.

5. That Section 117-148 (Critical River Overlay District Development Standards) of City Code establishes a minimum lot size of 2.5 acres for lots within the Critical River Area and rural service area.

6. That the Subject Property was platted in 1973 as part of the Bowers Mississippi Acres 3rd Addition plat and is considered lawful non-conforming with regard to lot size.

7. That in 1985, a Building Permit was issued for the installation of an in-ground swimming pool on the adjacent property known as 14255 Bowers Dr. NW.

8. That the Site Plan submitted as part of the Building Permit application indicated the swimming pool would be located at least forty (40) feet from the side lot line of the Subject Property.

9. That the Subject Property was recently sold and as part of the title work for that transaction, it was discovered that the swimming pool belonging to the adjacent parcel at 14255 Bowers Dr. NW encroached onto the Subject Property by almost ten (10) feet.

10. That to resolve this encroachment, the title company representing the owners of the swimming pool are proposing an Administrative Subdivision to realign the common boundary between the Subject Property and 14255 Bowers Dr. NW to eliminate the encroachment.

11. That an Administrative Subdivision would increase the non-conforming lot size of the Subject Property.

12. That the Subject Property size would be reduced to approximately 0.89 acres with the Administrative Subdivision.

13. That the Administrative Subdivision would realign the property line to a point that both property owners thought was the actual property boundary.

14. That a variance to setbacks for a swimming pool would still be required on 14255 Bowers Dr. NW after the Administrative Subdivision.

15. That City Code Section 117-590 prohibits the Zoning Administrator from realigning lot lines if doing so would circumvent other zoning regulations.

16. That City Code Section 117-57 (b) prohibits expansions of nonconformities without the issuance of a variance.

17. That Lucas Hase is now the fee title owner of the Subject Property.

18. That the encroachment of the swimming pool was not the result of actions of either the current or former fee title owner of the Subject Property.

19. That the encroachment of the swimming pool was not the result of the current owners of the parcel generally known as 14255 Bowers Dr. NW.

20. That economic circumstances alone do not create the practical difficulties.

21. That the plight is due to circumstances unique to the Subject Property.

22. That the plight was not created by the Applicant.

23. That, if granted, the variance will not alter the locality's essential character.

24. That, if granted, the variance will/will not impair an adequate supply of light and air to adjacent property.

25. That, if granted, the variance will/will not have the effect of allowing a use that is prohibited in the applicable zoning district.

26. That, if granted, the variance will/will not unreasonably increase the congestion on the public street.

27. That, if granted, the variance will/will not adversely impact the degree of public health, safety and general welfare provided for in the Ramsey City Code.

28. That, if granted, the variance will/will not diminish established property values within the neighborhood.

29. That, if granted, the variance requested is/is not the minimum variance necessary to accomplish the intended purpose of the Applicant.

30. That the unique circumstances on the Subject Property do/do not result from the actions of the Applicant.

31. That, if granted, the variance will/will not grant the Applicant any special privilege that is denied to the owners of other land in the same district.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 5th day of March, 2015.

_____
Chairperson

ATTEST:

City Clerk

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-03-064

RESOLUTION APPROVING THE ISSUANCE OF A VARIANCE TO LOT SIZE TO ALLOW FOR AN ADMINISTRATIVE SUBDIVISION TO ELIMINATE AN EXISTING ENCROACHMENT OF AN IN-GROUND SWIMMING POOL.

WHEREAS, Steven Little (Permittee) has properly applied for a variance to Section 117-148 (Critical River Overlay District Development Standards) of the Ramsey City Code with regard to lot size to allow for an Administrative Subdivision that will eliminate an existing encroachment of an in-ground swimming pool on the property generally known as 14235 Bowers Drive NW and legally described as follows:

Lot 2, Block 2, Bower's Mississippi Acres 3rd Addition, Anoka County, Minnesota

(Subject Property).

AND WHEREAS, the Planning Commission conducted a public hearing on March 5, 2015, pursuant to Section 117-53 of the Ramsey City Code, and adopted findings of fact relating to the request for a variance.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That based on Findings of Fact #0941, a variance to lot size to facilitate an Administrative Subdivision that will eliminate an encroachment of an in-ground swimming pool on the **Subject Property**, as shown on the attached exhibit, is hereby granted.

2. That the **Permittee** shall be responsible for all costs incurred in administering and enforcing this variance.

3. That this **Variance** shall automatically expire if the use is not initiated by March 5, 2016, and finalizing the Administrative Subdivision transferring a portion of the **Subject Property** to the adjacent parcel, generally known as 14255 Bowers Dr. NW, including providing evidence to the City that the Property Identification Numbers (PINs) have been combined after recording of the Quit Claim Deed, shall constitute initiation.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 5th day of March, 2015.

PERMITTEE

Steven Little hereby acknowledges receipt of this variance and that he has reviewed the terms of the variance and has agreed that he will comply with the terms of the variance.

_____
Steven Little

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Steven Little, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as their free act and deed.

_____
Notary Public

PROPERTY OWNER

Lucas Hase hereby acknowledges receipt of this variance and that he has reviewed the terms of the variance and has agreed that he will comply with the terms of the variance.

_____
Lucas Hase

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Lucas Hase, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as their free act and deed.

_____
Notary Public

CITY OF RAMSEY:

By:_____ By:_____
Chairperson, Planning Commission City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Gary Levine and JoAnn M Thieling, to me personally known, who, being each by me duly sworn did say that they are respectively the Planning Commission Chairperson and City Clerk of the City of Ramsey, the Municipal Corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said Municipal Corporation, and the said instrument was signed and sealed on behalf of said Municipal Corporation by authority of its City Council, and said Gary Levine and JoAnn M Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____
Notary Public

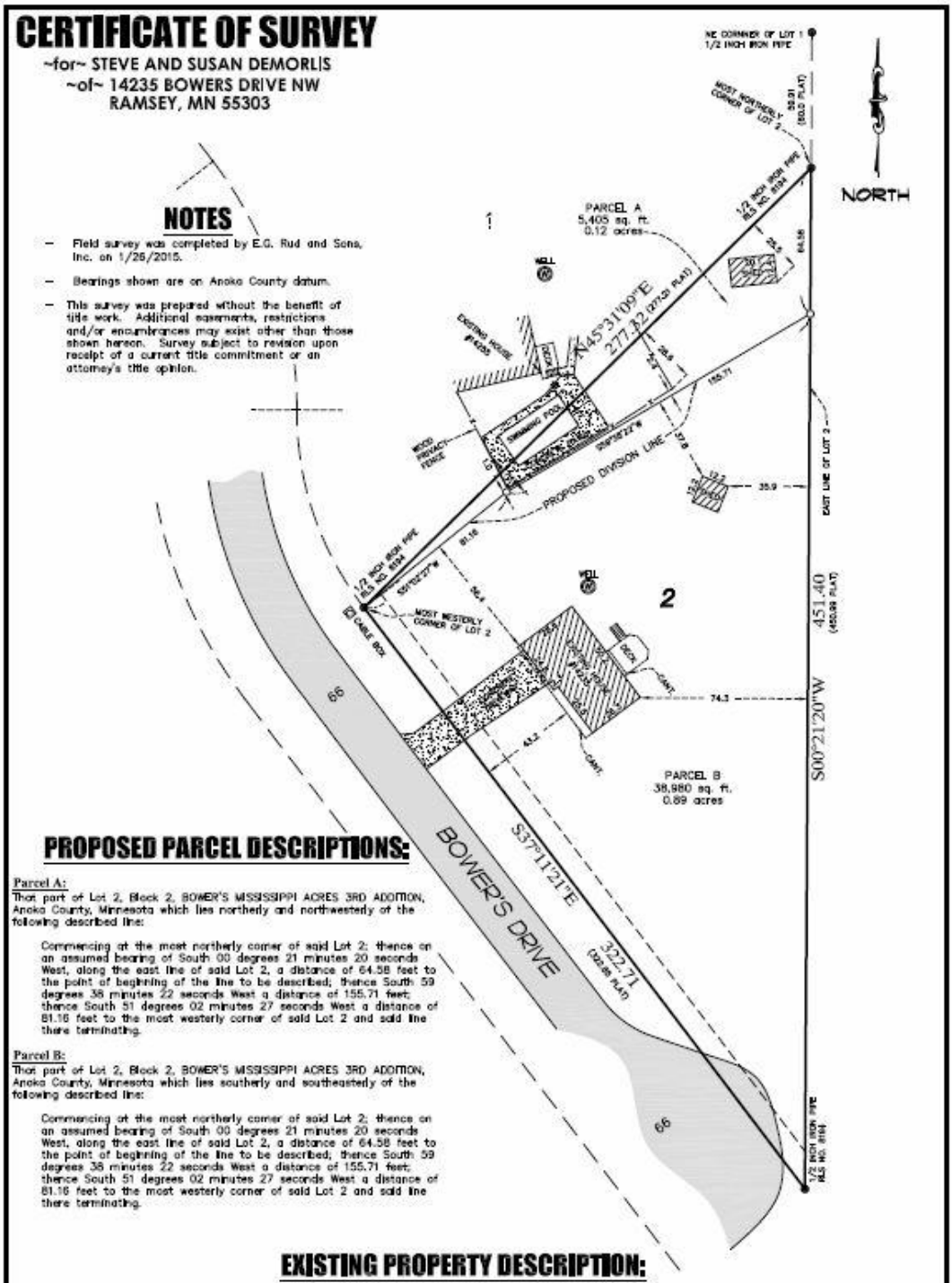
This document drafted by:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

This document reviewed by:
Ratwik, Roszak & Maloney
730 Second Ave. S., Suite 300
Minneapolis, MN 55402

Exhibit

CERTIFICATE OF SURVEY

~for~ STEVE AND SUSAN DEMORLIS
~of~ 14235 BOWERS DRIVE NW
RAMSEY, MN 55303



NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 1/26/2015.
- Bearings shown are on Anoka County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

PROPOSED PARCEL DESCRIPTIONS:

Parcel A:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies northerly and northwesterly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

Parcel B:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies southerly and southeastedly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

EXISTING PROPERTY DESCRIPTION:

Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota.

Location: SEC. 29, T.32, R.25 – CITY OF RAMSEY			
Scale 1"= 40'	Drawn By: BAB	Project Manager: JER	Job No.: 15048LS
○ Denotes Iron Set	● Denotes Iron Found	Bearings shown are on Anoka County datum.	

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota. Dated this 28th day of January, 2015.

License No. 41578

E.G. RUD & SONS, INC.
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
Tel (651) 361-8200 Fax (651) 361-8701
www.egrud.com

2–2

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-03-065

RESOLUTION ADOPTING FINDINGS OF FACT #0942 RELATING TO A REQUEST FROM STEVEN LITTLE FOR A VARIANCE TO SETBACK REQUIREMENTS FOR AN EXISTING IN-GROUND SWIMMING POOL.

WHEREAS, Steven Little, hereinafter referred to as "Applicant," has properly applied for a variance from Section 117-349 (Accessory Uses and Buildings) of the Ramsey City Code regarding minimum required setbacks for an in-ground swimming pool on the property generally known as 14255 Bowers Drive NW and legally described as follows:

Lot 1, Block 2, Bower's Mississippi Acres 3rd Addition, Anoka County, Minnesota

(the "Subject Property").

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-53 (Variances) of the Ramsey City Code on March 5, 2015, and that said public hearing was properly advertised, and that the minutes of said public hearing are hereby incorporated as a part of these findings by reference.

2. That the Subject Property is zoned R-1 Residential (MUSA) and is approximately 0.98 acres in size.

3. That the Subject Property is surrounded by properties also zoned R-1 Residential (MUSA) and of similar sizes, with the exception of the parcel to the east which is approximately seventy-eight (78) acres in size.

4. That the Subject Property is located within the Mississippi River Corridor Critical Area and the Rural Service Area as defined in MN Statutes.

5. That Section 117-148 (Critical River Overlay District Development Standards) of City Code establishes a minimum lot size of 2.5 acres for lots within the Critical River Area and rural service area.

6. That the Subject Property was platted in 1973 as part of the Bowers Mississippi Acres 3rd Addition plat and is considered lawful non-conforming with regard to lot size.

7. That in 1985, a Building Permit was issued for the installation of an in-ground swimming pool on the Subject Property.

8. That the Site Plan submitted as part of the Building Permit application indicated the swimming pool would be located at least forty (40) feet from the side lot line of the Subject Property.

9. That the adjacent property, 14235 Bowers Dr. NW was recently sold and as part of the title work for that transaction, it was discovered that the swimming pool encroached onto the adjacent property by almost ten (10) feet.

10. That to resolve this encroachment, the title company representing the owners of the swimming pool are proposing an Administrative Subdivision to realign the common boundary between the Subject Property and 14235 Bowers Dr. NW to eliminate the encroachment.

11. That to minimize the enlargement of the non-conforming lot size, the proposed realigned lot line is just beyond the existing fence that encloses the swimming pool, resulting in a setback of approximately six (6) feet from the side lot line.

12. That Travis and Bridgette Richard are the fee title owners of the Subject Property.

13. That the encroachment of the swimming pool was not the result of actions of either the current or most recent former fee title owner of the Subject Property.

14. That economic circumstances alone do not create the practical difficulties.

15. That the plight is due to circumstances unique to the Subject Property.

16. That the plight was not created by the Applicant.

17. That, if granted, the variance will not alter the locality's essential character.

18. That, if granted, the variance will/will not impair an adequate supply of light and air to adjacent property.

19. That, if granted, the variance will/will not have the effect of allowing a use that is prohibited in the applicable zoning district.

20. That, if granted, the variance will/will not unreasonably increase the congestion on the public street.

21. That, if granted, the variance will/will not adversely impact the degree of public health, safety and general welfare provided for in the Ramsey City Code.

22. That, if granted, the variance will/will not diminish established property values within the neighborhood.

23. That, if granted, the variance requested is/is not the minimum variance necessary to accomplish the intended purpose of the Applicant.

24. That the unique circumstances on the Subject Property do/do not result from the actions of the Applicant.

25. That, if granted, the variance will/will not grant the Applicant any special privilege that is denied to the owners of other land in the same district.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 5th day of March, 2015.

_____
Chairperson

ATTEST:

_____
City Clerk

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-03-066

RESOLUTION APPROVING THE ISSUANCE OF A VARIANCE TO SIDE YARD SETBACK REQUIREMENTS FOR AN EXISTING IN-GROUND SWIMMING POOL.

WHEREAS, Steven Little (Permittee) has properly applied for a variance to Section 117-349 (Accessory Uses and Buildings) of the Ramsey City Code regarding pool setbacks from adjoining lots on the property generally known as 14255 Bowers Drive NW and legally described as follows:

Lot 1, Block 2, Bower's Mississippi Acres 3rd Addition, Anoka County, Minnesota

(Subject Property).

AND WHEREAS, the Planning Commission conducted a public hearing on March 5, 2015, pursuant to Section 117-53 of the Ramsey City Code, and adopted findings of fact relating to the request for a variance.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That based on Findings of Fact #0942, a variance to the minimum required setback for a swimming pool on the **Subject Property** to an adjoining property is hereby granted.

2. That the existing swimming pool shall not be located closer than six (6) feet to the proposed side lot line as shown on the attached exhibit.

3. That the **Permittee** shall be responsible for all costs incurred in administering and enforcing this variance.

4. That this **Variance** shall automatically expire if the use is not initiated by March 5, 2016, and finalizing an Administrative Subdivision to acquire a portion of the adjacent property, including providing the City with evidence of combining the Property Identification Numbers (PINs) after recording of the Quit Claim Deed transferring a portion of the adjacent property, generally known as 14235 Bowers Dr. NW, to the **Subject Property**, shall constitute initiation.

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey Planning Commission this the 5th day of March, 2015.

PERMITTEE

Steven Little hereby acknowledges receipt of this variance and that he has reviewed the terms of the variance and has agreed that he will comply with the terms of the variance.

_____
Steven Little

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Steven Little, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

_____
Notary Public

PROPERTY OWNER

Travis and Bridgette Richard hereby acknowledge receipt of this variance and that they have reviewed the terms of the variance and have agreed that they will comply with the terms of the variance.

_____ _____
Travis Richard Bridgette Richard

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Travis and Bridgette Richard, husband and wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

_____
Notary Public

CITY OF RAMSEY:

By:_____ By:_____
Chairperson, Planning Commission City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

On this _____ day of _____, ____, before me, a Notary Public, personally appeared Gary Levine and JoAnn M Thieling, to me personally known, who, being each by me duly sworn did say that they are respectively the Planning Commission Chairperson and City Clerk of the City of Ramsey, the Municipal Corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said Municipal Corporation, and the said instrument was signed and sealed on behalf of said Municipal Corporation by authority of its City Council, and said Gary Levine and JoAnn M Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____
Notary Public

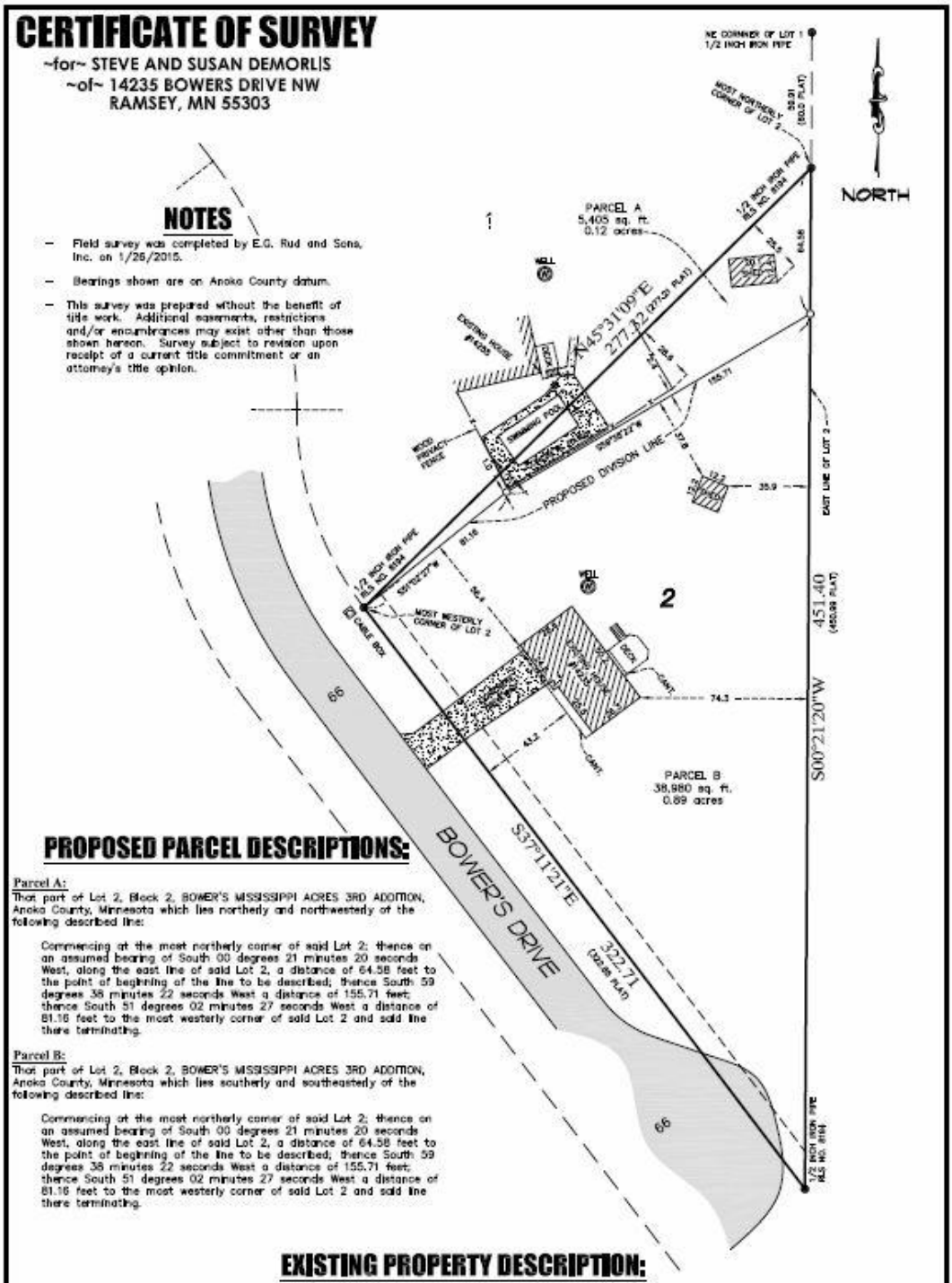
This document drafted by:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

This document reviewed by:
Ratwik, Roszak & Maloney
730 Second Ave. S., Suite 300
Minneapolis, MN 55402

Exhibit

CERTIFICATE OF SURVEY

~for~ STEVE AND SUSAN DEMORLIS
~of~ 14235 BOWERS DRIVE NW
RAMSEY, MN 55303



NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 1/26/2015.
- Bearings shown are on Anoka County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

PROPOSED PARCEL DESCRIPTIONS:

Parcel A:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies northerly and northwesterly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

Parcel B:
That part of Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota which lies southerly and southeastedly of the following described line:

Commencing at the most northerly corner of said Lot 2; thence on an assumed bearing of South 00 degrees 21 minutes 20 seconds West, along the east line of said Lot 2, a distance of 64.58 feet to the point of beginning of the line to be described; thence South 59 degrees 38 minutes 22 seconds West a distance of 155.71 feet; thence South 51 degrees 02 minutes 27 seconds West a distance of 81.16 feet to the most westerly corner of said Lot 2 and said line there terminating.

EXISTING PROPERTY DESCRIPTION:

Lot 2, Block 2, BOWER'S MISSISSIPPI ACRES 3RD ADDITION, Anoka County, Minnesota.

Location: SEC. 29, T.32, R.25 – CITY OF RAMSEY			
Scale 1"= 40'	Drawn By: BAB	Project Manager: JER	Job No.: 15048LS
○ Denotes Iron Set	● Denotes Iron Found	Bearings shown are on Anoka County datum.	

I hereby certify that this plan, survey or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota. Dated this 28th day of January, 2015.

License No. 41578

E.G. RUD & SONS, INC.
Professional Land Surveyors
6776 Lake Drive NE, Suite 110
Lino Lakes, MN 55014
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www.egrud.com

2–2

Regular Planning Commission **5. 2.**

Meeting Date: 03/05/2015

By: Tim Gladhill, Community Development

Information

Title:

PUBLIC HEARING: Consider Ordinance #15-07 Amending City Code Section 117-428 Entitled Towers

Purpose/Background:

Much of the information pertaining to this case is found in the attached documents. Please read all attachments for full context.

The purpose of this case is to hold a Public Hearing for Ordinance #15-07. The intent of Ordinance #15-07 is to amend City Code Section 117-428 entitled Towers to increase the maximum height of communications towers to 199 feet for entities providing Stage I and Stage II Improvements. Said improvements are required by City Code and represent basic utility services provided to Ramsey residents such as gas, electric, land-line telephones, streets, water, sanitary sewer, etc. The current height limitation for communications towers is 100 feet.

The current language of City Code was amended in 2008 to addresses an increase in the number of mobile phone provider towers within the community. The Ordinance #15-07 is intended to address direction provided by the Planning Commission to address safety needs of core utility providers. Staff has clarified this to be interpreted as a City-Required Stage I or Stage II Improvement.

The Ordinance #15-07 has been requested by Connexus Energy, who is proposing a 199 foot communications tower at their headquarters located at 14601 Ramsey Boulevard NW in Ramsey.

Notification:

The Notice of Public Hearing was published in the Anoka County UnionHerald.

Additionally, Staff attempted to notify all Property Owners within 350 feet of 14601 Ramsey Blvd NW of the Public Hearing related to the requested Conditional Use Permit. The request for Conditional Use Permit is processed as a separate case.

Observations/Alternatives:

The City last updated the Tower Ordinance in 2008 in response to a request for a 165 foot communications tower in Alpine Park. The policy direction of the City Council at that time was to limit the height of all communications towers to 100 feet. The policy direction meant that the City was comfortable in potentially seeing additional shorter towers in lieu of allowing fewer, yet relatively taller towers. The report drafted in 2008 is attached for review.

Towers are generally regulated by the Federal Telecommunications Act. In summary, said act prevents local governments from completely eliminating all possible locations for siting of said towers, but does provide for local government units to provide reasonable design, location, and other bulk standards. The act ensures that there is adequate cellular coverage across the nation. Over the past decade, the utilization of cellular phones has increased dramatically, with a majority of residents utilizing said services. With the number of residents utilizing said technology, it is also important from a public safety perspective to have adequate coverage.

Ordinance #15-07 still maintains the 100 foot limit for most towers as currently prescribed by the current City Code and acknowledges the Planning Commission direction from January 8, 2015. The Ordinance will essentially create an exemption from those core utility services<u>that are required of all Ramsey development</u>.

Funding Source:
The Applicant is responsible for all costs with processing the Application.

Recommendation:
Staff recommends that the City adopt Ordinance #15-07.

Action:
Motion to recommend that the City Council adopt Ordinance #15-07.

Attachments

Redlined Text
Ordinance #15-07
Planning Commission Minutes dated July 10, 2008
City Council Minutes dated July 22, 2008
City Council Minutes dated August 12, 2008
Tower Overlay District
Code Comparison Table
Presentation Provided in 2008
Planning Commission Agenda Item dated July 10, 2008

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	02/27/2015 02:57 PM
Form Started By: Tim Gladhill		Started On: 02/26/2015 04:31 PM
Final Approval Date: 02/27/2015		

Sec. 117-428. - Towers.

(a) *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:

(1) Facilitate the provision of wireless telecommunication services to the residents and businesses of the city;

(2) Minimize adverse visual effects of towers through careful design and siting standards;

(3) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and

(4) 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.

(b) *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:

(1) Parcels within the Tower Overlay District as shown on the official zoning map.

(2) All church, government, school, utility, and institutional sites

(3) 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.

(c) *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 antennas may be attached to existing structures provided the antenna does not extend more than 20 feet above the highest point of the structure or tower.

(d) *Towers in the H-1 Highway 10 Business District.* Construction of towers to support commercial antennas shall not be allowed in the H-1 Highway 10 Business District. Antennas may not be constructed on existing structures in the H-1 District.

(e) *Use of city-owned land for wireless telecommunication antennas and towers.*

(1) *Priority of users.*

a. The city;

b. Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the city and private entities with a public safety agreement with the city;

c. Other governmental agencies, for uses which are not related to public safety; and

d. 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.

(2) *Minimum requirements.*

a. The user must obtain a lease from the city, which shall take the following criteria into consideration:

1. The antennas or tower will not interfere with the purpose for which the city owned property is intended;

2. The antennas or tower will have no adverse impact on surrounding private property;

3. 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;

4. The antennas or tower will not interfere with other users who have a higher priority as discussed in subsection (e)(1) of this section;

5. Upon reasonable notice, the antennas or tower may be required to be removed at the user's expense;

6. The applicant must reimburse the city for any costs which it incurs because of the presence of the applicant's antennas or towers; and

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

(3) *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:

a. *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:

1. The applicant's access to the facility will not increase the risks of contamination to the city's water supply;

2. There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;

3. The presence of the facility will not increase the water tower maintenance costs to the city; and

4. The presence of the facility will not unreasonably interfere with maintaining the water tower.

b. *Parks.* Wireless telecommunication antennas will be considered only in parks on existing structures after the recommendation of the park and recreation commission and approval of the city council. Antennas may extend a maximum on 20 feet above existing structures. In addition, antennas are not permitted in those parks that have been titled to the plat in which they were dedicated or have restrictive covenants prohibiting any use except park and recreation use.

(4) *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 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.

(5) *Termination.* The city council may terminate any lease if it determines that any one of the following conditions exists:

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

b. 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

c. 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 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.

(6) *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.

(7) *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 and transmitted to the city's department of finance. Revenue shall be credited to the specific operating activity using the land upon which the wireless telecommunication towers and antennas are located:

a. To the water utility fund when located on water utility property;

b. To the park improvement fund if located on park or open space land;

c. Any revenues not meeting the above criteria shall be applied as general revenues of the general fund.

(f) *Collocation requirements.* All commercial wireless telecommunication towers erected, constructed, or located within the city shall comply with the following requirements:

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

a. 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.

b. 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.

c. 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.

d. In spite of its best efforts, within 60 days, the applicant was unable to obtain approval to collocate on an existing or approved tower or building.

e. Other reasons that make it impractical to locate the planned telecommunications equipment upon an existing or approved tower or building.

(2) 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 additional users.

(g) *Tower construction requirements.* All towers erected, constructed, or located within the city, and all wiring therefor, shall comply with the requirements set forth in chapter 105

(h) *Tower and antenna design requirements.* Proposed or modified towers and antennas shall meet the following design requirements:

(1) 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. Tower architectural standards are subject to final city council approval.

(2) 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, location availability, or the number of potential collocations warrants this consideration.

(3) 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.

(i) *Tower bulk standards.* Towers shall conform with each of the following requirements:

(1) 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.

(2) 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 nonresidential zoned property and the tower does not encroach upon any easements. When adjacent to a residential district, the tower must meet the setback equal to the height of the tower plus ten feet or the setbacks of the underlying zoning district, whichever is greater.

(3) Towers constructed within the Tower Overlay and Public/Quasi-Public Zoning Districts shall maintain a minimum setback equal to the height of the tower plus ten feet from any lot line.

(4) Towers shall not be located between a principal structure and a public street, with the following exceptions:

a. In industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street.

b. On sites adjacent to public streets on all sides, towers may be placed within a side yard abutting a local street.

(5) The setback shall be measured between the base of the tower located nearest the property line and the actual property line.

(6) 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.

(7) The height of a communication tower shall not exceed 100 feet~~.~~ with the following exceptions:

a. *City Required Stage I and Stage II Improvement Providers.* In recognition of the needs of providers of services and infrastructure required by the City as Stage I and Stage II Improvements as defined in City Code Section 117-615 (Construction of Improvements) that provide basic services to the community, utility providers of these improvements may construct a tower not to exceed 199 feet in commercial and industrial districts, with no additional height allowances granted.

(8) Multi-user towers may exceed the height requirements as stated in this section by up to an additional 20 feet provided that two additional users, as stated in subsection (f) of this section, have collocated their antennas on the monopole structure. A tower extension requires an amended conditional use permit.

(9) 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.

(j) *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.

(k) *Signs and advertising.* The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

(l) *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.

(m) *Abandoned or unused towers or portions of towers.* Abandoned or unused towers or portions of towers shall be removed as follows:

(1) All abandoned or unused towers and associated facilities shall be removed within 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.

(2) Unused portions of towers above a manufactured connection shall be removed within 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.

(n) *Antennas on roofs, walls and existing towers.*

(1) 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 20 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 a final site and building plan as specified by chapter 105, Buildings and Building Regulations, and 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.

(2) 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.

(o) *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 calendar days in advance of such changes and allow the city to monitor interference levels during the testing process.

(p) *Additional submittal requirements.* In addition to the information required elsewhere in this Code, development applications for towers shall include the following supplemental information:

(1) A report from a qualified and licensed professional engineer which:

a. Describes the tower height and design including a cross section and elevation;

b. Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas;

c. Describes the tower's capacity, including the number and type of antennas that it can accommodate; and

d. Includes other information necessary to evaluate the request.

(2) For all commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his 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.

(3) Before the issuance of a building permit, the following supplemental information shall be submitted:

a. Affirmation that the proposed tower will comply with any applicable regulations administered by the Federal Aviation Administration; and

b. 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.

(q) *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 60 feet in height if free standing and 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 this section. Antennas that are intended to be 60 feet or more in height if free standing and 15 feet or more in height if roof-mounted shall require a conditional use permit from the city.

(r) *Conditional use permit required.* Except as otherwise provided for in this section, 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 therefor as hereinafter provided. Routine maintenance of towers and related structures shall not require the issuance of a conditional use permit.

(s) *Existing antennas and towers.* Antennas and towers in existence as of July 14, 1997, which do not conform to or comply with this section are subject to the following provisions:

(1) 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.

(2) 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 within 180 days of when the damage or destruction occurred, 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 percent 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.

(Code 1978, § 9.15; Ord. No. 97-08, 7-14-1997; Ord. No. 00-13, 2-26-2001; Ord. No. 01-05, 4-9-2001; Ord. No. 08-24, § 2, 8-12-2008)

ORDINANCE #15-07
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN AMENDMENT TO CHAPTER 117 OF THE CITY CODE, WHICH CHAPTER IS KNOWN AS ZONING AND SUBDIVISIONS OF THE CITY CODE OF RAMSEY, MINNESOTA

AN ORDINANCE AMENDING SECTIONS 117-428 (TOWERS) OF THE RAMSEY 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 117-428 Subd. (i) is amended to ADD the following language (added language underlined, deleted language ~~strike-through~~):

(7) The height of a communication tower shall not exceed 100 feet~~.~~ with the following exceptions:

a. *City Required Stage I and Stage II Improvement Providers.* In recognition of the needs of providers of services and infrastructure required by the City as Stage I and Stage II Improvements as defined in City Code Section 117-615 (Construction of Improvements) that provide basic services to the community, utility providers of these improvements may construct a tower not to exceed 199 feet in commercial and industrial districts, with no additional height allowances granted.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #14-10, which 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.

It is the intent and effect of Ordinance #15-07 to amend Ramsey, Minnesota City Code Sections 117-428 to allow providers of Stage I and Stage II Improvements within the community to construct communications towers not to exceed 199 feet.

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 ___ day of _____, 2015.

_____
Mayor

ATTEST:

_____
City Clerk

Introduction Date:
Posting Dates:
Adoption Date:
Publication Date:
Effective Date:

PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey Planning Commission conducted a regular meeting on Thursday, July 10, 2008, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Chairperson Michael Nixt (arrived at 7:14 p.m.) Commissioner Ralph Brauer Commissioner Teresa Cleveland Commissioner Ralph Hunt Commissioner Gary Levine Commissioner Gary Van Scoy Commissioner Bryan Rogers
Members Absent:	None
Also Present:	Community Development Director Amber Miller Assistant Community Development Director Sylvia Frolik Associate Planner Breanne Dalnes Associate Planner Tim Gladhill

CALL TO ORDER

Acting Chairperson Levine called the regular meeting to order at 7:10 p.m.

CITIZEN INPUT

John Enstrom, 8702 – 181st Avenue, stated he has been dealing with an issue affecting him and hundreds of other residents because of the power line that was constructed last season across the north half of Ramsey. He stated that he was given a letter and told they would be installing new power poles on the existing power easement because the old poles had been there many years. However, Enstrom believed the power poles did not need to be replaced. He explained the 40 foot high power poles were replaced with 60 foot high poles so they now show above the tree line. He stated these power lines are in his back yard and he finds them to be obnoxiously tall. Mr. Enstrom stated another concern is that the 67,000 kilovolt line is now in excess of 100,000 kilovolts, which is why the poles had to be higher.

Mr. Enstrom stated he believes he has been lied to and that this new power line impacts the safety and health of the City of Ramsey. He suggested a zoning or some type of permit should be required and the utility company should be honest about the project they are undertaking. He advised the project also impacted the park land, making it more dangerous with holes, that were not restored.

Mr. Enstrom pointed out that should one these taller power poles fall down during a storm, it will fall outside of the easement area. He again stated the utility companies should be required to obtain a permit, or variance, for their projects and asked the City to seriously look into this matter because it impacts and harms residents.

Acting Chairperson Levine asked if there is a permitting process.

Assistant Community Development Director Frolik stated these comments can be brought to the Public Works Committee to be addressed.

Chairperson Nixt arrived at 7:14 p.m.

Mr. Enstrom stated the existing easement compensated for the old poles but the newly installed higher poles should require a wider easement or underground installation so it is not a health hazard.

Commissioner Brauer questioned whether this may already be in violation of the City's code due to the height.

Assistant Community Development Director Frolik clarified that the City Code contains a section on permitted encroachments and utility poles are exempt.

Community Development Director Miller stated that is correct unless the area is within an airport height limitation overlay zone.

Commissioner Brauer noted another concern is voltage and there has been mention of potential health hazards for higher kilovolt power lines.

Assistant Community Development Director Frolik stated the Public Works Committee will address that issue and their deliberations will be reported to the Planning Commission with the next agenda.

Acting Chairperson Levine turned the meeting over to Chairperson Nixt.

APPROVAL OF AGENDA

Associate Planner Gladhill recommended that Case #1 be removed from the agenda to allow time for staff to address a code enforcement issue on the property. He advised that Staff will repost the public hearing for a future meeting.

Motion by Chairperson Nixt, seconded by Commissioner Levine, to approve the agenda as revised to remove Case #1.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Levine, Brauer, Cleveland, Hunt, Van Scoy, and Rogers. Voting No: None. Absent: None.

APPROVE PLANNING COMMISSION MINUTES

Motion by Commissioner Van Scoy, seconded by Commissioner Levine, to approve the following minutes as presented:

1) Planning Commission public hearing and regular meeting minutes dated June 5, 2008.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Van Scoy, Levine, Brauer, Cleveland, Hunt, and Rogers. Voting No: None. Absent: None.

NOTE CITY COUNCIL MINUTES

The following Council minutes were noted:

1) City Council regular meeting minutes dated May 27, 2008
2) City Council regular meeting minutes dated June 10, 2008

PUBLIC HEARINGS/COMMISSION BUSINESS

Case #1: Public Hearing – Request for a Conditional Use Permit for a Private Dog Kennel to Maintain Four or More Dogs on a Parcel; Case of Lynette and David Randall

This item was removed from the agenda upon adoption.

Case #2: Public Hearing – Discuss Ordinance to Amend Section 9.12 (Signs) of City Code to Incorporate "Dynamic Display" Sign Regulations; Case of City of Ramsey

Chairperson Nixt closed the regular portion of the Planning Commission meeting at 7:19 p.m. in order to call the public hearing to order.

Public Hearing

Chairperson Nixt called the public hearing to order at 7:19 p.m.

Presentation

Associate Planner Dalnes reviewed that the Planning Commission met on June 5, 2008, to discuss the options for amending the sign ordnance and directed staff to use the City of Minnetonka's sign ordinance as basis for revisions, and to research Ramsey businesses' use of timing on existing electronic signs. The proposed ordinance was included in meeting packet with major change being to the definition for "dynamic display" for present signs and encompasses future technology.

Associate Planner Dalnes presented the specifics of the ordinance as it relates to brightness, size and duration of message. General language has been included for brightness to indicate that no sign may be of such intensity of brilliance that it interferes with the effectiveness of an official traffic sign, device or signal, or that distracts a motor vehicle driver. The size of dynamic display is proposed to be limited to 35% of total signage allowed, or about 35 square feet for most business and industrial districts. In terms of duration, staff is recommending that the sign is limited to changing at no more than once per three seconds, which is what banks in the community are currently following. This speed appears reasonable to allow owners enough use of the messages without being distracting from flashing or scrolling. Also staff is presenting, for discussion, a revision that if a business installs a functioning dynamic display sign, the use of temporary signs would no longer be permitted. However, multi-tenant centers would be permitted to install one temporary sign instead of three if they also have a dynamic display. Associate Planner Dalnes stated that Staff recommends the Planning Commission recommend approval of the proposed ordinance.

Chairperson Nixt stated this language appears to be straight forward.

Commissioner Levine asked if there will be impact to current signs.

Associate Planner Dalnes stated the impact will be minimal and businesses that were contacted indicated the speed of the sign message can easily be set to different intervals.

Commissioner Van Scoy asked about the desire of businesses for a scrolling or flashing signs.

Associate Planner Dalnes stated she talked with two banks and they indicated that flashing is not an effective way to relay their message because it is too quick to be read. The purpose of their signage is to convey a message, not attract attention.

Commissioner Van Scoy referred to Page 15 where the definitions mention flashing signs or lights and says: "other than a changeable copy sign." He asked what that means.

Associate Planner Dalnes explained it is defined in the sign ordinance as a sign where the message has slide-out lettering that is changed manually, not electronically. She stated that technology has changed so the Code definition will be clarified to indicate it is changed "manually" and not a dynamic display.

Chairperson Nixt asked whether it should be included if the entire face of the sign automatically changes by rotation, noting that is not a manual message change. He suggested that level of distinction be incorporated into the definition.

Associate Planner Dalnes stated staff will make that language clarification.

Citizen Input

Dennis Carpenter, BOB FM community radio, stated they will be operating by Monday and hope to invite the Planning Commissioners to see their new location. He asked about staff research that was conducted beyond talking with two banks.

Associate Planner Dalnes explained that SRF Consulting prepared a report addressing 10 to 12 scientific studies on signage. That report was prepared on behalf of the City of Minnetonka due to a lawsuit and their need to determine the level of distraction "dynamic display" signs had to the driver due to brightness and size of letters.

Mr. Carpenter stated he is unfamiliar with the SRF study but knows studies have been conducted, which is what he wanted to address tonight. He read a prepared statement indicating he wants to assure the new sign ordinance is crafted on a scientific basis, not personal opinion. He commented that if each of the Planning Commissioners is to positively impact the community they need to do so under the mastery of the subject under consideration, namely signs in the roadside environment. Mr. Carpenter suggested that this knowledge will allow the Planning Commission to take command of this process and have a truly positive impact on businesses and the community. He urged the Planning Commission to take into careful consideration the desires of the municipality for a visually pleasant and safe landscape but also the free speech rights of the individual and business. He noted that some businesses want to convey a certain unique image, but not all are like banks and have an individual identity.

Mr. Carpenter stated there is some verifiable research available beyond what staff relied upon. On line he found the United States Sign Council (USSC) has done research and clearly shown that signs do not cause traffic accidents and when properly sized and placed, contribute to traffic safety. Research shows that in most municipalities, signs are not too big but need to be bigger to account for the increased need for rapid legibility in high speed traffic environments. He suggested that the facts are clear that signs provide vitally needed info in extremely complex landscapes without which motorists may not find their destination. He advised that the United States Sign Council research is funded by the United States government and all studies done by impartial universities, unbiased researchers, and scientists. He suggested there is an unprecedented level of acceptance for these scientific studies and organizations have come to utilize them including the American Planning Association who just adopted the USSC study for illuminated signs. Other organizations include the International Code Council, Transportation Research Board of the National Academies of Science and Engineering, the American Society of Civil Engineers, and Illuminating Engineering Society of North America.

Mr. Carpenter stated he wanted to share this information to encourage the Planning Commission and staff to look into this research, to step back for a moment, and not vote in favor of the ordinance change tonight but to wait until staff has an opportunity to study the research so a proper sign ordinance can be crafted using the latest scientific data for illuminated signs.

Mr. Carpenter explained that as a radio communication company, they take it seriously to serve the public interest and are charged by the Federal Government to do so. He explained that in the

future they want to erect an illuminated pylon sign at their building with one face towards Highway 10 and hope, when budget allows, that it can be a state-of-the-art, full motion video sign. The sign will be utilized to not only deliver up-to-date radio information but also provide valuable weather information, weather alerts and warnings, and Amber Alerts through new technology. Mr. Carpenter suggested that the banks may not want to utilize scrolling signs but in downtown St. Paul the brand new $64 million Minnesota Public radio facility has a banner around their building, scrolling the latest news headlines. He noted that in New York City you will see the same type of technology being used. He stated that providing information is vital to the community and they want to be able to use their sign to provide that service. Mr. Carpenter stated they will not be selling an item but providing information that people need. He stated in his industry the availability of scrolling is important because the public relies on his company to provide information. He stated they made a huge investment to move to Ramsey, enjoy the community, and want to be able to erect the best sign they can to provide the best quality information.

Mr. Carpenter asserted that scientific study has found that such a sign does not cause accidents. What causes accidents, they have found, is if the sign is too small and drivers cannot read it. He suggested that at 100 yards, a 35 square foot sign is too small and cannot be read. He stated if illuminated signs are the major cause of accidents, there would be gridlock in Los Vegas, Nevada; however, they have one of the lowest number of car traffic accidents in the United States yet have the most illuminated signs. He suggested the City give the public credit that they live in a fast paced society and can process information quickly and move on. But, if you make it difficult they will become frustrated and it could cause problems. He urged the Planning Commission to reevaluate before moving forward. He offered his services, free of charge, to provide information or to help in any way he can to assure the Planning Commission bases its decision on scientific studies not personal opinion. He closed by saying he appreciates the Planning Commission listening to his comments and is proud to be part of Ramsey.

Commissioner Brauer asked Mr. Carpenter, since he had read the scientific study, what is in the scientific studies that are contradictory to the draft ordinance.

Mr. Carpenter stated he has not had time to read all of the studies but spent about an hour and a half on the internet to research available scientific studies. He stated he would be happy to share this information with staff.

Associate Planner Dalnes pointed out that the SRF lit review included a countless number of studies and is easy to download from the Minnetonka website.

Commissioner Brauer stated that information was previously provided to the Planning Commission.

Associate Planner Dalnes explained the SRF study looked at signs where the message was up long enough to read it and where the driver had to consistently look at the sign to read the message over a longer period of time than allowed. The study was not specific to scrolling signs but signs where you needed to look at them beyond a certain criteria. She stated that information

is included in the lit review by SRF and can be reviewed by the Planning Commission to draw their own conclusions.

Chairperson Nixt noted that with scrolling signs, you have to take your eye off the road for a period of time to read the message and that results in causing driver distraction for a prolonged or extended period of time.

Associate Planner Dalnes stated that is correct; the conclusion of the study is that driver distraction occurs if you have to take your eyes off the road consistently for a period of time to get the whole message, such as with a scrolling sign.

Chairperson Nixt pointed out that speed is also a factor, as is the nature of the highway, amount of vehicular traffic, and time of day. He noted Highway 10 is 65 mph and indicated he does not believe you can extrapolate literally and say that the level of distraction caused by signage in Los Vegas is the same as Highway 10 at rush hour.

Associate Planner Dalnes concurred and advised that the SRF study also addressed the size of the letters based on the speed of the traffic, because they are related. She noted that issue was discussed last month and that it was impossible to enforce so it was eliminated from the Code. However, it can be included if desired by the Planning Commission.

Associate Planner Dalnes stated small businesses in Ramsey want to utilize dynamic display billboards too.

Chairperson Nixt asked what research was included in the SRF study.

Associate Planner explained that the SRF study was a literature review of all the studies done, some from the 1970s, others more recent, and drew on studies done by transportation departments and engineers. The study dealt with what causes driver distraction and was not geared to a sign or type of sign.

Chairperson Nixt stated it appears the SRF study was a survey compilation of studies previously conducted.

Motion by Chairperson Nixt, seconded by Commissioner Van Scoy, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Van Scoy, Brauer, Cleveland, Hunt, Levine, and Rogers. Voting No: None. Absent: None.

The public hearing closed at 7:48 p.m.

Commission Business

Chairperson Nixt called the regular meeting of the Planning Commission back to order at 7:48 p.m.

Chairperson Nixt stated he missed the benefit of last month's discussion and while he feels enough study has been considered, he is not opposed to reconsideration if and when other research is presented. He noted staff has addressed concerns raised by the Planning Commission and when an application and the applicant can show it is appropriate to make an ordinance amendment, it can be considered at that point.

Chairperson Nixt stated that in the interest of public safety, he believes the three second standard provides plausible relationship to safety of residents and allows businesses to present products and businesses. He stated he understands the request for flexibility for full motion sign, beyond scrolling, to a level he may not feel comfortable with. He explained that he has seen drivers watching full motion video in their front seat and that those vehicles often times veer over the line, which he finds to be a safety issue.

Commissioner Levine stated the City needs to follow technology, see how the signs are working nationally, and new scientific data. Then if a change or amendment is needed, it can be considered and a recommendation made to the City Council. He agreed the Planning Commission has discussed this at length and adequate research has been conducted.

Motion by Commissioner Levine, seconded by Commissioner Van Scoy, to recommend that City Council adopt the proposed ordinance to amend sign regulations to establish dynamic display standards and provide further clarification to the language addressing mechanical versus automated changes.

Further discussion: Commissioner Brauer stated he will inform staff of two typographic errors.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Levine, Van Scoy, Brauer, Cleveland, Hunt, and Rogers. Voting No: None. Absent: None.

Commissioner Brauer commended staff for its detailed scientific research and drafting of the ordinance.

Chairperson Nixt advised those present that this item will be considered by the City Council on July 22, 2008.

Case #3: Public Hearing – Consider Ordinance to Amend City Code Section 9.15 Towers; Case of City of Ramsey

Chairperson Nixt closed the regular portion of the Planning Commission meeting at 7:55 p.m. in order to call the public hearing to order.

Public Hearing

Chairperson Nixt called the public hearing to order at 7:55 p.m.

Presentation

Associate Planner Gladhill noted the item before the Commission is several revisions to the ordinance that regulates the placement of towers in Ramsey. He explained that a moratorium on the construction of cell towers is currently in effect until September 17, 2008.

Associate Planner Gladhill reviewed staff's research of current tower location, identification of gaps in coverage, and need for additional towers. The southern half of Ramsey will be adequately served based on the current ordinance. However, areas in the northern half of Ramsey show gaps in coverage and there are no significant commercial or industrial parcels within that area so an ordinance amendment to the Tower Overlay District is recommended to cover those gaps. Staff studied lot sizes and site conditions (natural resources) to determine the new overlay district and found opportunity for co-location on existing utility power poles. However, this cannot be required because the City does not own the poles.

Associate Planner Gladhill presented the following proposed ordinance changes and provided an explanation for each:

- 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 in the Public/Quasi-Public Zoning District

Associate Planner Gladhill explained that questions came up from property owners who asked if this ordinance means they will get a tower. However, that will be up to the property owner. The ordinance will allow them to lease or sell property to wireless providers, but it does not require them to do so. Also, there has been discussion of wind turbines but they are typically addressed through a separate section of City Code because the needs for that type of tower are greatly different. Staff has received no written comments and recommends approval of the proposed ordinance amending City Code Section 9.15.

Commissioner Van Scoy asked about the proposed tower overlay districts.

Associate Planner Gladhill explained the map on display also identifies wetland resources. Staff does not want a tower on property that is encumbered by natural resources and based the

language on how Elk River handles their overlay district. He noted that Ramsey will provide more options with this overlay district, which abides by 1996 FCC guidelines.

Commissioner Van Scoy asked whether Staff started with the existing overlay district and eliminated wetlands.

Associate Planner Gladhill stated that is correct and staff also addressed gaps in service areas based on bandwidth. He noted that many people now use cellular telephones instead of landlines so it is also a matter of public safety.

Chairperson Nixt stated the overlay districts identified on the revised map anticipates providing sufficient co-location capabilities to provide wireless coverage at a reasonable level and meets the 1996 FCC Act.

Chairperson Nixt noted there are different levels of coverage based on proximity to the tower. He asked whether Staff, while designing the overlay districts, considered signal quality inside a structure as opposed to inside a vehicle.

Associate Planner Gladhill that Bloomington changed their ordinance because in higher populated areas, towers need to be shorter. In rural areas, the tower can be higher, based on the number of users. He explained that as density increases, towers may be shorter but more towers may be needed. He explained Slimera technology, which is well camouflaged. Staff hopes communication companies will consider this new technology, which doesn't require the need for a high tower, thus reducing the cost.

Citizen Input

John Enstrom, 8702 – 181st Avenue, stated he has more bearing on power poles than anyone in the City of Ramsey because 1.5 miles of power poles and the tallest structure in Ramsey are on his property. He reported that many utility companies want to put antennas on his 280 foot tower. However, he believes this use would be detrimental to his property value because they would need 24-hour access to the tower and he does not want that to happen on this property. He stated Ramsey has power lines all over and tall aluminum towers where the antennas can be placed. He stated he lives in the country to get away from the phone and does not care if Ramsey does not have enough cellular phone coverage in his area of Ramsey. He stated he talked with the Elk River Mayor and learned they are accepting cell towers so he would suggest they go there. Mr. Enstrom stated he attended Nowthen's first City Council meeting and learned they will accept towers and Nowthen is just across the road from his property. He suggested requiring a minimum lot size for the towers, noting it does not add to the value of the property. He stated he believes it tremendously devalues property, which may also impact residents that live one-quarter of a mile away who can see the flashing red lights. He supported the existing ordinance and to require service providers to place antennas on existing towers. Mr. Enstrom stated the financial offers are minimal, about a tank of gas a month, and questioned why you would ruin your land for that low amount. He stated the service provider needs electricity, 24-hour service

to the tower, and an enclosed screen on the base to keep terrorists away so it involves more than just having tower in the air.

Associate Planner Gladhill agreed Ramsey can work closely with adjoining cities but pointed out that by the Federal Communication Act, Ramsey has to provide adequate coverage to all of its residents.

Chairperson Nixt asked what consideration was given to proximity to municipal services such as accessibility and electric power.

Associate Planner Gladhill stated staff did look at those needs when the sites were identified. He noted that larger landlocked lots will not be easy to access so staff identified topography and existing utilities. Since larger residential parcels were identified, it will not impact too many existing neighbors.

Andy Hillebregt, 17061 Bison Street, stated it was indicated that the identified parcels are not landlocked, but his parent's property is landlocked. He asked why towers cannot be in the Ramsey Town Center and if they are too ugly to be located there.

Associate Planner Gladhill explained that the Ramsey Town Center density restricts the setbacks from being applicable. He further explained the setback around the tower would make it difficult to fit in the Ramsey Town Center.

Andries Hillebregt, 16926 Bison Street, stated that is correct and is the same as the property next to it that is owned by the City.

Andy Hillebregt, stated there are other landlocked parcels as well.

Chairperson Nixt stated no wireless provider companies will select a parcel of land if there is no legal public access so those types of parcels will automatically be excluded from their consideration.

Andy Hillebregt, stated he is concerned that staff has done research but are coming up short by saying nothing is landlocked when it is. He suggested that more in-depth research is needed.

Chairperson Nixt clarified that identifying a property as a potential site in the overlay district does not give a service provider the right to place a tower at that location. It is the landowner's right to determine if they want to enter into such a lease or give an outright deed to the property.

Chairperson Nixt stated the topic under consideration tonight is not landlocked properties and how or if access should be provided since that is a legal process completely independent of whether it is a tower location or other public improvement. He emphasized that he will not entertain any discussion of eminent domain or public purpose tonight because it has no bearing on this agenda item.

Andries Hillibregt asked whether a cable company can require the City to give them access if they want to put in a tower and the property owner has not given permission. He requested that his property be removed from the list and instead identify the adjacent City's landlocked property so a tower can be located there.

Associate Planner Gladhill stated the City parcel is encumbered by natural resources.

Andraes Hillibregt stated the City site is buildable and again requested that his parcel be removed from the list.

Associate Planner Gladhill stated the Planning Commission can consider the request to remove the Hillibregt parcel in its recommendation.

Chairperson Nixt asked whether staff has identified an alternate parcel in that vicinity.

Associate Planner Gladhill stated staff can do more research to make that determination. He noted staff chose several parcels for gaps in coverage, not one parcel, just in case one of the owners is not interested in having a tower on their property.

Commissioner Van Scoy asked if it is possible for someone to put up a tower in a location that is not identified in the overlay district.

Associate Planner Gladhill stated they would not be able to build a tower without making application for inclusion in the overlay district.

Chairperson Nixt stated the objective is to provide adequate coverage areas to comply with the Telecommunications Act of 1996. He asked if the moratorium can be extended, if needed.

Associate Planner Gladhill stated that the moratorium can be extended but it is "frowned upon" since it is an Act from 1996. However, some property owners in the northern section of Ramsey have already been approached so if brought to court, the judge may rule against the City.

Chairperson Nixt noted there are two levels of coverage: coverage that is adequate; and, coverage the service provider's desire. The City has an obligation to provide reasonable coverage, but not desirable coverage in all instances.

Associate Planner Gladhill stated service providers have not identified any critical area but it is known that more coverage is needed in the northern area.

Chairperson Nixt inquired about public comment, noting written materials have not been presented by residents. Tonight, the Commission heard comments by Mr. Hillibregt and Mr. Enstrom.

Chairperson Nixt stated the ordinance can be sent back to staff for further research on the overlay district to address issues raised tonight and to see if there is an alternate but that seems

deminimus in terms of what we are trying to accomplish. Or, the Planning Commission can recommend approval with the exclusion of the overlay section and direct staff to identify a replacement parcel. Chairperson Nixt stated since the moratorium is up in September, the preferred course of action would be to make a recommendation to the City Council.

Associate Planner Gladhill stated the other overlay areas may adequately cover even with the exception of this one parcel.

Dennis Carpenter reported that at the recent NAB convention, a manufacturer was showing new monopole designs that look like big white pine trees and you cannot see the antennas. He offered to share that information with staff. He informed Mr. Enstrom that red lights are not required if the tower is under 200 feet in height.

Andy Hillibregt asked about the overlay system and why the City did not leave it up to the individual landowners. He stated that a 2.5 acre lot will accommodate such a tower and it should be left up to the property owner if they want a tower.

Associate Planner Gladhill explained that a 2.5 acre commercial or industrial lot may be appropriate but it would not be appropriate within a residential area. He noted that residential parcels were excluded except for areas where needed to provide coverage. He stated he believes there would be a lot public feedback against doing such with a residential parcel.

Andy Hillibregt noted some of the areas could be developed in the future and when that happens the tower would be in the middle of the residential area anyway.

Andy Hillibregt stated his preference to allow the property owners to make the decision whether they want to be included in the overlay district since they better know their property.

Chairperson Nixt stated leaving it open to that level of discretion would end with a result that residents and the City would not be pleased with, in aggregate.

Andy Hillibregt suggested they work with the residents to decide which parcels should be identified. He noted that as density increases the towers will be lowered and more will be needed.

Associate Planner Gladhill stated staff tried to anticipate that, noting the additional locations along the Mississippi River areas. The gaps in service in the central area of Ramsey were also identified. He noted that technology will be changing and the City will have to adjust the ordinances accordingly.

Commissioner Brauer asked who defines the coverage area and adequacy.

Associate Planner Gladhill explained providers are required to research locations within a one-mile radius and that is the basis for determining the overlay. He stated staff talked with service providers about their service areas, which is the basis for the one-mile radius.

Commissioner Brauer stated the cellular telephone industry is being driven, to a large extent, by movement towards broadband capabilities which require a different type of transmission and reception. He asked whether the gaps may be there for broadband reception but not for regular reception, and questioned how much is driven by change in technology for broadband.

Associate Planner Gladhill stated he does not know but could do additional research on broadband technology.

Commissioner Brauer explained that the bandwidth needed to carry pictures is wider than needed for voice transmission. He noted that cellular companies are selling technologies to watch a television feed on your cellular telephone that requires different signal delivery and bandwidth. He asked who and what defines the "gap." The 1996 FCC Act requires Ramsey to provide service for all residents to access a cellular telephone but wondered whether it requires Ramsey to also provide, in addition, broadband service. He also asked whether getting one bar on their telephone is adequate service.

Associate Planner Gladhill stated the additional uses gets down to additional use of bandwidth. He stated he does not have additional information about the difference in bandwidth needed to answer a call and additional bandwidth needed to watch wireless streaming video on a cellular telephone.

Commissioner Brauer asked where the data comes from and whether, in the long run, the City has to rely on the service provider to say where they want the towers. He also asked if Ramsey can find a means to get the data independently on tower placements.

Associate Planner Gladhill noted that in past tower requests, the applicant provided engineering specs for their service coverage but it may not have indicated how much was needed for the phone, and how much for streaming video. Staff can determine if the request is appropriate for additional bandwidth or adequate coverage.

Community Development Director Miller stated staff can determine if additional information is needed beyond the engineering specs provided by the applicant.

Chairperson Nixt stated his belief that the City is better off to design overlay districts that are established and based on reasonable review. That puts the City in a favorable position should a wireless provider want a tower in an area not designated as an overlay district or otherwise permitted site and properly shift the burden to the wireless provider to demonstrate the City has not provided it with adequate access required under Federal law. At that point, it is fair to say if the City believes this ordinance identifies overlay districts based on current information to accomplish that objective, to provide reasonable coverage, it seems prudent to move the ordinance forward to the City Council for consideration and adoption. He noted that standards, technology, and needs may change but the Planning Commission has to look at standards for today; the current situation not future situation.

John Enstrom stated he has 3.5 of the most desirable sites in Ramsey on his property and if Central Park is not a good spot, Veterans Lake is not a good site either and he wants it eliminated from consideration. He noted one of the towers straddles his property and his neighbor's property to the west. However, he does not want an antenna on the west half of that tower either.

Community Development Director Miller clarified that the antennas allowed in Central Park are co-located on the 100-foot tall lights, adding an additional 20 feet as opposed to adding new towers.

Motion by Commissioner Levine, seconded by Commissioner Van Scoy, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Levine, Van Scoy, Brauer, Cleveland, Hunt, and Rogers. Voting No: None. Absent: None.

The public hearing closed at 8:48 p.m.

Commission Business

Chairperson Nixt called the regular meeting of the Planning Commission back to order at 8:48 p.m.

Chairperson Nixt stated that given the amount of work his firm does for service providers, he will be abstaining from discussion.

Commissioner Van Scoy questioned the language about minimum setback.

Associate Planner Gladhill explained that the design of the monopole is to fall straight down, not to the side and in looking at the design of the tower, the setbacks should be adequate. He reviewed the zoning districts where towers are allowed and setback standards for the various zoning districts.

Commissioner Van Scoy asked if towers can be 35 feet from a structure.

Associate Planner Gladhill stated it can be within 35 feet from the property line if in an industrial zoning.

Commissioner Van Scoy stated he believes it is not appropriate to locate a tower close to a property line when next to residential because the tower could fall on someone's house. He asked that consideration of the neighboring use be addressed in the setbacks.

Associate Planner Gladhill suggested adding language to indicate that when adjacent to a residential area, they are subject to the height of tower plus ten feet.

Commissioner Brauer stated he will also abstain from this vote.

Motion by Commissioner Hunt, seconded by Commissioner Levine, to recommend that City Council amend the Tower regulations in Section 9.15 of City Code, subject to the following:

1. Excluding the Andries Hillibregt landlocked parcel from the overlay district
2. Excluding the Enstrom parcel from the overlay district
3. Including language to indicate that setbacks for Commercial and Industrial properties, if next to Residential property, shall be the greater of the setback in the residential district or commercial/industrial districts
4. Staff to work with Mr. Enstrom to address his concern regarding the tower being located on his property and his neighbor's property

Commissioner Cleveland stated it is still possible to work with neighboring cities in location of towers to provide coverage.

Associate Planner Gladhill stated that staff will encourage service providers to look beyond Ramsey's boundaries when addressing tower locations.

Motion Carried. Voting Yes: Commissioners Hunt, Levine, Cleveland, Van Scoy, and Rogers. Voting No: None. Absent: None. Abstain: Chairperson Nixt and Commissioner Brauer.

Case #4: Staff Update

1) Associate Planner Dalnes' Last Meeting

Associate Planner Dalnes informed the Planning Commission that this will be her last meeting as she has accepted a position with the City of Minnetrista.

The Planning Commission thanked Ms. Dalnes for her work with Ramsey and wished her well at Minnetrista.

2) Associate Planner Gladhill

Assistant Community Development Director Frolik advised that this is the first official meeting for Mr. Gladhill as Associate Planner.

The Planning Commission congratulated Mr. Gladhill on his promotion from Management Intern to Associate Planner.

3) Joint City Council / Planning Commission Workshop

Assistant Community Development Director Frolik notified the Planning Commission that a joint Planning Commission and City Council meeting has been scheduled for Tuesday, August 12, 2008, from 5:30 – 7:00 p.m. This will provide an opportunity for the Comprehensive Plan consultant to present scenarios and land use information for the Comprehensive Plan update.

Case #5: Zoning Bulletin

The Zoning Bulletin was noted.

OTHER COMMISSION BUSINESS

1) Community Center Focus Group

Associate Planner Gladhill advised of the upcoming community center focus group meetings on Wednesday, July 16, 2008 at 6:00 p.m. and July 17, 2008 at 2:00 pm. Information on this matter, including meeting dates and questions to be asked, will be in the *Ramsey Resident* and the next utility billing.

The Planning Commission asked staff to also include this information on the City's website.

ADJOURNMENT

Motion by Chairperson Nixt, seconded by Commissioner Levine, to adjourn the meeting.

Motion Carried. Voting Yes: Chairperson Nixt, Commissioners Levine, Brauer, Cleveland, Hunt, Van Scoy, and Rogers. Voting No: None. Absent: None.

The regular meeting of the Planning Commission adjourned at 9:03 p.m.

Respectfully submitted,

Sylvia Frolik
Assistant Community Development Director

ATTEST:

JoAnn Shaw
Community Development Secretary

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.

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CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, July 22, 2008 at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present:	Mayor Thomas Gamec Councilmember John Dehen Councilmember David Elvig Councilmember David Jeffrey Councilmember Matt Look Councilmember Mary Jo Olson Councilmember Sarah Strommen
Members Absent:	None
Also Present:	City Administrator Kurtis Ulrich Fire Chief Dean Kapler Public Works Director Brian Olson Community Development Director Amber Miller Police Chief James Way City Attorney William Goodrich Associate Planner Breanne Dalnes Associate Planner Timothy Gladhill

CALL TO ORDER

Mayor Gamec called the regular meeting of the Ramsey City Council to order at 7:08 p.m., followed by the Pledge of Allegiance led by Councilmember Strommen.

CITIZEN INPUT

None.

APPROVE AGENDA

Councilmember Look asked that item #11 from the Consent Agenda be pulled and added as Case #15 on the regular agenda, for further discussion.

Motion by Councilmember Jeffrey, seconded by Councilmember Olson, to approve the agenda, with the revision that Consent Agenda item #11 be added as Case #15 on the regular agenda.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Olson, Dehen, Elvig, Look, and Strommen. Voting No: None.

CONSENT AGENDA

Motion by Councilmember Jeffrey, seconded by Councilmember Strommen, to approve the following items on the Consent Agenda:

1) Receive Building Permits Approved for June 2008 and Year to Date
2) Receive Ramsey Fire Department Monthly Report for May 2008
3) Receive Ramsey Fire Department Monthly Report for June 2008
4) Note the following Commission Meeting Minutes
    a) Board of Adjustment/Regular/April 3, 2008
    b) Planning Commission/Regular/June 5, 2008
5) Approve the following License Applications
    Special Event
    Lord of Life Church – HarvestFest 14501 Nowthen Boulevard NW Ramsey, MN 55303
    Transient Merchant
    Alamo Kennels – Travis Weis 16051 Iguana Street NW Ramsey, MN 55303
6) Approval of the following Rental Licenses
    Owner Jeremy Madrid Address 13887 Hematite Street NW
    Owner Kent Lindgren Address 5731-170th Lane NW
    Owner Donna Hartley Address 7266-147th Lane NW
    Owner Thomas M. Wilman Address 6925-139th Lane NW
7) Adopt Resolution #08-07-124 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of July 3, 2008 through July 17, 2008
8) Adopt Resolution #08-07-125 Approving a Permit Application for Twin Cities North Chamber of Commerce to Allow Charitable Gambling at the Links at Northfork
9) Adopt Resolution #08-07-126 Authorizing 2nd Partial Payment to Standard Sidewalk, Inc. for IP 08-24 Sunwood Drive Streetscape
10) Adopt Resolution #08-07-127 Approving Pay No 15 to EH Renner & Sons, Inc. for Improvement Project #05-41 Wells No 7 & 8
11) Adopt Resolution #08-07-128 Reciting a Proposal for an Industrial Development Project and Taking Official Action with Respect thereto Indicating Preliminary Intent to Assist the Financing of the Project Pursuant to the Minnesota Municipal Industrial Development Act and Calling for a Public Hearing on the Project (Knoll Properties, LLC Project) - **Moved to Case #15 on the Regular Agenda**
12) Approve Request for Amended Development Permit Extending the Completion date to November 13, 2009 for Ramsey Commons; Case of Ramsey Arbor Properties
13) Report from Personnel Committee
    1) Consider Authorization to Hire an Accountant I

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Dehen, Elvig, Jeffrey, Look, Olson, and Strommen. Voting No: None.

COUNCIL BUSINESS

Case #1: Public Hearing: Consider Adoption of an Ordinance to Amend City Charter Sections 2.5 and 4.5.5

Mayor Gamec closed the regular portion of the City Council meeting at 7:10 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Gamec called the public hearing to order at 7:10 p.m.

Presentation

City Attorney Goodrich reported that this has been reviewed over the past few years and tonight there is a recommendation from the Charter Commission for revisions to Sections 2.5 and 4.5.5. He stated that the revisions must be adopted unanimously by the Council and would then be effective 90 days after publication, unless a petition is received within 60 days of the adoption. He reviewed the suggested changes for Section 2.5 and introduced Ben Deemer, Vice-Chair of the Charter Commission, if there are any questions.

Councilmember Dehen asked why the Charter Commission felt a liaison should be appointed to the Council. He stated that if a citizen has any issues, they can contact any member of the Council and are not just limited to their ward representative.

City Attorney Goodrich stated that this was discussed and it was felt that if the vacancy was for 90 days or longer, it was too long to have an elected position open.

Mr. Deemer stated that they felt that when there is a ward vacancy, people are entitled to specific representation and this also helps staff by making it clear who to tell people to contact.

Mayor Gamec stated that he doesn't think this is a problem and thinks people could either call the Mayor or one of the At Large Councilmembers.

Councilmember Jeffrey stated that really any person in the City is represented by four people, their Ward Representative, the two At Large Councilmembers and the Mayor. He stated that he also is concerned about appointing a liaison.

Councilmember Olson stated that she agrees that citizens have more than one way of being represented on the Council; however, if there were no importance to representing a Ward, the entire Council would be At Large. She stated that she feels citizens are entitled to have a specific person represent them.

Councilmember Strommen stated that she feels the language is a bit confusing and doesn't specifically refer to a ward position. She asked if a liaison would be appointed if the vacancy were for an At Large position. She reiterated that she feels the language is confusing.

Councilmember Elvig stated that in a voting situation, there should be representation by a majority of the board.

City Attorney Goodrich noted that the liaison would not be a voting position.

Councilmember Elvig stated that he feels citizens still need someone they can rely on to lobby their position.

Councilmember Dehen stated that he doesn't feel a liaison is necessary in this situation.

Mr. Deemer stated that he wanted to emphasize that this liaison situation only represents a short period of time, every two years, and covers the period of time from the first week of July to the end of the election. He stated that there are other provisions in the Charter to handle other vacancies at other times.

Councilmember Look stated that in reading through the minutes it appears that the liaison would have one vote, not two votes.

City Attorney Goodrich stated that was discussion by the Charter Commission but no action was taken.

Councilmember Look stated that there appear to be a lot of questions floating around and he wonders why this issue wasn't brought to a work session for more in depth discussion. He stated that he thinks it would be appropriate to get everyone together and outline the concerns and feels that any proposed change to the City's charter should be brought before the people as a referendum. He stated that he is in favor of tabling this so there can be further discussed at a work session because he doesn't think he has enough information to vote in favor of this recommendation.

City Attorney Goodrich stated that he would like to review the recommendations for Section 4.5.5. He reviewed the details and suggested language changes and noted that the person elected to the vacant office would take his or her seat as soon as the election is certified.

Councilmember Dehen stated that he feels this is reasonable and noted that he had also suggested taking this a step further and after an incumbent Councilmember is defeated, having the newly elected Councilmember take office immediately after the results are certified rather than have a lame duck member serving on the Council from November to January.

City Attorney Goodrich stated that he had run this idea by the Attorney General's office and was told that, in cases of a vacancy, it would be alright, however, in the situation where there was a defeat, it would be considered unconstitutional, because all elected officials take their seats on the first business day in January.

Councilmember Look asked why the Charter Commission was making these recommendations and what deficiencies they have seen.

City Attorney Goodrich stated that the Charter Commission is trying to keep the charter up to date and see that it grows with the community. He stated that the Charter was drafted when there were five Councilmembers and there was no primary election system and now there are seven Councilmembers as well as a primary election system. He stated that they have been reviewing the language and why it may be not valid anymore. He stated that they did not see an urgent need or a problem, but are just slowly reviewing the Charter language for possible updates. He reviewed the language in Sections 4.5.5.1, 4.5.5.2 and 4.4.5.5.

Councilmember Strommen stated that she again feels this language is confusing and doesn't understand why there is the assumption that this couldn't be handled with the regular election.

City Attorney Goodrich stated that there are certain time sequences that need to be met and noted that this section just applies to the eight week period prior to a primary election. He reiterated that there are other provisions for other vacancies and other circumstances.

Mayor Gamec stated that he agrees with Councilmember Look that this needs more discussion at a work session.

Councilmember Look stated that he sees value in meeting jointly with the Charter Commission because he feels some of the information presented tonight is out of context and could benefit from a detailed discussion.

Citizen Input

There was none.

Motion by Councilmember Olson, seconded by Councilmember Elvig, to close the public hearing.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Olson, Elvig, Dehen, Jeffrey, Look, and Strommen. Voting No: None.

The public hearing was closed at 7:43 p.m.

Council Business

Mayor Gamec called the regular City Council meeting back to order at 7:43 p.m.

Motion by Councilmember Look, seconded by Councilmember Olson, to introduce an ordinance amending Section 2.5 of the City Charter creating a councilmember liaison when a vacancy occurs and Section 4.5.5 of the City Charter amending the procedure for filling a vacancy in an elected office of the City when there is less than eight weeks prior to the primary election.

Further Discussion: Councilmember Jeffrey stated that he would like to make sure there is a joint meeting to discuss these issues.

Motion failed. Voting Yes: None. Voting No: Mayor Gamec, Councilmembers Look, Olson, Dehen, Elvig, Jeffrey, and Strommen.

Case #2: Public Hearing: Application for Off-Sale Intoxicating Liquor License: Case of 10 Spot Liquor

Mayor Gamec closed the regular portion of the City Council meeting at 7:46 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Gamec called the public hearing to order at 7:46 p.m.

Presentation

Police Chief Way stated that Melissa and Dennis Fitzgerald have properly applied for this license and noted that this location is the former Ramsey Wine & Spirits location, which has been closed for quite a while. He stated that the case is for 10 Spot Liquor, but the applicants have requested the name be changed to Fitz Liquors. He stated that everything appears to be in order and staff is recommending approval contingent upon receipt of the assumed name certification from the State of Minnesota.

Citizen Input

There was none.

Motion by Councilmember Jeffrey, seconded by Councilmember Elvig, to close the public hearing.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Elvig, Dehen, Look, Olson, and Strommen. Voting No: None.

The public hearing was closed at 7:48 p.m.

Council Business

Mayor Gamec called the regular City Council meeting back to order at 7:48 p.m.

Motion by Councilmember Jeffrey, seconded by Councilmember Look, to approve an off-sale intoxicating liquor license for Melissa B. Fitzgerald and Dennis J. Fitzgerald of DJ Investments, d/b/a as Fitz Liquors, contingent upon receipt of assumed name certification from the State of Minnesota.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Look, Dehen, Elvig, Olson, and Strommen. Voting No: None.

Case #3: Public Hearing: Application for On-Sale, Sunday and 2:00 a.m. Intoxicating Liquor License; Case of Broken Spoke Saloon

Mayor Gamec closed the regular portion of the City Council meeting at 7:49 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Gamec called the public hearing to order at 7:49 p.m.

Presentation

Police Chief Way stated that Alan Hamel, William Boyum and James Green have properly applied for this licensing. He stated that the original application was under the name of Broken Spoke Saloon and they are now changing the name to Ol'Skool Bar and Grill, LLC. He stated that staff is recommending approval contingent upon receipt of an assumed name certification from the State of Minnesota.

City Attorney Goodrich clarified that it won't be the three individuals, but the LLC, that will operate the business.

Citizen Input

There was none.

Motion by Councilmember Jeffrey, seconded by Councilmember Dehen, to close the public hearing.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Dehen, Elvig, Look, Olson, and Strommen. Voting No: None.

The public hearing was closed at 7:52 p.m.

Council Business

Mayor Gamec called the regular City Council meeting back to order at 7:52 p.m.

Alan Hamel, one of the owners, introduced himself and their general manager, Tim Lynch. He stated that they are looking to change the venue to try to bring in clientele that hasn't been using the Diamonds property.

Councilmember Dehen asked if the liquor liability has been verified.

Police Chief Way stated that the dram shop insurance goes through City Clerk Jo Thieling.

City Attorney Goodrich noted that the City needs to make sure that this is under the corporate name and not the individuals.

Councilmember Jeffrey noted that the Council has approved some events for the property and asked if those events will transfer with the business or become null and void.

City Attorney Goodrich stated that the CUP events go with the land but he isn't sure about the special events.

Police Chief Way noted that this application is for the liquor establishment which was kept separate from the surrounding properties.

Councilmember Elvig asked if the City has a limit on the amount of on-sale licenses it could issue.

City Attorney Goodrich stated that the City does not have a limit.

Motion by Councilmember Jeffrey, seconded by Councilmember Elvig, to approve an on-sale, Sunday and 2:00 a.m. intoxicating liquor license application for Ol'Skool Bar and Grill, LLC.

Further Discussion: Councilmember Jeffrey stated that he wanted to publicly thank Gary Gruber for his service to the community. He stated that Mr. Gruber held numerous events for the children and youth of the community. He stated that he wishes Mr. Gruber well and hopes he stays near the community because he has really done a lot to service the community.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Elvig, Dehen, Look, Olson, and Strommen. Voting No: None.

Case #4: Consider Reduction in Development Fees for the Anderson Dahlen Expansion

Associate Planner Gladhill stated that at the June 24, 2008 Council meeting, Anderson Dahlen requested the City consider a reduction in their trunk fees. He stated that this was discussed at the EDA and they recommended a reduction for the sanitary sewer and trunk lines from $50,818 down to $25,883.

Public Works Director Olson clarified that the City didn't want to set a precedent, so they were overly cautious in looking at this situation. He noted that they are not expanding across a lot line.

Councilmember Elvig stated that he appreciates that everyone was willing to take a look at this and discuss options. He stated that the City is trying to be reasonable and assist existing businesses in their expansion.

Motion by Councilmember Elvig, seconded by Councilmember Olson, to adopt Resolution#08-07-129 to reduce the development fees for Lot 1, Block 1, Knoll Properties to a total of $25,883.00.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Dehen, Elvig, Jeffrey, Look, Olson, and Strommen. Voting No: None.

Case #5: Request for Vacation of Drainage and Utility Easements in Knoll Properties Addition; Case of Anderson Dahlen, Inc.

Associate Planner Gladhill stated that this also relates to the prior case and a portion of the existing drainage and utility easement needs to be vacated to accommodate their proposed expansion.

Councilmember Dehen left the Council Chambers at 8:04 p.m.

Associate Planner Gladhill stated that he would like to suggest additional language in the motion as recommended by City Attorney Goodrich.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to adopt Ordinance #08-18 to vacate the drainage and utility easements within Outlot A, AEC Energy Park 4th Addition.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Jeffrey, Look, Olson, and Strommen. Voting No: None. Absent: Councilmember Dehen.

Councilmember Dehen returned to the Council Chambers.

Motion by Councilmember Look, seconded by Councilmember Jeffrey, to waive the City Charter requirement to read the ordinance aloud.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Look, Jeffrey, Dehen, Elvig, Olson and Strommen. Voting No: None.

City Attorney Goodrich noted that the first motion adopting the Ordinance, needed to be a roll call vote.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to adopt Ordinance #08-18 to vacate the drainage and utility easements within Outlot A, AEC Energy Park 4th Addition.

A roll call vote was performed by the Recording Secretary:

Councilmember Look: aye
Councilmember Olson: aye
Councilmember Elvig: aye
Councilmember Strommen: aye
Councilmember Jeffrey: aye

Councilmember Dehen: aye
Mayor Gamec: aye

Motion carried.

City Administrator Ulrich noted that Case #15 also relates to the same Anderson Dahlen project and suggested that the Council move that item earlier in the agenda.

Case #15: Adopt Resolution #08-07-XXX Reciting a Proposal for an Industrial Development Project and Taking Official Action with Respect thereto Indicating Preliminary Intent to Assist the Financing of the Project Pursuant to the Minnesota Municipal Industrial Development Act and Calling for a Public Hearing on the Project (Knoll Properties, LLC Project)

Councilmember Look stated that he wanted this taken off the Consent Agenda so staff could explain this to residents so they understood what was being proposed.

City Administrator Ulrich stated that this would schedule a public hearing for August 26, 2008 at 7:00 p.m. to discuss the City issuing revenue bonds to finance all or a portion of the costs of constructing, furnishing and equipping a project on behalf of Knoll Properties. He stated that the aggregate principal amount of the proposed Bonds would be $6,000. He stated that there would be very limited liability on behalf of the City and the City has issued similar bonds for PACT and Panther Precision Tooling and noted that this is not a general obligation bond.

Councilmember Look asked for further explanation about what "limited liability" means.

City Administrator Ulrich stated that the interest will be payable only from the revenues pledged to the payment.

City Attorney Goodrich noted that these details will be discussed that the public hearing.

Councilmember Look asked if this could affect the City's bond rating.

City Attorney Goodrich stated that he did not think it affected bond ratings.

Motion by Councilmember Look, seconded by Councilmember Strommen, to Adopt Resolution #08-07-130 Reciting a Proposal for an Industrial Development Project and Taking Official Action with Respect thereto Indicating Preliminary Intent to Assist the Financing of the Project Pursuant to the Minnesota Municipal Industrial Development Act and Calling for a Public Hearing on the Project (Knoll Properties, LLC Project).

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Look, Strommen, Dehen, Elvig, Jeffrey, and Olson. Voting No: None.

Case #6: Consider Resolution of 160th Lane Issues

Public Works Director Olson stated that in 2005, the City used eminent domain procedures to acquire the right-of-way to utilize what is now known as 160th Lane to provide public access. He stated that in the summer of 2005, the City started receiving calls from nearby homeowners, Bauer's and Kaas', disputing the use of the driveway access that had been constructed within the right-of-way. He stated that the Public Works Committee discussed this in May 2008 and indicated that they would recommend to the Council that the City not move ahead with plans to pave the street, but clear the trees and the 66 feet of right-of-way and post No Parking signs. He stated that the neighbors agreed to enter into mediation with Anoka County which resulted in the case being settled. He noted that a copy of the settlement agreement was included in the Council packet. He stated that the discussion by the Public Works Commission was that it would not be the best use of general tax dollars to create and maintain a roadway that virtually was a private driveway. He stated that staff has discussed a compromise with Mr. Bauer, that instead of cutting down the entire right-of-way, that only 36 feet would be cleared, 18 feet from the center line to allow for 6 feet of paving, a 4 foot shoulder and an 8 foot clear zone. He stated that Mr. Bauer has agreed to improve the roadway and maintain it, but asked that the City do the tree removal, clearing and grubbing and that 'No Parking' signs be posted.

City Attorney Goodrich noted that he has also made the recommendation that this road be posted as a Minimum Maintenance Road and that the City would conduct annual inspections to determine that the construction and maintenance continues as it was at final acceptance. He stated that this makes it clear that the City will not be plowing, grading or maintaining the street.

Public Works Director Olson stated that the City will go out every 12 months and make sure that Mr. Bauer is doing what he agreed to do.

Councilmember Strommen asked what the financial impact would be for the City if it took on maintenance.

Public Works Director Olson stated that the costs would be the time and effort to go in and noted that, generally, the City doesn't maintain roads that it cannot turn around in. He stated that, in staff's opinion, if the City is going to maintain the road, it should be built to City standards. He stated that this is basically a private driveway located on public right-of-way.

Councilmember Dehen asked if there had been an option to sell this area outright to Mr. Bauer and have him take over everything.

City Attorney Goodrich stated that the City used eminent domain procedures to acquire this land in 2005 and if the City now turns around and sells it to a private property, that would misrepresent what the City offered to the courts. He stated that there is also a requirement to provide a cartway access to land locked parcels.

Councilmember Dehen stated that he doesn't want to use public money to make a road for one person. He asked if there would be liability issues with the Minimum Maintenance Road designation.

City Attorney Goodrich stated that this is why it will be posted Minimum Maintenance and the City is also asking Mr. Bauer to sign a hold harmless agreement. He stated the hold harmless agreement basically states that, if Mr. Bauer or one of his guests at his home is injured on the road, would hold the City harmless from any liability related to the maintenance of the roadway.

Councilmember Olson stated that she doesn't like the idea of spending City money to plow a private driveway, but also doesn't like the idea of a citizen maintaining a City street, particularly when there has been so much controversy surrounding this situation.

Councilmember Strommen asked what would happen if Mr. Bauer no longer owned the property. She stated that this doesn't seem to be a long term solution and thinks the City will, at some point, have to "bite the bullet" and accept responsibility for this street.

City Attorney Goodrich stated that the City will conduct annual inspections and if it comes to the City's attention that the road is not being properly maintained, the City could consider taking it back as a street.

Public Works Director Olson stated that the City has been working hard to encourage the paving of dirt streets and if the Council wants to take on maintenance responsibilities, he feels this needs to go back to the drawing board for another solution. He stated that their thinking with this issue is that if someone buying this property is not willing to take on the maintenance duties, they probably won't buy the house. He reiterated that it will be posted as a Minimum Maintenance road.

Councilmember Dehen stated that he just doesn't think it is a good use of public money to construct this to City standards for, basically, a one person road.

Councilmember Elvig noted that when this property was originally put together, there was a ghost plat for a road to continue through to Variolite, so there could be a long term plan for a roadway connection through the property.

Councilmember Jeffrey asked if there was any issue about who actually owns the property.

City Attorney Goodrich stated that the City owns the property, but anyone can drive their vehicle down the road, with the understanding that this is a Minimum Maintenance road. He stated that the neighboring property owners were present, if the Council would like to have them comment.

Francis Kaas, 7155 - 160th Lane, stated that he heard that the City would have Mr. Bauer sign a waiver that if any of his guests were injured on the road that he wouldn't sue the City. He asked what would happen if someone else was hurt because of the lack of maintenance on the road.

City Attorney Goodrich stated that the City would accept no liability. He stated that Mr. Bauer is using this street to access his residence, but if you are driving on the road and get injured, you accept full responsibility and cannot sue the City for damages.

Mr. Kaas stated that the City fought to buy this land and now is not willing to maintain what they own. He stated that he feels the City should be required to maintain their property.

Councilmember Dehen stated that he feels that if the City builds a road, it will be to City standards, which means the entire 66 foot right-of-way will be cleared and there will be much greater costs. He stated that he understands Mr. Kaas" position, but feels spending the money isn't justifiable, so the City is trying to make a compromise to keep some of the trees and have a smaller road. He stated that he feels Mr. Kaas has been sending mixed signals to the City.

Mr. Kaas stated that he just wants this situation to end and the City spent a lot of money to buy this property. He stated that he wants it to be clear that Mr. Bauer is not landlocked.

City Attorney Goodrich stated that the City is simply trying to work through the situation and come up with a compromise.

Mr. Kaas stated that he wants the City to go ahead and put the road in and maintain it.

Mayor Gamec stated that he feels the City has done the best it can and feels that Mr. Kaas has changed his mind every time he has talked about this issue.

Councilmember Elvig stated that he feels it is important to note that this has gone through Anoka County Mediation Services and there has been a settlement.

City Attorney Goodrich explained that three separate motions are required for this case.

Motion by Mayor Gamec, seconded by Councilmember Jeffrey, to accept Greg Bauer's offer to install the following improvements on the Subject Roadway: a) Place a 20 foot wide, four inch lift of class 5 in the path graded by the Public Works Department; b) Place a 12 foot wide lift of bituminous pavement centered within the 20 foot based area; AND direct the City Engineer/Public Works Department to do the following on the Subject Roadway: a) Clear the trees/growth 18 feet on each side of the centerline; 2) Grub stumps and grade roadway to a width of 36 feet; 3) Place Minimum Maintenance Roadway signs as required by State Statute.

Further Discussion: Public Works Director Olson stated that Mr. Bauer has noted that the 12 foot wide pavement could be increased to 20 feet if the funding becomes available. He stated that this language is included in the resolution, but did not get included in the suggested motion language.

Amended motion by Mayor Gamec, seconded by Councilmember Jeffrey, to accept Greg Bauer's offer to install the following improvements on the Subject Roadway: a) Place a 20 foot wide, four inch lift of class 5 in the path graded by the Public Works Department; b) Place a 12 – 20 foot wide lift of bituminous pavement centered within the 20 foot based area, AND direct the

City Engineer/Public Works Department to do the following on the Subject Roadway: a) Clear the trees/growth 18 feet on each side of the centerline; 2) Grub stumps and grade roadway to a width of 36 feet; 3) Place Minimum Maintenance Roadway signs as required by State Statute.

Further Discussion: Councilmember Strommen confirmed that the City will inspect this road annually. Public Works Director Olson stated that the City will inspect this annually. Councilmember Olson stated that she thinks there is too much opposition based on Mr. Kaas' comments and cannot support this motion. Councilmember Look asked why the City wasn't putting through a road. Public Works Director Olson stated that it is not being put through because there isn't a subdivision request that would require a need for the additional roadway. He stated that from a traffic perspective, there hasn't been a need to spend the many thousands of dollars it would take to make a roadway connection across the wetland area. Councilmember Dehen stated that Councilmember Olson had voted in favor of this issue in the Public Works Commission meeting and asked why she would now vote against it. Councilmember Olson stated that she doesn't think the issue is going to go away because there is still too much opposition.

Amended Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Dehen, Look, and Strommen. Voting No: Councilmember Olson. Abstaining: Councilmember Elvig.

Motion by Mayor Gamec, seconded by Councilmember Jeffrey, to adopt Resolution #08-131 declaring the Subject Roadway as a Minimum Maintenance Roadway, subject to Greg Bauer's and spouse's agreement to sign a hold harmless agreement holding the City harmless for any liability from injuries to persons on property concerning the City's designation of the Subject Roadway as a Minimum Maintenance Roadway.

Further Discussion: Councilmember Look asked if the City constructed this to City standards whether the costs can be assessed to the properties. City Attorney Goodrich stated that it cannot, unless the property owners petition for this. Councilmember Look asked if Mr. Bauer can simply neglect the road to force the City to take it over. City Attorney Goodrich stated that this is a possibility.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Dehen and Strommen. Voting No: Councilmembers Look and Olson. Abstaining: Councilmember Elvig.

Motion by Mayor Gamec, seconded by Councilmember Jeffrey, to permit Greg Bauer to place an address sign at the entrance to the Subject Roadway.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Dehen, Look, and Strommen. Voting No: Councilmember Olson. Abstaining: Councilmember Elvig.

Case #7: Adopt Ordinance Amending Section 5.08 (public nuisances) of Chapter 5 of City Code; Case of City of Ramsey

Community Development Director Miller stated that this ordinance has been rewritten to make the definition of "inoperable vehicle" easier to understand and apply.

Motion by Councilmember Jeffrey, seconded by Councilmember Olson, to waive the reading as required by City Charter and adopt Ordinance #08-20 to amend Section 5.08 (Public Nuisances) of City Code.

A roll call vote was performed by the Recording Secretary:

Councilmember Dehen: aye
Councilmember Strommen: aye
Councilmember Jeffrey: aye
Councilmember Olson: aye
Councilmember Look: aye
Councilmember Elvig: aye
Mayor Gamec: aye

Motion carried.

Case #8: Adopt an Ordinance Amending Chapter 5 of the City Code to Include Social Host Liability

Police Chief Way stated that there have been minor changes to the ordinance since the last meeting.

Councilmember Dehen noted that section 5.22.02 (5) states that "the person fails to take reasonable steps to prevent possession or consumption by the underage person(s)". He stated that, for example, what if there is liquor kept in a pole barn by parents but it isn't locked up. He asked what would prevent law enforcement from saying that they didn't take reasonable steps.

City Attorney Goodrich stated that law enforcement won't charge unless they think they can convict and they will need to use common sense for what is considered reasonable and what isn't. He stated that this will need to be handled on a case by case basis.

Police Chief Way stated that he understands that there is some concern about the word "reasonable", but in his research he found it used over 500 times in Minnesota Statute language. He stated that he was unable to come up with another word.

Motion by Councilmember Look, seconded by Councilmember Strommen, to Adopt Ordinance #08-21 amending Chapter 5 of City Code, which is known as the Municipal Regulations chapter of the city Code of Ramsey, Minnesota.

A roll call vote was performed by the Recording Secretary:

Councilmember Strommen: aye
Councilmember Jeffrey: aye
Councilmember Olson: aye
Councilmember Dehen: aye

Councilmember Look: aye
Councilmember Elvig: aye
Mayor Gamec: aye

Motion carried.

Case #9: Adopt Ordinance Repealing Section 7.82 (Alarm Systems) of the City Code and Adding Section 5.23 (Alarm Systems)

Police Chief Way stated that this was discussed at the July 8, 2008 Council meeting. He noted that the rates will be discussed at the August 26, 2008 work session.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to adopt Ordinance #08-22 repealing Section 7.82 of City Code and amending Chapter 5, adding Section 5.23 – Alarm Systems.

A roll call vote was performed by the Recording Secretary:

Councilmember Look: aye
Councilmember Jeffrey: aye
Councilmember Elvig: aye
Councilmember Olson: aye
Councilmember Dehen: aye
Councilmember Strommen: aye
Mayor Gamec: aye

Motion carried.

Case #10: Adopt Ordinance Amending Chapter 7 of the City Code to Include Age Verification for Liquor Establishments

Police Chief Way reviewed this amendment and noted that staff is recommending a $100 fee reduction for Off Sale establishments that meet the requirements.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to Adopt Ordinance #08-23 amending Chapter 7 of City Code, which is known as the licensing and permits chapter of the City Code of Ramsey, Minnesota.

A roll call vote was performed by the Recording Secretary:

Councilmember Look: aye
Councilmember Jeffrey: aye
Councilmember Elvig: aye
Councilmember Olson: aye
Councilmember Dehen: aye
Councilmember Strommen: aye

Mayor Gamec: aye

Motion carried.

Case #11: Introduce Ordinance to Amend City Code Section 9.15 Towers; Case of City of Ramsey

Associate Planner Gladhill stated that the moratorium on construction of cell towers is set to expire on September 17, 2008. He summarized the proposed changes in 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 (from 175 feet in industrial) in all zoning districts; an additional 20 feet 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 on residential and public/quasi public parcels; Setbacks for the towers in industrial and commercial areas will default to the underlying zoning district except when adjacent to a residential zone; when adjacent to a residential zone, the setback shall be the height of the tower plus 10 feet adjacent to the residential zone. He stated that the Planning Commission has recommended these revisions and noted that the City Attorney has recommended some language changes on page 160 and 163. He showed a map of the proposed overlay district.

Councilmember Elvig stated that the map shows 33 square miles with two towers and that isn't adequate coverage for all areas. He stated that he doesn't understand this because he has traveled to places like Montana which has far fewer towers and he has adequate cell service.

Community Development Director Miller stated that one of the reasons for this is that sometimes when there are fewer towers, such as in Montana, they allow much higher towers. She stated that having a tower that is 300 or 400 feet tall will give a much greater coverage area and lower towers have a smaller coverage distance.

Associate Planner Dalnes stated that this is also affected by the number of users, which is why towers in a rural area can cover a much larger area.

Councilmember Elvig stated that he would like to see the City have authority for aesthetic controls for the towers and their attachments.

Councilmember Jeffrey agreed and noted that he has seen cell towers in Arizona disguised as a palm tree.

Councilmember Strommen stated that Afton is constructing a cell tower that looks like a pine tree.

Councilmember Dehen asked if there was anything in the Telecommunications Act that would prevent the City from regulating for aesthetic purposes.

City Attorney Goodrich stated that the City cannot do anything to hinder their ability to administer their product, so he thinks that the City could regulate aesthetics.

Motion by Councilmember Strommen, seconded by Councilmember Elvig, to introduce an ordinance amending City Code Section 9.15 Towers.

Further Discussion: Councilmember Dehen asked if the language suggested by Councilmember Elvig about aesthetics was included.

Amended Motion by Councilmember Strommen, seconded by Councilmember Elvig, to introduce ordinance amending City Code Section 9.15 Towers, with additional language that the City will retain controls for regulating the aesthetics of the towers.

Amended Motion carried. Voting Yes: Mayor Gamec and Councilmembers Strommen, Elvig, Dehen, Jeffrey, Look and Olson. Voting No: None.

Case #12: Introduce Ordinance to Amend Section 9.12 (Signs) of City Code to Incorporate "Dynamic Display" Sign Regulations: Case of the City of Ramsey

Associate Planner Dalnes stated that staff has been researching electronic signs and has included literature from SRF Consulting in the packet. She reviewed the definition of an electronic sign for "dynamic display" and the proposed language for brightness, size, speed of change in message and that the use of temporary signs would no longer be permitted if there was a functioning dynamic display sign. She stated that the Planning Commission has discussed these amendments and recommends approval.

Mayor Gamec asked if the ordinance covered the color of the reader boards.

Associate Planner Dalnes stated that it does not specifically prohibit any colors, but noted that they cannot interfere with traffic signals.

Councilmember Elvig asked if there was any consideration given to size of the signs and their distance from the roadway. He stated that there has been discussion about a reader sign for City Hall and that it should be readable from Highway 10. He stated that he doesn't want to adopt an ordinance that "shoots the City in the foot" for that goal.

Associate Planner Dalnes stated that the City doesn't adjust size requirements, for any type of signage, based on distance from the road. She stated that any variance in the sign ordinance can be made through a CUP.

Motion by Elvig, seconded by Olson, to recommend that the City Council introduce the proposed ordinance to amend sign regulations to establish dynamic display standards.

Motion carried. Voting Yes: Mayor Gamec and Councilmembers Elvig, Olson, Dehen, Jeffrey, Look and Strommen. Voting No: None.

Case #13: Consideration of Awarding Bid for IP 08-35 East Ramsey Parkway Sunwood Drive Streetscape Improvements

Public Works Director Olson stated that the bids were opened last week and the low bid was by Hardrives, Inc. for $122,274.95. He stated that Hardrives, Inc. has done acceptable work for the City in the past and staff is recommending utilizing the RTC letter of credit in the amount of $122,274.95 and awarding the contract to Hardrives, Inc.

Councilmember Dehen asked if there was anything cities do as far as guarantees of lasting quality. He asked if there was a way for the City to be more proactive in doing something to ensure that the City is getting what it pays for.

Public Works Director Olson stated that there is a 12-month warranty on the improvement. He stated that if this was changed to a 5-year warranty, for example, it would require a lot more up front costs and he doesn't think the likelihood of premature failure is worth the required cost.

Councilmember Dehen stated that he would like to see what the increased costs would actually be.

Mayor Gamec stated that the City looked at this a few years ago and it was an increase of 40%-60%.

Councilmember Dehen stated that his point is "ask not, get not" and perhaps contractors would be willing to extend the 12 month warranty a few more years without additional expenditures. He stated that the market is very competitive right now and he would like to see those costs in the future.

Public Works Director Olson stated that he will put this on a future Public Works agenda to explore this option. He stated that he will also try to find the information that Mayor Gamec mentioned.

Councilmember Elvig stated that he feels it all comes back to the inspection process to make sure it is compacted properly, excavated properly, and the mixture of asphalt is correct.

Public Works Director Olson stated that it is all certified and noted that Mike McDowell is MnDot certified to conduct these inspections.

Motion by Councilmember Jeffrey, seconded by Councilmember Dehen, to adopt Resolution #08-07-131A to award the bid for IP-08-35 East Ramsey Parkway Bituminous Wear Course to Hardrives, Inc., in the amount of $122,274.95.

Motion carried. Voting Yes: Mayor Gamec and Councilmembers Jeffrey, Dehen, Elvig, Look, Olson and Strommen. Voting No: None.

Resignation of Associate Planner Dalnes

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Public Works Director Olson stated that it is all certified and noted that Mike McDowell is MnDot certified to conduct these inspections.

Motion by Councilmember Jeffrey, seconded by Councilmember Dehen, to adopt Resolution #08-07-131 to award the bid for IP-08-35 East Ramsey Parkway Bituminous Wear Course to Hardrives, Inc., in the amount of $122,274.95.

Motion carried. Voting Yes: Mayor Gamec and Councilmembers Jeffrey, Dehen, Elvig, Look, Olson and Strommen. Voting No: None.

<u>Resignation of Associate Planner Dalnes</u>

Mayor Gamec noted that Associate Planner Dalnes is leaving the City to become the City Planner in Minnetrista. He stated that he wanted to wish her good luck and make it known that she has done an excellent job for the City. He stated that she is regarded highly by everyone and he personally appreciated her frankness when it has been necessary to tell him he was wrong.

Case #14: Accept Plans and Specifications for City Project #08-36, 144th Avenue NW Extension into the Sunfish Lake Business Park, and Authorize for Bid

Public Works Director Olson stated that the estimated cost for the project is around $275,000 and the plans and specifications are completed, so staff would like to advertise for bids.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to accept the plans and specifications for City project #08-36, 144th Avenue NW extension into the Sunfish Lake Business Park, and authorize for bid.

Motion carried. Voting Yes: Mayor Gamec and Councilmembers Elvig, Jeffrey, Dehen, Look, Olson and Strommen. Voting No: None.

MAYOR, COUNCIL AND STAFF INPUT

Elected Officials Meeting

Mayor Gamec stated that the Elected Officials meeting is scheduled for July 30, 2008 in Columbus Township.

Ramsey Golf Tournament

Mayor Gamec stated that the City's Business Appreciation Golf Tournament is scheduled for August 19, 2008.

Community Center Focus Group Meeting

Associate Planner Gladhill stated that there is a Community Center Focus Group meeting on Thursday, July 24, 2008, from 6:00 to 8:00 p.m. in the Alexander Ramsey room.

County Rail Authority Meeting

City Administrator Ulrich stated that staff is meeting with the County Rail Authority later in the week to begin working on preliminary plans for the Ramsey rail station.

Sexual Offender Meeting

City Administrator Ulrich noted that the Level III Sexual Offender meeting will be held Wednesday, July 23, 2008 at 6:00 p.m. at the PACT charter school. He stated that the meeting will be taped for rebroadcast on cable television.

National Night Out

City Administrator Ulrich stated that National Night Out is scheduled for August 5, 2008 and there will be no Council meeting that night.

County Road 63

Public Works Director Olson stated that there is a pre-construction meeting for County Road 63 coming up and he will keep the Council updated as he hopes this project will begin soon.

Lunch with Governor Pawlenty

Mayor Gamec stated that there is a lunch with Governor Pawlenty event scheduled for August 7, 2008 and asked anyone interested in attending to contact City Clerk Jo Thieling. He noted that the cost is $50.

ADJOURNMENT

Motion by Councilmember Strommen, seconded by Councilmember Jeffrey, to adjourn the meeting.

Motion carried.

The regular meeting of the City Council adjourned at 9:28 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Kayla Atkins-Rokosz
TimeSaver Off Site Secretarial, Inc.

NOTICE OF PUBLIC HEARING

CITY OF RAMSEY
COUNTY OF ANOKA
STATE OF MINNESOTA

NOTICE IS HEREBY GIVEN that the City of Ramsey City Council will conduct a public hearing on Tuesday, July 22, 2008 at 7:00 p.m. at the Ramsey City Hall, 7550 Sunwood Drive NW, Ramsey, MN 55303.

The purpose of the hearing will be to consider the Charter Commission's recommendation to amend Sections 2.5 and 4.5.5 of the City Charter to provide as follows:

Section 2.5 Vacancies. A vacancy in the council, whether it be in the office of mayor or councilmember, shall be deemed to exist in the case of the failure of any person elected thereto to qualify, or by reason of the death, resignation in writing filed with the city clerk, removal from office, non-residence in the city, conviction of a felony of any such person after his/her election, or by reason of the failure of any councilmember without good cause to attend council meetings for a period of three consecutive months. In each such case, the council shall publicly declare by resolution, the vacancy to exist within fifteen (15) days of its occurrence and such vacancy shall be filled according to the provisions of Section 4.5.

At the same time as the resolution declaring the vacancy is adopted, the council shall appoint a current councilmember to act as a liaison for those residents whose councilmember's seat is vacant. The liaison so appointed shall serve until the vacancy has been filled. The councilmember appointed as liaison shall continue to have only one vote as a councilmember.

4.5.5 Office Vacancy when less than eight weeks prior to primary election.

4.5.5.1 Special Election. When a vacancy in an elected office of the city occurs when there is less than eight weeks prior to a primary election there shall be no primary election, except as provided in Section 4.5.5.3 below. The special election to fill the vacancy shall coincide with the Regular Municipal Election and the notice of such vacancy shall be published as soon as is practicable.

4.5.5.2 Vacancy in offices to be voted on in the Regular Municipal Election. If a vacancy occurs less than eight weeks prior to the primary election, in the office of the mayor or the councilmembers whose seats are to be voted on in the Regular Municipal Election, said vacancy shall be considered not to exist for the purpose of the Regular Municipal Election. The person elected to fill the vacancy in the Regular Municipal Election, if approved by unanimous vote of the sitting Council, may assume the duties of the office to which elected on the first business day following the City Clerk's issuance of a certificate of election to said person.

4.5.5.3 Vacancy in an office not to be voted on the Regular Municipal Election. If a vacancy occurs in the office of the mayor or a councilmember not standing for election in the Regular Municipal Election, a special primary election and a special election shall be held in January of the subsequent year following the vacancy to fill said vacancy. The election procedures for the special primary election and the special election shall be those election procedures for municipal office candidates as prescribed in Minnesota Statutes and this Charter. The term of the office of the person elected pursuant to this subsection 4.5.5.3 shall be for the remainder of the unexpired term of the office vacated.

All persons interested are invited to attend the hearing and will be given the opportunity to make presentations.

Written comments also are welcome and may be addressed to Kurtis G. Ulrich, City Administrator, 7550 Sunwood Drive NW, Ramsey, MN 55303. Written comments must be received prior to 5:00 p.m. on Tuesday, July 22, 2008.

Dated: June 24, 2008
/S/ Jo Thieling
Jo Thieling, Ramsey City Clerk
abcdefghijklmnopqrstuvwxyz
Published in Anoka County Union
June 27, 2008

AFFIDAVIT OF PUBLICATION

STATE OF MINNESOTA)
COUNTY OF ANOKA) SS

Peter G. Bodley, being duly sworn on oath says that he is the managing editor of the newspaper known as the Anoka County Union, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statue 331A.02, 331A.07 and other applicable laws, as ammended.

(B) The printed NOTICE OF PUBLIC HEARING (Amend Sections 2.5 and 4.5.5 of the City Charter), which is attached was cut from the columns of said newspaper and was printed and published once a week for one week; it was first published on Friday, the 27th day of June, 2008, and was therefore printed and published on every Friday to and including Friday, the 27th day of June, 2008, and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz

Managing Editor

Subscribed and sworn to before me on
this 27th day of June, 2008

JILL M. DONAHUE
Notary Public-Minnesota
My Commission Expires Jan 31, 2012

Notary Public

RATE INFORMATION

(1) Lowest classified rate paid by commercial users for comparable space	$ 15.00 (line, word or inch rate)
(2) Maximum rate allowed by law for the above matter	$ 15.00 (line, word or inch rate)
(3) Rate actually charged for the above matter	$ 10.25 (line, word or inch rate)

1,280,021

AFFIDAVIT OF PUBLICATION

STATE OF MINNESOTA)
COUNTY OF ANOKA) SS

NOTICE OF PUBLIC HEARING

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA
TO WHOM IT MAY CONCERN:

Notice is hereby given that the Ramsey City Council will hold a public hearing on Tuesday, July 22, 2008, at 7:00 p.m. in the Council Chambers at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, MN 55303.

The purpose of the hearing is to consider a request by Alan Hamel, William Boyun and James Green Jr., d/b/a Broken Spoke Saloon, for an On-Sale, Sunday Sales and 2:00 a.m. Intoxicating Liquor License at the property generally known as 7550 Highway #10 NW, Ramsey, Minnesota. (Note: This is not a new liquor license; this is a sale/transfer of ownership and a name change. This is the current Diamonds Sports Bar & Grill site.)

All interested persons are invited to attend the hearing and comment on the request for an On-Sale Intoxicating liquor license. The City of Ramsey complies with the Americans with Disabilities Act. Upon advance request, information will be provided in an alternative form, and interpreters will be available. Any person with such a request should contact Jo Thieling at 763-433-9840 prior to 4:30 p.m., Wednesday, July 16, 2008. There is a TDD machine at Ramsey Municipal Center; the number is 763-427-8591.

Written comments are welcome and shall be addressed to the Ramsey City Council, attention Jo Thieling, 7550 Sunwood Drive NW, Ramsey, Minnesota, 55303. Written comments shall be received at the above address prior to 4:00 p.m., on Tuesday, July 22, 2008.

Jo Ann M. Thieling, CMC
City Clerk
abcdefghijklmnopqrstuvwxyz
Published in Anoka County Union
July 11, 2008

Peter G. Bodley, being duly sworn on oath says that he is the managing editor of the newspaper known as the Anoka County Union, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statue 331A.02, 331A.07 and other applicable laws, as ammended.

(B) The printed NOTICE OF PUBLIC HEARING (Broken Spoke Saloon), which is attached was cut from the columns of said newspaper and was printed and published once a week for one week; it was first published on Friday, the 11th day of July, 2008, and was therefore printed and published on every Friday to and including Friday, the 11th day of July, 2008, and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz

Managing Editor

Subscribed and sworn to before me on
this 11th day of July, 2008

JILL M. DONAHUE
Notary Public-Minnesota
My Commission Expires Jan 31, 2012

Notary Public

RATE INFORMATION

(1) Lowest classified rate paid by commercial users for comparable space	$ 15.00 (line, word or inch rate)
(2) Maximum rate allowed by law for the above matter	$ 15.00 (line, word or inch rate)
(3) Rate actually charged for the above matter	$ 10.25 (line, word or inch rate)

1,298,743

AFFIDAVIT OF PUBLICATION

STATE OF MINNESOTA)
COUNTY OF ANOKA) SS

NOTICE OF PUBLIC HEARING

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA
TO WHOM IT MAY CONCERN:

Notice is hereby given that the Ramsey City Council will hold a public hearing on Tuesday, July 22, 2008, at 7:00 p.m. in the Council Chambers at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota, 55303.

The purpose of the hearing is to consider a request by Melissa B. Fitzgerald and Dennis J. Fitzgerald of DJ Investments LLC d/b/a 10 Spot Liquor, at the property generally known as 7129 Highway #10 NW, Ramsey, Minnesota.

All interested persons are invited to attend the hearing and comment on the request for an Off-Sale Intoxicating liquor license. The City of Ramsey complies with the Americans with Disabilities Act. Upon advance request, information will be provided in an alternative form, and interpreters will be available. Any person with such a request should contact Jo Thieling at 763-433-9840 prior to 4:30 p.m., Wednesday, July 16, 2008. There is a TDD machine at Ramsey Municipal Center; the number is 763-427-8591.

Written comments are welcome and shall be addressed to the Ramsey City Council, attention Jo Thieling, 7550 Sunwood Drive NW, Ramsey, Minnesota, 55303. Written comments shall be received at the above address prior to 4:00 p.m., on Tuesday, July 22, 2008.

Jo Ann M. Thieling
City Clerk
abcdefghijklmnopqrstuvwxyz
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1,298,754

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CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

The Ramsey City Council conducted a regular meeting on Tuesday, August 12, 2008, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Thomas Gamec
Councilmember John Dehen
Councilmember David Elvig
Councilmember David Jeffrey
Councilmember Matt Look
Councilmember Mary Jo Olson
Councilmember Sarah Strommen

Members Absent: None

Also Present: City Administrator Kurtis G. Ulrich
Fire Chief Dean Kapler
Community Development Director Amber Miller
Management Intern Timothy Gladhill
Assistant City Engineer Tim Himmer
Economic Development Coordinator Sean Sullivan
City Attorney William Goodrich

CALL TO ORDER

Mayor Gamec called the regular meeting of the Ramsey City Council to order at 7:08 p.m., followed by the Pledge of Allegiance led by Boy Scouts Brian *(last name not caught)* and Courtland Bolles.

ADOPT RESOLUTION RECOGNIZING NORTHERN STAR COUNCIL, BOY SCOUTS OF AMERICA THREE RIVERS DISTRICT – RUM RIVER SCOUT CAMP

City Administrator City Administrator Ulrich read the inscription on a plaque recognizing the Northern Star Council, Boy Scouts of America Three Rivers District.

Councilmember Elvig read the conclusion of the proclamation and stated his appreciation to Brian and Courtland and John Andrews and the Northern Star Council.

Fire Chief Kapler presented information about Safety Camp, noting 133 attended Camp and 623 attended the graduation. He commented that Ramsey is fortunate to have this wonderful facility, which the Northern Star Council has allowed the City to use it each year for the two-day Safety Camp.

Fire Chief Kapler stated the Safety Camp focuses on things most likely to harm a child, like finding a weapon, usage of fire extinguishers, wild animal safety, drug related issues, and personal protection.

Councilmember Elvig stated his son attended the Camp and learned about the danger of putting your mail in a rural mailbox with the flag up because it can result in stolen identity. He described the large region covered by the Northern Star Council and Three Rivers District. Councilmember Elvig presented the plaque of appreciation from the City of Ramsey, thanked them for their contribution, and for sharing their Camp with Ramsey and its residents.

John Andrews, representing the Northern Star Boy Scout Council, stated their members are from the community and they seek to deliver the curriculum that has proven to change lives. He explained that Scout Camps are sold from time to time. They now have eight camps, owned by non-profit organizations, so the benefactor is the community through volunteers and that is why Scouting has stayed so strong.

Councilmember Dehen asked about the age of Safety Campers.

Fire Chief Kapler stated that children in Grades 4 and 5 can attend the Camp and additional information is available on the City's website. Safety Camp is held the beginning of June and this year five registration fee scholarships were awarded. The counselors are made up of police officers, fire fighters, and ambulance staff who come to Camp wearing T-shirts and short pants and become friends with the campers. These Camp counselors try to keep their occupation a secret until graduation day when they attend in their uniform. Fire Chie Kapler stated the graduation ceremony is a nice climax to the Camp and is a family event.

A 2008 Safety Camp video was played for the Council and audience.

Motion by Councilmember Strommen and seconded by Councilmember Look to adopt Resolution #08-08-132 Recognizing Northern Star Council, Boy Scouts of America, Three Rivers District – Rum River Scout Camp for their contribution to the City of Ramsey Safety Camp each year.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Strommen, Look, Dehen, Elvig, Jeffrey and Olson.

Mayor Gamec thanked the Boy Scouts and stated he has attended Safety Camp each year. He stated Bob Litke has been wonderful to assure the Camp is ready and agreed Ramsey is fortunate to have this camp facility, which has a beautiful "up north" feel. Mayor Gamec thanked Jerry Streich and Chandra Kreyer who work with the Safety Camp, noting campers are already registering for next year's Safety Camp. Mayor Gamec also thanked the more than 40 sponsors who provide meals and other things for the campers.

CITIZEN INPUT

Wayne Varner, 6461 153rd Way NW, stated he would like to discuss the 160-foot communication tower that is being constructed in Alpine Park. He stated in July 2008 he sent an e-mail to Councilmembers Look, Strommen, Jeffery, and Olson and asked that the e-mail be forwarded to the other Councilmembers. Mr. Varner stated as of today only Councilmember Look has responded and provided him with a detailed list of what has transpired with the Alpine Park tower. Mr. Varner reviewed the dates of past notifications and meetings held regarding the Communications Tower. He stated on April 20 2007, notices were sent out to residents within 350 feet of the proposed location on the west side behind the soccer fields and swamp. A hearing was held on May 3, 2007, and on May 10, 2007, the Parks Commission got involved and moved the location farther west. On June 7, 2007, at a Planning Commission meeting, three residents voiced concerns over that location and again the tower location was moved. On September 14, 2007, a mailing went out and on September 25, 2007, the City Council tabled action. Mr. Varner stated he has a list of 20 of his neighbors who did not receive notice of the meeting. On October 30, 2007, four alternative sites were proposed, another mailing was sent, and again his neighborhood did not receive notice. On January 8, 2008, the request for a tower site was considered by the City Council at a different area and this time no notices go out. On June 24, 2008, a lease agreement is approved and the permit signed.

Mr. Varner stated his issue is that the neighborhood most affected by the current site didn't receive any notices of the location. The neighborhood did receive notice about the location for the western side of the park, but nothing more. When residents brought this up, City officials said legally they only need to give one notice and it is then up to the resident to keep track of it. Mr. Varner stated that may be legal but it is not ethical. He asked how anyone can keep track because over a year of time transpired and who knows how many locations were considered. Now that the tower is built, residents are getting misinformation.

Mr. Varner stated the signed lease is for five years, with three, five-year renewable options. He stated his interpretation of the FCC ruling is that it requires "reasonable opportunities," which do not equal "required by law." Mr. Varner stated residents were told they would plant 30 trees, but even a 40-foot tree will not disguise a 160-foot tower. Residents were also told the City would receive $18,000 from the lease that would go directly into Alpine Park improvements. However, that does nothing for his neighborhood that lost, in aggregate, $500,000 in resale value based on the location of that tower. Mr. Varner noted Alpine Street is 50 mph and the tower is a "kid magnet."

Mr. Varner stated all understand that no one wants a 160-foot tower in their neighborhood and given opportunity, would vote against it. He stated his question is whether the City really needs it and asserted that answer is clear, "no, we don't need service." However, the tower is up. Mr. Varner stated residents could say they want it removed but that won't happen because of the cost. Mr. Varner stated he wants the City to issue T Mobile a letter saying the three, five-year options will not be given. Then, in five years the tower comes down and nothing else is built on that site unless it helps the ballpark.

Mr. Varner stated he also wants the City to make the speed limit on Alpine Street a more reasonable speed because kids will be jumping over snow banks and, in time, there will be a tragedy. He stated he would like the City to adopt a more comprehensive way of letting

neighborhoods know what is going on and a better notification method than the US mail, which has been proven to not work. Mr. Varner suggested the Councilmembers visit neighborhoods to hand out the notices and visit with residents. The Councilmembers can also then realize what a project would do to the neighborhood. Mr. Varner stated that lastly, he would like it remembered that all City employees and the City Council work for the taxpayers of Ramsey, not for T Mobile or the FCC, but for the taxpayers of Ramsey and he wished they would vote that way.

Mayor Gamec clarified that everyone on the Council votes for the best interest of the City and he resents Mr. Varner implying that they do not. He stated the City went through a lot of problems and a lot of difficult decisions had to be made. Mayor Gamec stated that every Councilmember here always works in the best interest of the citizens and the City of Ramsey. He stated he has a lot of respect for Councilmembers and what they go through. Mayor Gamec stated that it is up to families to look after their children and know what they are doing, noting Ramsey holds a Safety Camp to help. Mayor Gamec stated the tower application was handled in the best interest of Ramsey and the Council assured everything was legally handled and also got documentation from the City Attorney and Administrator on the procedures taken. Mayor Gamec stated the tower was centered in that park away from residential and the Council felt that was the best decision at that time. He stated he understands some are not happy but a decision had to be made.

Mr. Varner stated he knows the Council has to make decisions that are not easy. His statement is that residents didn't know because it said the western side.

Mayor Gamec agreed there was a lot of controversy and the tower could not be placed on the west side because of people who came in. Then the Council looked at the other side and established a 6-month moratorium to study the matter. Because of legal pressure, the Council had to make a decision.

City Administrator Ulrich stated the City Attorney was asked to review the tower lease to see what the options are in terms of the additional options.

Attorney Goodrich advised that one of the provisions for termination, in addition to default, is that the owner can terminate the lease after the first option with a one-year prior notice if the Council votes to redevelop the property for a public purpose. So, after the initial four years, with a one-year notice, the City could make a determination that the property is better suited for a different public purpose.

Mr. Varner asked if it has to be redevelopment, and whether the park being used more can be considered "redevelopment."

Mayor Gamec stated Alpine Park is already at the maximum and the Council picked that tower site because it lined up with possible lighting for the fields. Also, other communications can be located on that tower. The Council assured access to the communications building was between fields so it would not interrupt play on the fields. Mayor Gamec stated that the City looked into a lot of things to determine that particular site. The tower height was determined because of the

landfill location and height. Mayor Gamec stated if the tower had to be in that area, that particular site was the farthest away from residents, designed to drop down, there will be a smaller communications building, plus landscaping and fencing was required to protect children in the area.

Mr. Varner stated residents thought field lighting was going to be installed and instead it was a tower. He stated he means no disrespect, but thinks someone told the City Council they had to go with the FCC and he thinks the Council should "fight it" once in a while.

Councilmember Elvig noted that parks typically come with lights or an ice arena dome or another building. He stated that in the future, it sounds like if anything is going on in the Park, the City should notify residents all around the perimeter of the park instead of 350 feet from the area of the project.

Mr. Varner stated that is correct, notice should go out to all around the park.

Councilmember Dehen stated one of the comments from Mr. Varner was about notification and while he has served on the Council for the past two years, that issue seems to reverberate. He stated he always hears that residents are not getting notified. Councilmember Dehen suggested the City establish a list of names when someone comes in, like Mr. Varner, and complains about not getting notified. He stated it is reasonable and prudent for the Council to have a list of the mailing so Councilmembers know who has been notified.

Mayor Gamec stated a list is created and those who sign up at the meeting are also included, even if beyond the required distance.

Community Development Director Miller clarified that with the Alpine Park cellular tower issue, the notification list was the same for all mailings and it was sent to property owners 350 feet from the park itself, not from the tower location, because Alpine Park is one parcel.

Mayor Gamec noted that sometimes residents don't get the notice because it goes to the mortgage company. Others have admitted they got the notice but didn't read it because it came from the City. Mayor Gamec agreed with the suggestion to have the Councilmember visit the neighborhood but noted that in this case, there are about 270 homes.

City Administrator Ulrich stated one constructive process is to review the landscape plan to assure it provides an effective buffer. He suggested that perhaps the closer the landscaping is to the homes, the more effective it will be and perhaps landscaping should be included in the boulevard of Alpine Street.

Mayor Gamec stated he met with one family who was concerned about the height so he explained that the reason for the height was because of the landfill and desire to keep it away from residential homes.

John Enstrom, 8702 - 181st Avenue, requested the Council withdraw Agenda Item 15. 4), Consider Establishing Topsoil Requirements in New Subdivision. He stated he would like to present information for the Council's consideration prior to it being considered for approval.

City Administrator Ulrich pointed out this is a Consent Agenda item.

Community Development Director Miller stated if approved, the item would be referred to the Planning Commission for review of an ordinance so it will come back to the Council for consideration. She stated this process will provide ample opportunity to discuss Mr. Enstrom's concerns.

Assistant City Engineer Himmer explained the recommendation is to develop an ordinance for topsoil and it will be discussed by the Planning Commission.

Frank Yamoutpour, Sunfish Express, stated he received notice from the railroad that they will shut down the road for a month at least. He stated it was his understanding the road would remain open to local traffic but now it will be closed.

Mayor Gamec explained they are working on the railroad tracks so the road had to be shut down for several weeks but that decision is by the railroad, and Anoka County, as the lead agency, sent out the notice.

Mr. Yamoutpour stated he talked with them yesterday and they said the road would be closed for six to seven weeks.

Mayor Gamec stated staff will research the issues and contact Mr. Yamoutpour this week.

Councilmember Strommen pointed out that other businesses may also be affected and asked staff to notify all of them of the information.

Councilmember Dehen stated he does not know what the schedule of construction will be but it seems elemental to have that communication with Ramsey City officials as well as business owners. He asked to receive this information so he can answer such questions, if asked.

Councilmember Look stated if the railroad is changing terms at this point by closing the road for six to seven weeks, that may not have been the intent of the Council when it was approved. If that's the case, he suggested the City may want to send a strong message that the City does not support a closure for that long.

APPROVE AGENDA

Councilmember Look requested to remove Consent Agenda Item #9.

Councilmember Dehen requested to remove Consent Agenda Item #11.

Motion by Councilmember Strommen, seconded by Councilmember Look, to approve the regular Council agenda, with the removal of Cases #9 and #11.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Strommen, Look, Dehen, Elvig, Jeffrey, and Olson. Voting No: None.

CONSENT AGENDA

Motion by Councilmember Strommen, seconded by Councilmember Look, to approve the following items on the Consent Agenda, as revised:

1) Receive City of Ramsey Report of Pooled Cash Flows Period Ended July 31, 2008
2) Reschedule September 9 Council Meeting due to Primary Election
3) Approve City Council and Council Committee Meeting Minutes
   (a) City Council/Regular/July 8, 2008
   (b) Ramsey Town Center City Council Subcommittee/Work Session/July 22, 2008
   (c) City Council/Regular/July 22, 2008
   (d) City Council/Work Session/July 8, 2009
   (e) City Council/Work Session/July 29, 2008
4) Approve the following License Applications
   Special Event
   City of Ramsey Happy Days 7550 Sunwood Drive NW Ramsey, MN 55303
   Transient Merchant
   Linda Strelow 1476 Mahogany Street Mora, MN 55051
   Eric Johnson 14305 Tungsten Street NW Ramsey, MN 55303
5) Approval of the following Rental Licenses
   Owner: Angelo Juliano Property Address: 5163-146th Circle NW
   Owner: Katie Greil Property Address: 5654-154th Court NW
   Owner: Rainmaker Properties, LLC Property Address: 14058 Dysprosium Street NW
6) Approval for Exemption for a Gambling License for Rum River Chapter of the Minnesota Waterfowl Association
7) Adopt Resolution #08-08-133 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of July 18, 2008 through August 7, 2008
8) Adopt Resolution #08-08-134 Appointing Election Judges for the Primary Election on September 9, 2008
9) Adopt Resolution #08-08-136 Authorizing Execution of Agreement with the Minnesota Department of Public Safety for 2008-2009 Participation in the Safe and Sober Communities Program – **moved to Case #11 on regular agenda**
10) Adopt Resolution #08-08-137 Adopting an Addendum to the Development Agreement for Ebony Woods
11) Authorize City Council to Execute a Loan Agreement with Clear Choice Countertops, Inc. – **moved to Case #12 on regular agenda**
12) Adopt Resolution #08-08-138 Authorizing the Payment to RES Specialty Pyrotechnics for Pyrotechnics Services Related to 2008 Happy Days

13) Adopt Resolution #08-08-139 Authorizing the Payment to the Killer Hayseeds for Entertainment Services Related to Happy Days

14) Report from Personnel Committee
   1) Consider Authorization to Hire a Fire Inspector

15) Report from Public Works Committee
   1) Consider Authorization to Expand Municipal Center Conference Room – Council voted to ratify the recommendation of the Public Works Committee and directed staff to acquire competitive bids to compare costs and to research the usage of meeting rooms, including Fire 1.
   2) Consider Request for Stop or Yield Sign at the Intersection of Hedgehog Street and 155th Lane – Council voted to ratify the recommendation of the Public Works Committee which was that the Yield signs be posted on the north and south legs of the intersection of Hedgehog and 155th Lane, that the Public Works Department clear the vegetation located within the right-of-way, and that contact be made with corner property owners to review additional sight line improvements that should be made.
   3) Consider Establishing an Assessment Policy for MSA Street Construction Projects – Council voted to ratify the recommendation of the Public Works Committee and consider establishing an assessment policy for MSA street construction projects be discussed by the full Council, at a work session.
   4) Consider Establishing Topsoil Requirements in New Subdivisions – Council voted to ratify the recommendation of the Public Works Committee and direct staff to prepare an ordinance modifying City Code to require a minimum of four (4) inches of topsoil meeting the MnDOT specifications 3877C, premium topsoil borrow in landscaped areas of all new developments, and work in conjunction with the EPB on other ways of water conservation methods that could be used for the whole community and possible ways to give residents incentive to use them.
   5) Consider 2008 Storm Sewer Improvements – Council voted to ratify the recommendation of the Public Works Committee and direct staff to prepare plans and specifications for the 2008 Storm Water Improvement Project which would include the improvements at 6941 – 152nd Avenue; Llama Street and 163rd Avenue; and 6043 Highway #10; and that staff continue to work with the residents of the Kamacite Street and 148th Lane/Avenue project to determine the desired alternative and to proceed with the implementation of that alternative.
   6) Periodic Inspection of Parking Ramp – Council voted to ratify the recommendation of the Public Works Committee and direct staff to write a policy for the periodic inspection of the City owned parking ramps be prepared; that staff be directed to investigate possible funding sources for the inspections and direct staff to investigate the possibility of engineering staff becoming certified to conduct the inspections.
   7) Cost of Concrete Streets – For informational purposes only – no action necessary.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Strommen, Look, Dehen, Elvig, Jeffrey, and Olson. Voting No: None.

COUNCIL BUSINESS

Council Business

Case #1: Ramsey^3 Presentation of Final Report and Vision and Values Statement

Joe McDilda, Ramsey^3 Steering Group Member, presented their final report and encouraged the Council to pay attention to the process used to arrive at the findings. He reviewed the background of Ramsey^3 that is a volunteer group that was formed after looking at the land use maps for the 2008 Comp Plan because they thought there were other land uses and elements that Ramsey residents may find important. That is what started Ramsey^3 and their desire to be in partnership with the City, which continues to this day. Mr. McDilda stated they recognized funding would be needed to explore the process and get citizen input. The City was not able to find funding so, at that point, Ramsey^3 decided to look for other funding, prepared a proposal to the McKnight Foundation, and was successful in obtaining a grant for that work.

Mr. McDilda presented the phases they used to educate and use Open Space Technology (OST) to gather public comments. Another phase was to determine how to use the 1,200 or so different public comments and lay them out into a guideline and identify values. Mr. McDilda read the Ramsey^3 vision statement, values statements, checklist to guide review of zoning alternatives and future planning, commenting on each of the six components and recommendations for changes. He emphasized the guidelines can be used when looking at land use maps and Codes to put them in a matrix and determine how many values it does or does not meet. This will give people a way to draw contrast and comparison on different issues and discussions being held. Mr. McDilda stated if these guides can be included, it will go a long way in having the Comp Plan meet the needs and desires of Ramsey's residents. He stated the guides are all of equal importance.

Mr. McDilda acknowledged members of the Ramsey^3 Steering Group that he served with: Will Thompsen, Sarah Strommen, Ralph Brauer. Read members of the Ramsey^3 Visioning Team: Melody Shyrock, Jim Overtoom, Al Pearson, Ryan Hunt, Bob Ramsey, John Enstrom, Colin McGlone, Jim Steffen, Ralph Hunt, Bob Benz, and Dan Markel as a consultant. He also acknowledged City staff, Kurt Ulrich, Amber Miller, Tim Gladhill and Sylvia Frolik and past staff members Pat Trudgeon and Breanne Dalnes. He also extended his appreciation to residents of Ramsey who were involved and provided input.

Motion by Councilmember Jeffrey, seconded by Councilmember Elvig, to adopt Resolution #08-08-140 acknowledging the efforts of the participants in the Ramsey^3 project and receiving the Final Report, Vision, and Values Statement.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Elvig, Dehen, Look, Olson, and Strommen. Voting No: None.

Motion by Councilmember Jeffrey, seconded by Councilmember Olson, to adopt Resolution #08-08-141 acknowledging the significance of the Ramsey^3 Steering Committee.

Further discussion: Councilmember Elvig extended his appreciation for the tremendous work expended in this effort, noting many organizations are looking at Ramsey^3's efforts and are looking for something magnificent to come out of it. He stated this process will create a positive and proactive outlook for Ramsey.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Olson, Dehen, Elvig, Look, and Strommen. Voting No: None.

Mayor Gamec stated he attended a Land Planning meeting and was asked about Ramsey^3 and the process used.

Mr. McDilda stated one of the great things in Ramsey is its residents and how much they care about their City and where it is going.

Mayor Gamec advised the Ramsey^3 received a trial grant and then the McKnight Foundation dropped all funding for this process. However, they are now looking at it again.

Councilmember Strommen stated Michael Herman came to Ramsey twice during the initial OST and again about a year later to review the draft vision and value statements. Mr. Herman made a comment about the remarkable change that had taken place during that year. He indicated that at the initial meeting, residents made statements at other people and it was not a conversation. Then, a year later, there was dialog and conversation between residents, even though there was not always agreement. Councilmember Strommen stated it was most gratifying to her to learn how to come together as a community, face difficult issues and disagreements, and hold a conversation about them and come together. She stated it is very important for all to acknowledge and thank the residents involved. She stated it is an exciting future if Ramsey can keep moving in that direction.

Mr. McDilda stated he is sure he missed someone during acknowledgements and apologized if that happened. He stated he also wants to acknowledge the Mayor and Councilmembers for their support of Ramsey^3 to move forward with the process.

Public Hearing

Case #2: Public Hearing to Consider Execution of Business Subsidy Agreement with CTT Properties, LLC (Panther Precision Machine)

Mayor Gamec closed the regular portion of the City Council meeting at 8:23 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Gamec called the public hearing to order at 8:23 p.m.

Presentation

Economic Development Coordinator Sullivan stated staff has negotiated a development agreement with CTT Properties, LLC (Panther Precision Machine), for a 25,000 sq. ft. office/warehouse building to be constructed in the Fall of this year. The building will be located east of the lot owned by Panther Precision Machine. They currently employ 30 people, 19 of them added since they moved to Ramsey. The new expansion will have nine new job creations paying at least $14 per hour. The subsidy proposed is within the Council guideline requirement of one job creation for each $25,000 increment of assistance. In April, the EDA made a motion to recommend approval. It will have an assessed taxable market value of approximately $1.776 million, generate $58,200 annually in taxes, and approximately $34,770 annually in tax capacity. Tax increment generated per year will be approximately $18,000, which would be used to assist the City with its payment for public improvements. He noted that Tom Olson and Tracy Anderson of CTT Properties are available to answer questions on the project.

Citizen Input

There was none.

Motion by Councilmember Jeffrey, seconded by Councilmember Strommen, to close the public hearing.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Strommen, Dehen, Elvig, Look, and Olson. Voting No: None.

The public hearing was closed at 8:26 p.m.

Council Business

Mayor Gamec called the regular City Council meeting back to order at 8:26 p.m.

Tom Olson, Panther Precision Machine, Tracy Anderson of Dynamic Rigging, Inc. introduced themselves.

Councilmember Elvig asked if it is warehouse or manufacturing space.

Mr. Olson stated it is warehouse, manufacturing, and office.

Councilmember Dehen asked staff to explain the subsidy.

Economic Development Coordinator Sullivan explained that TIF is a tool the City has to allow new projects to be built by providing land at a reduced cost. In this case, it is $200,000 and over time, the project will pay taxes to cover the cost of infrastructure and create new jobs. They will sign an agreement to create new jobs or they will have to pay back the assistance. This TIF will expire in 2011 and then the district will be retired. He advised that the City has put up water towers from TIF funds generated beyond expectations.

Councilmember Elvig stated they have a good track record, exceeded initial expectations, and are a wonderful addition to Ramsey.

Motion by Councilmember Elvig, seconded by Councilmember Olson, to authorize business subsidy agreement with CTT Properties, LLC.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Olson, Dehen, Jeffrey, Look, and Strommen. Voting No: None.

Motion by Councilmember Jeffrey, seconded by Councilmember Elvig, to authorize execution of a development agreement with CTT Properties, LLC, contingent upon review by the City Attorney.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Elvig, Dehen, Look, Olson, and Strommen. Voting No: None.

Council Business

Case #3: Adopt Resolution Authorizing the Sale of Lots 1 and 1A, Block 1, TC Trail, Anoka County, Minnesota

Economic Development Coordinator Sullivan explained that this case is to authorize the sale of torrents property. There is a County requirement that specific authorization is required for torrents property. He explained the Ordinance was introduced and adopted in April for the City requirement and this is now a County requirement.

Motion by Councilmember Elvig, seconded by Councilmember Strommen, to adopt Resolution No. 08-08-143 which is a resolution authorizing the sale of Lot 1 and Lot1A, Block 1, TC Trail.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Strommen, Dehen, Jeffrey, Look, and Olson. Voting No: None.

Case #4: Request for Final Plan Review of TC Trail; Case of the City of Ramsey

Associate Planner Gladhill explained this case is related to the platting of Lots 1 and 1A, as well as Outlots A and B of TC Trail, previously portions of Sunfish Lake Business Park and Sunfish Lake Business Park Second Addition. The City engaged the services of Hakanson Anderson to assist. Associate Planner Gladhill stated two accesses are proposed, noting the location of the flag lot. He stated drainage, grading and landscape plans will be considered as part of the Site Plan application. Park Dedication Fees have been satisfied with a previous plat and trail dedication, stormwater fees, sanitary sewer trunk charges, and water trunk charges will be addressed through a TIF Agreement with Panther Precision Machines.

Councilmember Elvig asked about the flag lot.

Associate Planner Gladhill used a map to identify the location and explained the purpose is to provide two points of access, which is important for emergency services.

Motion by Councilmember Jeffrey, seconded by Councilmember Strommen, to adopt Resolution #08-08-144 granting final plat approval to TC Trail.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Strommen, Dehen, Elvig, Look, and Olson. Voting No: None.

Case #5: Request for Site Plan Review; Case of Sharp and Associates, LLC

Associate Planner Gladhill stated this case deals with the Panther Precision expansion of approximately 2600 sq. ft. addition on Lots 1 and 1A of TC Trail. He stated drainage, grading, and landscape plans are generally acceptable, subject to the staff review letter. He noted the revised plans identify the flag lot and increased landscape requirements have been shifted onto the Outlot to the east, which is City owned property. Associate Planner Gladhill stated setbacks conform and the building is proposed to be constructed of precast rib panels with smooth architectural elements. The Planning Commission met on August 7, 2008 to discuss the site plan and recommended approval. Staff recommends approval conditioned on the staff letter dated August 1, 2008 and revised on August 8, 2008.

Mayor Gamec asked if the landscaping would be shifted to the Outlot.

Associate Planner Gladhill stated staff is working with the applicant to shift landscaping to the Outlot in order to accommodate the size of facility they want to build.

Economic Development Coordinator Sullivan explained that CT Trail wants to make the pond an amenity. The pond configuration has some contour and the intent is to allow them to utilize some trees off site so it looks better.

Councilmember Elvig asked staff to describe the property to the south.

Economic Development Coordinator Sullivan stated that property is owned by Rotary Systems, another manufacturing company and it fronts on Azurite Street.

Councilmember Elvig commented that he did a fair amount of landscaping on his site and described the resulting problems with storage of snow. He noted that snow on the flag lot and roadway will have to be plowed to the south and dumped onto the area of landscaping. He stated his concern whether there is a friendly neighbor to the south that will allow snow to be plowed onto their lot.

Mayor Gamec noted there is a large area between the building and Rotary Systems.

Associate Planner Gladhill advised that Hakanson Anderson made the flag portion of the lot larger so it could accommodate snow storage. Their engineer felt there would be sufficient width for a blacktop drive plus snow storage.

Dennis Sharp, Sharp and Associates, stated they discussed snow storage and the logical storage location is the ponding area, which will work fine.

Mayor Gamec questioned snow storage in the ponding area and asked whether there are restrictions if the pond has an over flow pipe.

Assistant City Engineer Hinner stated that pond is part of a larger system but he does not know if water leaves that area. He stated staff will work with the applicant to assure it is not a problem.

Councilmember Elvig recommended staff look at that issue and how trash from the snow will be cleaned up before the frost goes out.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to approve the site plan and associated Development Permit (TIF Agreement Exhibit C), contingent upon conformance with the City Staff Review Letter dated August 1, 2008 *revised August 8, 2008.*

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Jeffrey, Dehen, Look, Olson, and Strommen. Voting No: None.

Revise Agenda

City Administrator Ulrich explained that the Economic Development Coordinator has a scheduling conflict and requested the agenda be revised to next consider Case #12.

The Council agreed.

Case #12: Authorize City Council to Execute a Loan Agreement with Clear Choice Countertops, Inc.

Councilmember Dehen asked about the loan agreement with Clear Choice Countertops, Inc.

Economic Development Coordinator Sullivan advised the business is currently housed in a multi-tenant facility.

Councilmember Strommen left the meeting at 8:42 p.m.

Councilmember Dehen asked how the City decides which businesses should get loans and why they are not referred to a bank.

Economic Development Coordinator Sullivan stated it is a revolving loan program and its funds were put in through the old State MIF Program. He explained this fund started when Systematic Refrigeration received a $300,000 grant that was paid back to the City. The City then paid back the State of Minnesota, as a pass through, and was allowed to keep $150,000 for this revolving loan program. The amount in that Revolving Loan Fund is now about $190,000. The Council put together Revolving Loan Fund guidelines that deal with how funds can be loaned and the

interest rate. This is one of the programs staff refers businesses to that are looking for help. It is only for manufacturers, not retailers, and an employment aspect for job growth with good paying salaries is required because the loan is considered a subsidy if lower than market rate.

Councilmember Dehen asked why this fund only applies to manufacturers.

Economic Development Coordinator Sullivan stated that is a guideline set forth by the Council.

Mayor Gamec explained the Council looked at the volume of jobs that would be created with a retail business versus manufacturing and found it would be better with manufacturing and bring in larger tax increment. He noted a small retail business may be a one-person operation.

Councilmember Dehen asked what the policy rationale is for the City doing the loan as opposed to telling the business to go to the bank.

Mayor Gamec stated he serves on a bank board and there are other loans available, such as through the Small Business Administration, but then the businesses may move from Ramsey and go to another city.

Councilmember Elvig explained that the Economic Development Authority (EDA) recognizes that new business is some of the most expensive business to attract and sometimes requires full subsidy. Part of the initiative of the EDA is to grow the businesses that are already here. He explained how this program can work to assist a business in buying a needed piece of equipment and stated he used a program from Anoka County for his business. The program under consideration has little or no expense to Ramsey because it is a revolving fund.

Economic Development Coordinator Sullivan explained the fund continues to grow as loans are made and payments come in.

Councilmember Dehen asked what happens if a business defaults.

Economic Development Coordinator Sullivan explained that under this situation the loan will utilize the machinery as collateral. If they default, the City will get the machinery.

Motion by Councilmember Jeffrey, seconded by Councilmember Olson, to approve the loan request between Clear Choice Countertops, Inc. and the City of Ramsey, to obtain a personal guarantee from Mathew Semler and to authorize the Mayor to execute the required loan documents.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Jeffrey, Olson, Elvig, Dehen, and Look. Voting No: None. Absent: Councilmember Strommen.

Case #6: Adopt Ordinance to Amend City Code Section 9.15 Towers; Case of the City of Ramsey

Associate Planner Gladhill explained the City had a moratorium on cell phone towers during which time staff studied the height, location, and setbacks in the City. At the August 7, 2008, Planning Commission meeting a recommendation was made. However, Commissioners questioned the motion reflected in the meeting minutes so staff reviewed the tape and confirmed that direction was given to staff to work with a property owner who wanted his property excluded from the Overlay District. The Planning Commissioner didn't think they motioned to exclude the property, but that is how the motion was introduced. He stated this Ordinance was introduced on July 22, 2008, and is available for adoption tonight.

Councilmember Dehen noted the new height limit was adjusted to 100 feet and asked what was the rationale to add 20 feet more. He asked if they couldn't use the 100-foot height to co-locate.

Associate Planner Gladhill explained it gives the applicant incentive to construct with co-locations to get the extra 20 feet.

Mayor Gamec noted it will result in fewer towers because of co-locating.

Community Development Director Miller stated locations in parks would also be considered to allow the Council's preference to locate antennas on light poles. He advised City Engineer Olson has indicated light poles for ball diamonds would top out at 100 feet, at the highest, so an additional 20 feet would be needed for tower with co-locates.

Councilmember Elvig left the Council Chambers at 8:52 p.m.

Motion by Councilmember Olson, seconded by Councilmember Look, to adopt Ordinance #08-24 amending City Code Section 9.15 Towers.

A roll call vote was performed by the Recording Secretary:

Councilmember Dehen:	aye
Councilmember Elvig:	absent
Councilmember Strommen:	absent
Councilmember Jeffrey:	aye
Councilmember Olson:	aye
Councilmember Look:	aye
Mayor Gamec:	aye

Motion carried.

Case #7: Adopt Ordinance to Amend Section 9.12 (Signs) of City Code to Incorporate "Dynamic Display" Sign Regulations; Case of the City of Ramsey

Community Development Director Miller stated on July 22, 2008, the City Council introduced an ordinance to amend sign regulations to regulate dynamic display signs. The ordinance will define digital display, size of the sign, and speed of the message. It is staff's recommended action to adopt this ordinance on roll call vote

Councilmember Elvig returned at 8:54 p.m.

Mayor Gamec stated he was contacted by the radio station that wants a dynamic display community billboard sign. He noted this Ordinance regulates how many seconds a message can be displayed and the height of the lettering. He asked if a variance application can be made if the radio station would like large lettering or a different speed of message display.

Community Development Director Miller stated there is a Conditional Use Permit (CUP) process so if they want something other than currently allowed, they could come before the Planning Commission and request something different.

Mayor Gamec questioned the rate allowed.

Community Development Director Miller stated it is three seconds.

Mayor Gamec stated the speed of the message display is related to the speed of traffic on Highway 10.

Community Development Director Miller advised that staff met with the radio station personnel and explained the procedure if, in the future, they want to make application.

Motion by Councilmember Jeffrey, seconded by Councilmember Dehen, to adopt Ordinance #08-25 amending Section 9.12 (Signs) of City Code to establish dynamic display standards.

Councilmember Look:	aye
Councilmember Olson:	aye
Councilmember Jeffrey:	aye
Councilmember Strommen:	absent
Councilmember Elvig:	aye
Councilmember Dehen:	aye
Mayor Gamec:	aye

Motion carried.

Case #8: Update on Improvement Project #08-27, 167th Avenue NW Realignment and Acceptance of Appraisals and Authorization to Negotiate Land Acquisitions

Assistant City Engineer Himmer stated the end of June the Council discussed this project as part of the design preparation authorized in April 2008. Staff tried to balance and minimize environmental and property impacts. In June, three alternatives were prepared for the westerly 500 feet and Council direction was to determine costs with each option. Appraisals were performed and costs provided in detail. Assistant City Engineer Himmer noted the three alternatives range from $420,000 to $27,000. He described each of the alternatives, noting Alternate 1 results in the resident leaving a home valued at $431,666 for total acquisition of the parcel plus a minor easement. Alternate 2 costs $27,766 and skirts the wetland, impacting two

property owners with the most significant impact being to the same property as impacted in Alternative 1. However, that property owner is not in favor of the project or supportive of acquisition. That property owner indicated if there is a taking, he would prefer the City take it all. Alternate 3 shifts the curve to the east and pushes acquisition to the next property over. That property owner was not too thrilled about the project but indicated they understood and would investigate options so they could make an informed decision. However Alternate 3 results in the most significant impacts to the wetland and the Watershed District may not support such a project. Based on acquisition alone, the cost is $49,250 plus additional costs for more fill, storm sewer, and geotechnical investigation that is estimated at $126,000 of additional costs. Assistant Engineer Himmer stated staff also investigated purchasing wetland banking, which would lower the costs significantly. Staff requests authorization to accept appraisals and start negotiations once the final alignment is decided upon.

Mayor Gamec asked about the driveway location for the property and stated it may be best in the long run to go with Alternative 2 but buy the whole property.

Assistant City Engineer Himmer stated that would leave open the option of resale and noted utilities are in the area.

Councilmember Look noted there has been some discussion about a costly culvert under the roadway with Alternate 2.

Assistant City Engineer Himmer stated that was with Alternate 3, not Alternate 2.

Councilmember Olson asked what is the total cost and how would it be funded.

Assistant City Engineer Himmer stated all funds will be paid through MSA dollars. He estimated the costs for the project, not including property acquisition, at about $900,000. It was noted the sanitary sewer and watermain portions are proposed to be funded through their corresponding Utility Funds. It is estimated that $190,000 would be financed through the Water Utility Fund, and $250,000 through the Sewer Utility Fund.

Councilmember Elvig agreed that Alternate 2 is the best approach and he would like to authorize staff to find out if the land can be purchased or if they want to maintain their dwelling and live there for a while.

Assistant City Engineer Himmer stated that property owner is in attendance. He advised that staff has talked about alternate driveway locations, options, and would look to find a compromise if it is more economical.

Councilmember Dehen asked where this road goes.

Assistant City Engineer Himmer described the Section 1 location from Highway 5 on the east to Quartz where there is a T in the road.

Councilmember Dehen asked if the City has done mapping so it is not done piecemeal fashion.

Assistant City Engineer Himmer stated at Quartz there are easements in place and assured the Council that nothing done here would be redundant with future work.

Councilmember Dehen noted this action would make a significant improvement to the road and he wondered if this may not be a good corridor.

Mayor Gamec explained that drivers are going off the road and onto private property. This is one of the most dangerous corners in Ramsey and the City has wanted to change it for several years because it is a safety factor.

Assistant City Engineer Himmer stated no one has questioned the need for this project and understand it needs to be done.

Councilmember Dehen noted just the corner of 7131 is being impacted.

Assistant City Engineer Himmer stated that is correct, and it impacts about 750 square feet.

Councilmember Dehen stated it may be even less impact because the City already has some easement.

Assistant City Engineer Himmer stated the roadway would fall in the right-of-way but the trail would be within two feet of the property line. There is no request for standard drainage and utility easements because they already exist in the street.

Councilmember Dehen asked whether the City would be required to take the full seven acres if the project only impacts a small part.

City Attorney Goodrich advised that Ramsey can take just the amount necessary.

Councilmember Dehen asked whether the owner has been approached about taking just the area of impact.

Assistant City Engineer Himmer stated the property owner has been approached but not with the appraisal or dollar figures because the appraisals are under consideration tonight.

Councilmember Dehen noted the area of small impact in Alternate 2 is appraised at $27,000.

Assistant City Engineer Himmer stated the value of the land to be taken is $15,600. Damages and loss of trees is added as well as encroachment in having the road closer to the home and loss of property, which equates to $27,766.

Councilmember Dehen noted that Alternate 2 also impacts the 7100 property and asked what is that cost.

Assistant City Engineer Himmer stated the cost for 7100 impacts is $10,100. He explained there are also impacts at 7131 and 7046 so staff considered all acquisition costs to assure a comparison based on "apples to apples."

Councilmember Dehen asked about the third property.

Assistant City Engineer Himmer explained there would be a small impact for easement damages to the third property.

Councilmember Cook asked about the trail and stated hopefully this will be an example of using Sate Aid dollars for the road. He noted that in the Northfork area, MSA funds were used for trails/sidewalks and the City Council talked about policy relating to MSA and assessments.

Assistant City Engineer Himmer stated there will be no assessments because this project improves the safety and geometrics of the road. It will also improve walkability by including trails.

Councilmember Look stated the Council discussed possibly assessing some of the Northfork costs since the road would be upgraded. He is concerned about spending about $1 million of MSA dollars for this project. He asked if all the MSA dollars will be spent on one project when there are many projects throughout the City.

Assistant City Engineer Himmer agreed with the concern of using $1.4 million potentially on this project. He explained that MSA dollars accrue annually and carry into the next year. Ramsey can also spend out into the future allocations. He stated he was trying to get down to the exact costs and impacts to the future with MSA dollars.

Councilmember Look stated the Council discussed having a policy for use of MSA dollars. With the Northfork property, Andrie Street, there was going to be an assessment; however there will be no assessment with this project. He stated there needs to be a consistent policy.

Assistant City Engineer Himmer stated they are two drastically different projects because this project was looked at as a major road within Ramsey that was not up to safety standards, there was a need for an east/west connection, and it was initiated by Ramsey as a transportation need.

Councilmember Elvig stated with the Northfork project, the City was petitioned to improve the road to a higher standard and that initiated the discussion that at some point the City should look at a policy. With Northfork, the only tool to upgrade beyond the City's standards involved MSA plus assessments.

Assistant City Engineer Himmer stated that is correct and Northfork was always intended to be an assessed project.

Councilmember Elvig noted that Ramsey was "scolded" for pooling State Aid funds because the City was not putting the money to work. He stated it is good to have a road plan to anticipate

road projects that will be coming up. Now, no more than two years of MSA is pooled and Ramsey does not spend out beyond four years.

Assistant City Engineer Himmer agreed there was some discussion about being penalized for conducting due diligence before projects were done.

City Administrator Ulrich asked staff to put together a proposal with Alternate 2 after talking with that homeowner whether to purchase the entire area or just the small area needed.

Assistant City Engineer Himmer stated there are 7 to 8 acquisitions that need to take place and the other acquisitions need to be resolved.

Councilmember Elvig supported staff being authorized to start negotiations.

Assistant City Engineer Himmer stated it sounds like Alternate 2 is the alignment but the question is whether or not the City needs to purchase all of 7131.

Councilmember Dehen asked why Ramsey would want to purchase easements ahead of time before knowing the price for 7131. He stated he wants to know the price first so Ramsey is not "held hostage" on the easements already purchased.

Assistant City Engineer Himmer stated regardless of what happens, they are independent acquisitions and construction easements. He stated he would like those pieces concluded and then come back with a recommendation on the 7131 property.

Motion by Councilmember Elvig, seconded by Councilmember Look, to adopt Resolution No. 08-08-145 authorizing the required property acquisition for the realignment of 166th / 167th Avenue NW to State Aid standards, based upon the alignment in Alternate 2, and the final decision coming back to Council with findings, conclusions and concerns of the staff.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Look, Dehen, Jeffrey, and Olson. Voting No: None. Absent: Councilmember Strommen.

Case #9: Authorize Installation of Security Cameras in TH 47 Pedestrian Underpass

Assistant City Engineer Himmer stated this project was approved in the Summer of 2005 with some reconstruction on Highway 47. The meeting minutes at that time indicate some concern about security. Since that time, lighting has been installed and most recently, graffiti was discovered as well as broken lights. Staff is trying to determine how to address security cameras and concerns about costs, housing equipment, and temperature issues so staff investigated cameras that work through the Internet and records at City Hall. Staff recommends the use of IP cameras. The cost is $9,050.86 for a three-year contract with Quest at $65.40 per month plus install of cameras, software and hardware needs.

Councilmember Olson asked who maintains the cameras.

Assistant City Engineer Himmer stated the maintenance under either option will be a City responsibility and those costs were not included. The cameras are vandalism resistant and would be purchased as a capital improvement. He noted that ten years of service equals the DVR option of $16,117.65, to recapture those costs.

Councilmember Look stated the reality is that there is a fair amount of vandalism that occurs in this area and the parks that cost the City real dollars. He stated he favors this camera and to research the possibility at other parks that have vandalism.

Motion by Councilmember Look, seconded by Councilmember Olson, to authorize staff to proceed with the installation of IP security cameras in the Highway 47 pedestrian underpass and execute a 3-year contract with Qwest for an Internet service connection.

Further discussion: Councilmember Jeffrey stated he agrees with Councilmember Look but noted these cameras will not be surveiled, but played back should vandalism occur. Assistant City Engineer Himmer stated it will be similar to the camera in the parking ramp that is recorded 24 hours a day but not monitored 24 hours a day. He suggested the same types of signs be placed as used in the ramp. Councilmember Dehen stated his concern about spending $10,000 every place the City experiences vandalism. He asked if this is a problem area with vandalism or assaults. Assistant City Engineer Himmer stated it is an area where a person can hide, there is not an established neighborhood, and it could be open to other types of activities. Councilmember Dehen asked if this is the worst area. Assistant City Engineer Himmer stated he does not know whether it is the worst area but there has already been significant vandalism over a short time period. At the original approval, conduits were approved to be installed in the event surveillance was needed. Councilmember Elvig stated when this overpass went in, the Council had the opportunity with the project on the east side of Highway 47 and wanted a connection point. The developer agreed so over six to ten weeks, it was approved and went in. However, this is a tunnel where activities could occur and some kind of camera or surveillance is needed. He stated that he thinks this purchase is necessary and is sorry vandalism had to happen before it was considered. Assistant City Engineer Himmer agreed a camera was always "on the radar." He stated he tried to work a camera into another location and may bring that forward once the Town Center moves forward. Councilmember Dehen urged parents to talk with their children and explain the high cost to all from vandalism.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Look, Olson, Dehen, Elvig, and Jeffrey. Voting No: None. Absent: Councilmember Strommen.

Case #10: Accept Plans and Specifications for City Project #08-29, Alpine Park Watermain Loop, and Authorize for Bid

Assistant City Engineer Himmer stated this project was authorized in May and he would like authorization to put plans out for bids. He stated staff will continue to negotiate with the MPCA for easements.

Motion by Councilmember Elvig, seconded by Councilmember Olson, to accept the plans and specifications for City Project #08-29, Alpine Park Watermain Loop, and authorize for bid.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Olson Dehen, Jeffrey, and Look. Voting No: None. Absent: Councilmember Strommen.

Case ##11: Adopt Resolution #08-08-XXX Authorizing Execution of Agreement with the Minnesota Department of Public Safety for 2008-2009 Participation in the Safe and Sober Communities Program

Councilmember Look stated he has experience with this Program and requested that consideration be tabled so Police Chief Way can make comment. He explained that Ramsey receives money from the State for the Safe and Sober Communities Program. The "Safe" portion deals with seat belt use, which is not a primary offense so the driver cannot be pulled over for it. The "Sober" portion has to do with enforcement of alcohol arrests. To qualify for the Program, the officers have to make so many stops per hour or per day. Councilmember Look stated that he does not mind police officers making stops for legitimate reasons, but not to meet quotas. He does not want Ramsey residents put into a situation where they are pulled over for a reason that may be fabricated. Councilmember Look stated he was pulled over and given a card indicating they were conducting this Program at 4 o'clock in the afternoon. This left a "bad taste in his mouth." He stated that he has no problem with, as a secondary offense, ticketing if seat belts are not being worn but he does have a problem with quotas.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to table consideration of Resolution #08-08-XXX Authorizing Execution of Agreement with the Minnesota Department of Public Safety for 2008-2009 Participation in the Safe and Sober Communities Program and to request Police Chief Way attend the next Council meeting to address the Council's concerns.

Further discussion: Mayor Gamec noted that Highway Patrol Officers also make stops in Ramsey, not just local officers.

Motion carried. Voting Yes: Mayor Gamec, Councilmembers Elvig, Jeffrey, Dehen, Look, and Olson. Voting No: None. Absent: Councilmember Strommen.

Case #12: Authorize City Council to Execute a Loan Agreement with Clear Choice Countertops, Inc.

This item was considered earlier in the meeting.

MAYOR, COUNCIL AND STAFF INPUT

National Night Out

Councilmember Jeffrey reported that National Night Out went well and thanked residents, staff, officers, fire and safety personnel for their participation.

Traffic Concerns at 142nd Street and Argon

Councilmember Look agreed National Night Out was very successful and it gives residents an opportunity to talk to Councilmembers. He stated he was asked about traffic levels at 142nd Street and Argon and indicated he would support discussion at a Work Session to discuss the possibility of closing it off. He explained resident's concern due to bypass traffic cutting through their neighborhood, which poses public safety and welfare concern for those residents. Councilmember Look stated if the Council agrees, he would like the topic discussed at a Public Works meeting and a recommendation received from Fire Chief Kapler.

Councilmember Jeffrey stated he also heard that concern.

Councilmember Elvig agreed the whole area needs to be looked at for traffic.

Recycling Fees

Councilmember Elvig stated Ms. Backus asked why they pay a recycling fee when they don't recycle through the City but through another provider. He stated he did not know the details of that program and asked staff to provide that information so he can relay it to Ms. Backus. He suggested the *Ramsey Resident* newsletter include information on the recycling program and fees, or that it be answered on camera.

Concerns with Survey

Councilmember Elvig reported a resident called about the survey being conducted by a citizen-led group about a potential referendum to purchase greenways and waterways. The resident wrote down notes and believed the City was sponsoring the survey and pushing the initiative. Councilmember Elvig stated he explained that it was a citizen-led initiative but the survey staff made comments to her that it was initiated by the City. He stated he is concerned this group may be misrepresenting themselves as an "arm" of the City and asked staff to call the person in charge and make that distinction with them.

Mayor Gamec advised that Decision Resources states at the beginning of the survey that they are an outside agency and asking questions about the City.

Councilmember Dehen noted there is a "City connection" because an Environmental Policy Boardmember wrote to the City requesting comments about the survey.

Mayor Gamec stated the biggest problem is when the survey asks residents if they want to pay higher property taxes. He stated he has also received some calls on the survey.

City Administrator Ulrich stated the City is not paying for the survey and is not in charge of the survey. The survey was provided to the City to inform us it was being sent out. He explained that it is the intention of the group to share the survey results with the Council at a future Work Session meeting.

Councilmember Elvig stated it is a phone survey, not a written survey.

Mayor Gamec stated the survey on parks and open space is going out in conjunction with the Three Rivers Park District.

Public Access to Mississippi River

Councilmember Dehen stated he spoke with Parks Supervisor Riverblood about trying to get access to the Mississippi River for Ramsey residents. He noted there is a beautiful stretch of the Mississippi River in Ramsey but no access because there is no landing. Parks Supervisor Riverblood had said he would talk with County staff about getting a landing by Diamonds, off Traprock. Councilmember Dehen noted other access locations in neighboring communities and stated if a landing is available in Ramsey, it will allow residents to enjoy the River.

ADJOURNMENT

Motion by Councilmember Olson, seconded by Councilmember Dehen, to adjourn the meeting.

Motion carried.

The regular meeting of the City Council adjourned at 9:52 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Carla Wirth
TimeSaver Off Site Secretarial, Inc.

AFFIDAVIT OF PUBLICATION

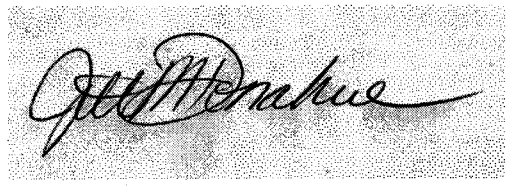
STATE OF MINNESOTA)
COUNTY OF ANOKA) SS

Jill Donahue, being duly sworn on oath says that she is the business manager of the newspaper known as the Anoka County Union, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statue 331A.02, 331A.07 and other applicable laws, as ammended.

(B) The printed NOTICE OF PUBLIC HEARING (PANTHER), which is attached was cut from the columns of said newspaper and was printed and published once a week for one week; it was first published on Friday, the 1st day of August, 2008, and was therefore printed and published on every Friday to and including Friday, the 1st day of August, 2008, and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice

abcdefghijklmnopqrstuvwxyz
abcdefghijklmnopqrstuvwxyz



Business Manager

Subscribed and sworn to before me on
this 1st day of August, 2008

Notary Public

NOTICE OF PUBLIC HEARING

CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA
TO WHOM IT MAY CONCERN:

Notice is hereby given that the City of Ramsey City Council will hold a public hearing on Tuesday, August 12, 2008, at 7:00 p.m. at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, MN 55303.

The purpose of the hearing is to consider a Business Subsidy Agreement with CTT Properties, LLC and/or its operating entity.

All interested persons are invited to attend the hearing and comment on the proposed Business Subsidy Agreement with CTT Properties, LLC and/or its operating entity. The City of Ramsey complies with the Americans with Disabilities Act and upon advance request, information will be provided in an alternative form and interpreters will be available. Any person with such a request should contact Jo Ann Thieling at 433-9840 by noon on Thursday, August 7th, 2008. There is a TDD machine at Ramsey Municipal Center; the number is 763-427-8591.

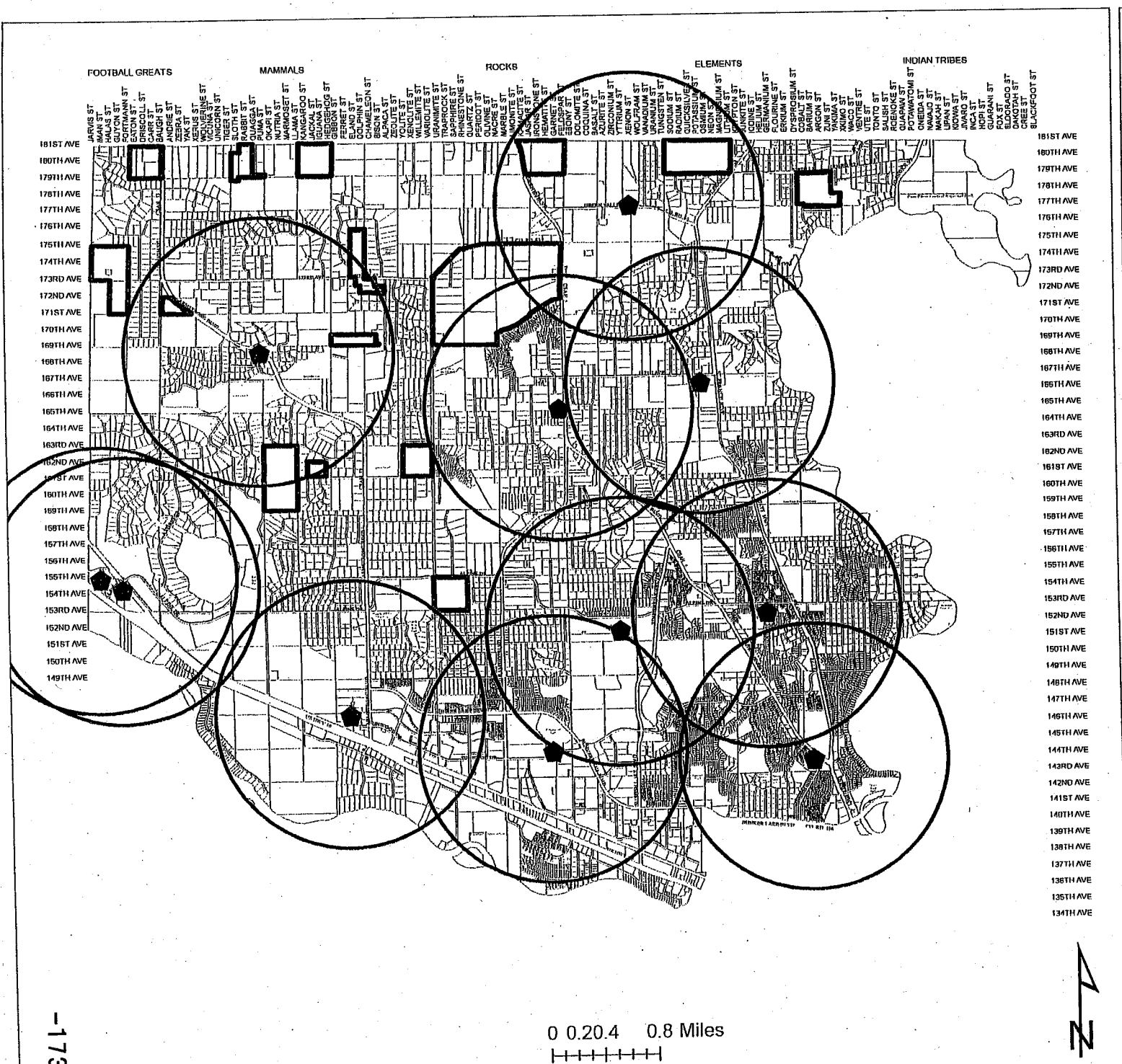
Written comments are welcome and shall be addressed to the Ramsey City Council, 7550 Sunwood Drive NW, Ramsey, MN 55303. Written comments shall be received at the above address prior to 4:00 p.m. on Tuesday, August 12, 2008.

Jo Ann Thieling
City Clerk
Date: July 16, 2008
abcdefghijklmnopqrstuvwxyz
Published in Anoka County Union
August 1, 2008

RATE INFORMATION

(1) Lowest classified rate paid by commercial users for comparable space	$ 15.00 (line, word or inch rate)
(2) Maximum rate allowed by law for the above matter	$ 15.00 (line, word or inch rate)
(3) Rate actually charged for the above matter	$ 10.25 (line, word or inch rate)

1,309,282



City of Ramsey

Proposed Tower Overlay Districts

City of RAMSEY

Legend

- Towers
- One Mile Buffer
- Proposed Overlay
- Parcels

Exhibit B

	Residential	Industrial	Commercial	Other Comments
Ramsey	*100*	*100*	*100*	*Additional 20' for multi-use towers (antenna)*
Andover	100	150	120	Additional 20' for multi-user towers
Anoka	90	150	150	Additional 20' for multi-user towers; protected residential limit is 60'
Bloomington	30	100	75	
Edina	30	125	75	Certain residential can be 75'
Elk River	150	150	150	All towers must be within Tower Overlay District. Co location requirements increase as height increases.
Champlin	150	150	150	Additional 20' for multi-user towers
Mounds View		150	100	10' above roof line in residential areas or on "upward thrusting architectural elements" B-1 and B-2 Districts limit=75; Additional 20' for co-location in Business and Industrial Districts. Certain uses require CUP.

NOTE: Based on 2008 Research

Enhancing Wireless Coverage in the Twin Cities

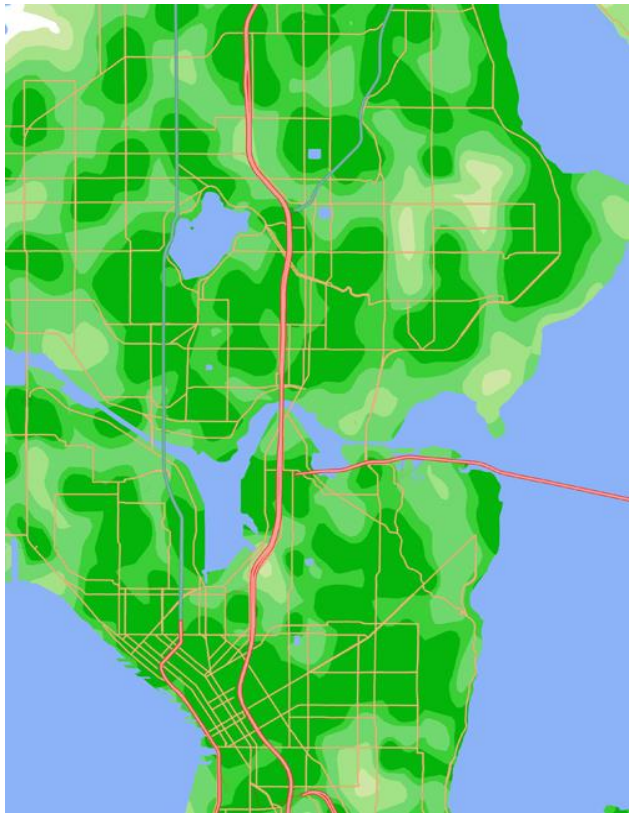
Wireless Usage

- **Wireless Penetration in the U.S.**
  - **June 1995 – 11%**
  - **June 2000 – 38%**
  - **June 2005 – 69%**
  - **June 2007 – 81%** ***www.ctia.org Sept 2007***

- **Currently, over 84% of all Americans subscribe to a mobile device.**

- **It took more than 90 years for landline telephone service to reach 100 million consumers. It took more than 21 years for color televisions to reach 100 million consumers. It took less than 17 years for wireless to reach 100 million consumers.**

  www.ctia.org June 2007



Enhancing Wireless Coverage in the Twin Cities

Landline Replacement

- **60% of all cell phone calls are made at home.** ***USA Today, 4-23-07***
- **Adoption of landline phone services peaked in 2001 with 127 million customers. Since then, the number of landline customers has steadily decreased to 107 million in 2005.** ***FCC Telephone Service Study 2007***
- **In 2006, U.S. Government statistics indicated 13.6% of wireless customers rely exclusively on their cell phone as their only phone – they've "cut the cord" and gone entirely wireless.**
- **During the last 3 months of 2006, half of the U.S. residents who moved households didn't reconnect their landlines.** ***Telephia Communications Survey 2007***

Enhancing Wireless Coverage in the Twin Cities

Safety Enhancement – E911

- As of June 2007, there are over 291,000 E911 calls made every day via wireless device in the U.S. *www.ctia.org Feb 2008*
- Roughly half the 9-1-1 calls made in the U.S. today come from a cell phone. *National Emergency Number Association*

The Future of Wireless

- "3G" High speed data networks and devices are out there. Unless networks expand to keep pace with increasing consumer demand, consumers may experience dropped calls, poor call clarity, and spotty coverage.

G1 with Google

Evolution of Tower Design

Original Cellular and PCS Networks built out in the late 90's with Monopole and Self-Support Tower Designs.

Low profile/Stealth Tower Designs

75’ Canister Pole – Stillwater, MN

75’ Canister Pole with Lights for Park – Apple Valley, MN

Stadium Light Pole – Flag Pole

75’ Church Bell Tower – Similar Design in Bloomington, MN

Low Profile Cluster mount on Light Pole – Bloomington, MN

Enhancing Wireless Coverage in the Twin Cities

Development Challenges

- Most wireless facility ordinances were passed in the mid-to-late 90's and significantly restrict sites in residential areas.
- Only viable options were water tower co-locations or building rooftop co-locations.
- Viable options in residential areas could be church and school campuses or park sites with athletic fields.
- Using municipal sites can provide an additional source of revenue.
- Having 'rock solid' wireless coverage in residential areas is a benefit to your citizens while also enhancing E911 safety.

CASE # 3

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.

9.15.07~~5~~ 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, t~~The height of a communication tower shall not exceed one hundred ~~and twenty~~ (12~~0~~0) 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.

9.15.11~~0~~ 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.

9.15.12~~1~~ Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

9.15.13~~2~~ 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.

9.15.14~~3~~ 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 ocdur 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

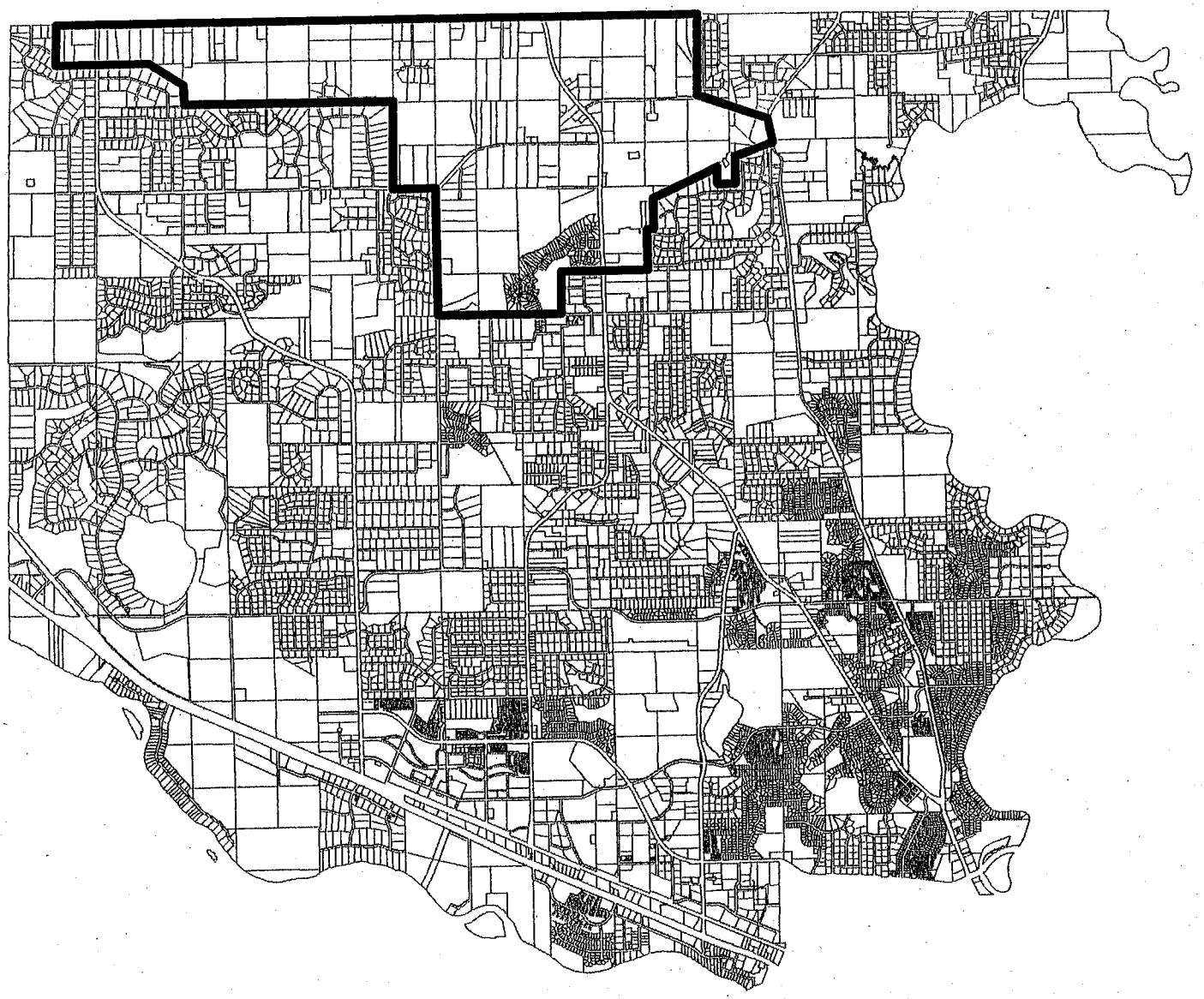
ATTEST:

_____
City Clerk

Introduction Date:
Posting Dates:
Adoption Date:
Publication Date:
Effective Date:

City of Ramsey

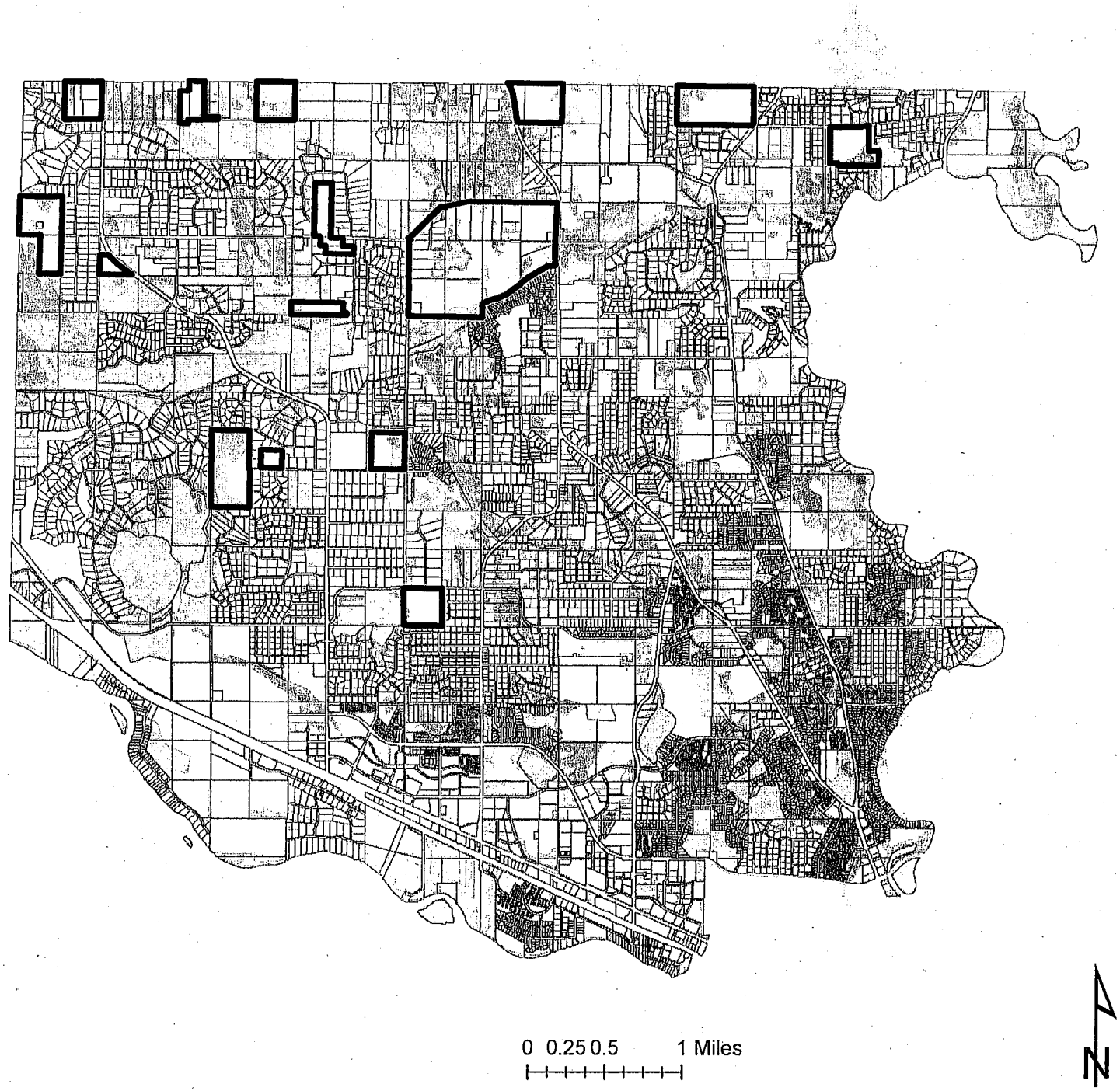
Current Tower Overlay Districts



0 0.25 0.5 1 Miles

Legend

- Current Overlay
- Parcels



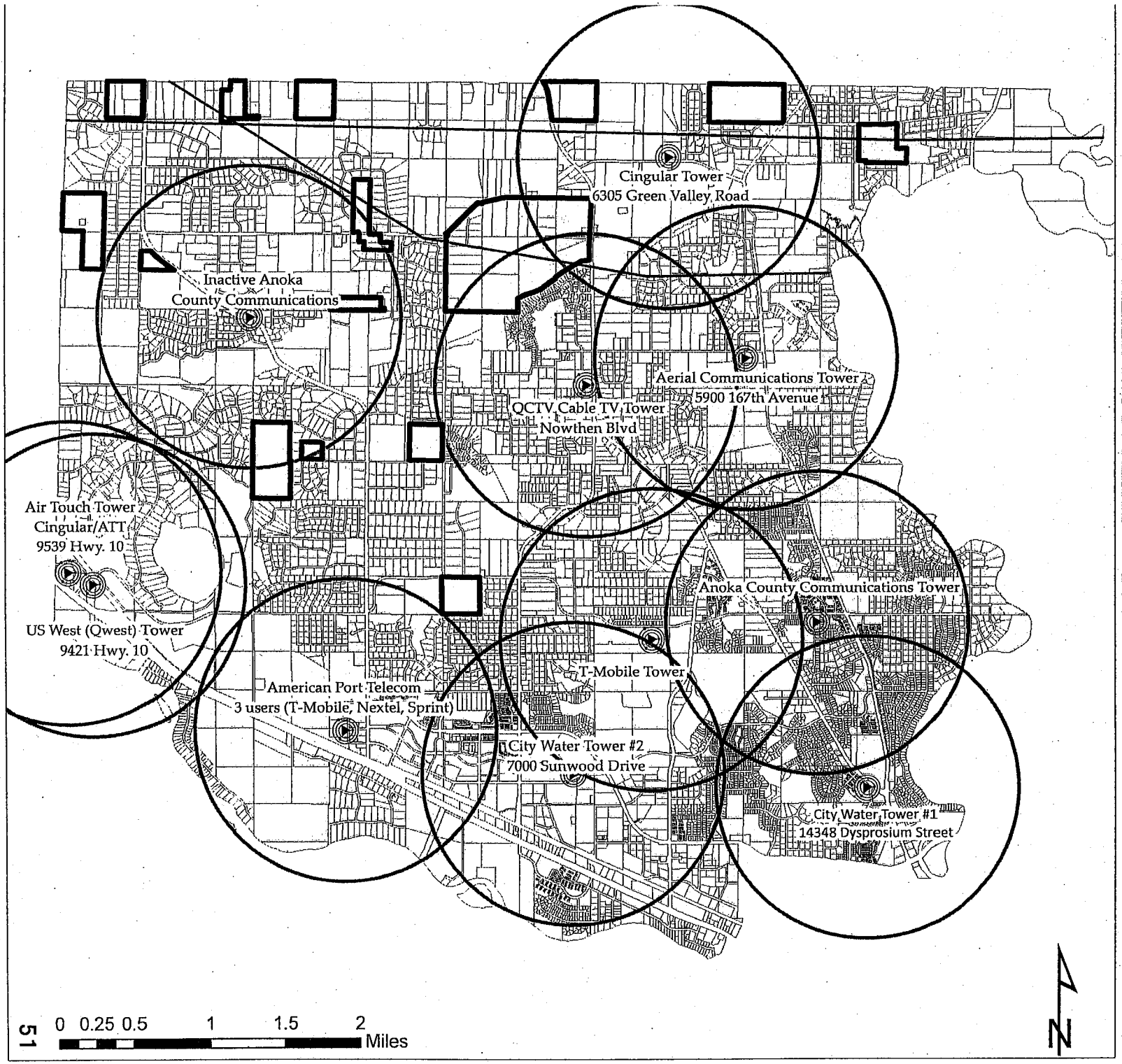
City of Ramsey

Proposed Tower Overlay Districts

City of RAMSEY

Legend

- Proposed Overlay
- NWI/NRI
- Parcels



Communications Towers

City of Ramsey

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 as 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.

CASE #: 4

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

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CASE # 5

ZONING BULLETIN

By: Interim Community Development Director Sylvia Frolik

Background:

Enclosed for your review are the zoning periodicals.

PC: 07/10/08

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QUINLAN™

June 10, 2008 | Volume 2 | No. 11

Zoning Bulletin

in this issue:

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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-

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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).*

Regular Planning Commission **5. 3.**

Meeting Date: 03/05/2015

By: Tim Gladhill, Community Development

Information

Title:

PUBLIC HEARING: Consider Request for Conditional Use Permit for 199 Foot Communications Tower; Case of Connexus Energy

Purpose/Background:

The purpose of this case is to hold a Public Hearing and recommend an action to the City Council regarding a request from Connexus Energy for a Conditional Use Permit to allow at 199 foot communications tower related to their operation.

Connexus Energy is located at 14601 Ramsey Blvd. NW and services several communities within a several mile radius of their headquarters. Connexus Energy desires to locate a monopole communications tower at this location to provide communication to its staff, sub-stations, grid, meters, and other related equipment. Primarily, in order to provide adequate coverage over their entire service area, Connexus Energy has stated that this height of tower is required in order to provide coverage with a single tower. Additionally, the closed landfill does provide some barrier to coverage.

Notification:

Staff attempted to notify all Property Owners within 350 feet of the Subject Property of the Public Hearing via Standard US Mail. A Notification of Public Hearing was published in the Anoka County UnionHerald.

Observations/Alternatives:

This review is contingent upon approval of City of Ramsey Ordinance #15-07 amending maximum height requirements for certain types of towers.

Connexus Energy has provided technical analysis as to their findings for the need for this communications tower and the chosen site. Other than the height, the request would meet all other minimum standards for Tower found within City Code Sections 117-428 in conjunction with performance standards established in the attached Conditional Use Permit.

The Planning Commission previously reviewed this concept at the January 8, 2015 Planning Commission Meeting. At that time, the Planning Commission recommended that the request be processed as a Variance due to the perceived unique nature of the request of a utility provider and the associated safety element of its operation. Upon further analysis, Staff would recommend amending City Code Section 117-428 to exempt providers of Stage I and Stage II Improvements required by City Code. These improvements include, but are not limited to gas utility, electric utility, land-line telephones, and streets. By amending the City Code provision instead of processing a Variance, a more uniform process of enforcement is established, eliminating any potential concerns about arbitrary enforcement. Staff believes that the revised ordinance language addresses the concerns and direction of the Planning Commission at the January 8, 2015 meeting.

Funding Source:

All costs associated with processing this Application are the responsibility of the Applicant. No City funds are involved in the project.

Recommendation:

Staff recommends approval of the request, contingent upon Ordinance #15-07 becoming effective.

Action:

Motion to recommend that the City Council 1) adopt Resolution #15-03-067 adopting Findings of Fact #0948; and 2) adopt Resolution #15-03-068 approving the Conditional Use Permit.

Attachments

Site Location Map
Application
Site Plan
Resolution #15-03-167: Findings of Fact
Resolution #15-03-168: Conditional Use Permit

Form Review

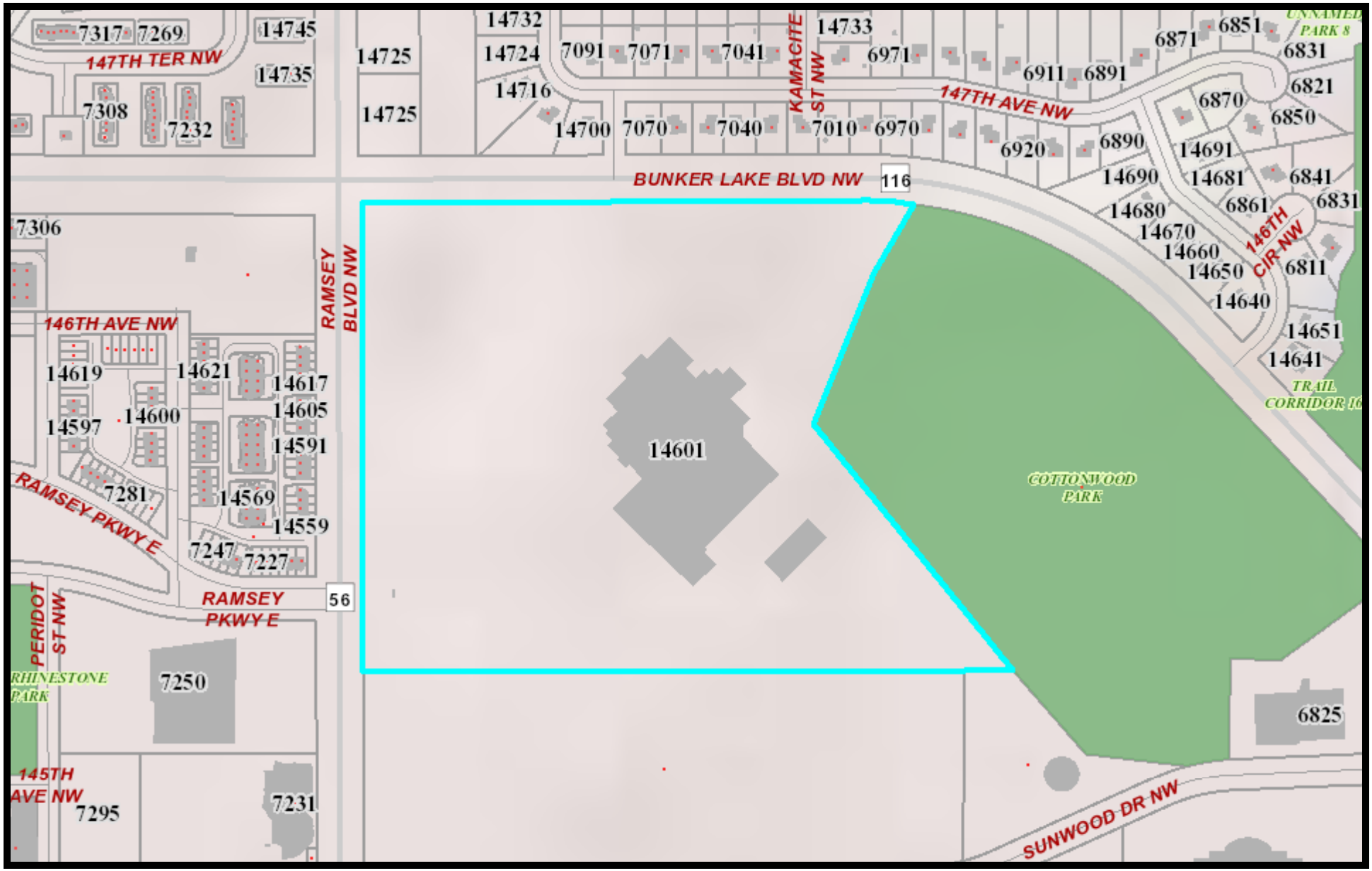
Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	02/27/2015 02:57 PM
Form Started By: Tim Gladhill		Started On: 02/26/2015 04:33 PM
Final Approval Date: 02/27/2015		

27-32-25-23-0004

14601 RAMSEY BLVD NW

Connexus Energy

14601 Ramsey Blvd NW



Print Date: February 27, 2015

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Connexus Energy Communications Tower – City of Ramsey

Request for Conditional Use Permit

January 30, 2015.

This document is hereby submitted to the City of Ramsey in application for and approval of Conditional Use Permit (CUP) for construction of a telecommunications tower on Connexus Energy Headquarters property in the City of Ramsey.

Property:

Owner:	Connexus Energy
Address:	14601 Ramsey Blvd, Ramsey, MN 55303
PIN:	27-32-25-23-0004
Legal Description:	Section 27 T. 32 R. 25; Lot 1 Block 1 AEC Energy Park
Zoning District:	E2

Applicant Primary Contact:

Tom Guttormson
Connexus Energy Principle Technology Engineer
Phone: 763-323-2692
Cell: 763-242-0633
Email: tomg@connexusenergy.com

Description of Project & Structure

The structure will be used to support communications apparatus needed for company operations. Structure design is planned to be a height of 199' (<200') above ground level and will be of monopole design with no supporting guy wires. The proposed placement of the structure is to the east side and to the back of the building adjacent to the building generator and mechanical and electrical facilities. Also included will be a small equipment hut approximately 10'x12' at the base of the tower, to house communications equipment.

Timeline

The intended timeline for construction of the project is in the 2nd half of 2015, subject to City of Ramsey approvals and permitting.

See Exhibit 1 below for a picture of a monopole structure similar to what is intended for Connexus' application.

Exhibit 1: Similar monopole structure

Basis for need

Connexus Energy completed a communications study in 2014 to identify solutions for areas of need:

1. Resolve issues with current communications systems
2. Develop a forward-looking strategy to enable and support forthcoming applications that require additional communications capability.

The company's existing tower located in Anoka just off Trunk Highway 10 was determined to be structurally deficient per current codes in a recent analysis. As such, no additional attachments can be added. Existing systems include the company's land mobile radio system (voice communication to trucks and hand held radios), and control and monitoring communications to customer owned Distributed Generation (DG).

Looking forward, Connexus Energy plans to add communication infrastructure for "smart grid" applications, including:

- AMI - Automated Metering Infrastructure.
- DA – (Distribution Automation) communications to devices on the electric grid to enhance grid efficiency and reliability.
- SCADA – Communications for monitoring and control of substations.
- Demand Response – enables customers to control electrical load to reduce demand and energy consumption during peak periods of use.

The proposed communications tower is an integral element of the overall plan. The study indicates the tower is ideally located on Connexus Energy property.

Location and Height

A tower height of 199 feet (just under 200') above ground level is the ideal height based on the following:

- The tower does not need to be painted (red and white) or lamped for heights under 200 feet above ground level per FCC requirements.
- Propagation analysis indicates that communications signal performance at 200' at the Ramsey location is comparable to that of the existing 300' height in Anoka. Propagation performance degrades below 200' towards 100'. "Holes" in coverage due to degradation of signal path creates additional safety risk when crews need voice communication working on power lines, and additional reliability risk if signal is lost when performing line switching operations.
- The 200' height allows for signal propagation over the Ramsey landfill (~160') for applications where direct line of site communications is needed.

Proposed placement of the structure is to the "back" of the Connexus building, near the generator enclosure and service transformers. Exhibit 2 illustrates the location of the tower on the property with approximate dimensions from the tower base to surrounding property lines. Exhibit 3 illustrates approximate placement in the general back area of the property, with approximate distances from the tower base to the building, the Eastern property edge bordering Cottonwood Park, and to the closet point of the public trail within the park. These exhibits were extracted from the Anoka County GIS base map with the aerial view included.

Exhibit 2: Location on Connexus Energy property

Exhibit 3: Placement of tower on Eastern side of building

Addition Locational Benefits

Other benefits that will be realized with the proposed location include the following:

- Increased security by having the structure within the fenced area on Connexus property in lieu of an external site.
- Mitigation of "dig-ins" and other exposure of interruptions from locating infrastructure near road right-of-ways or property owned by Others.
- Emergency back-up power from Connexus' onsite generator.

Other Considerations

- It is understood the City of Ramsey currently has a 100' tower height ordinance. Applying multiple 100' towers in lieu of a single 200' structure is not feasible, due to the type of licensing applied by the FCC to the frequency allocated for the land mobile radio system.
- The height of the tower makes provision for co-location by other entities.

Illustrations

Trees and berms currently on the property and adjacent park property in addition to locating the structure on the "back" side to the building will provide some screening. Below are photos taken of the property from the shoulder of surrounding streets with a similar 200' structure embedded in the photos to scale to provide illustration of what this is anticipated to look like from the public view.

The proposed height of just under 200' is 35' taller than the 165' water tower to the southeast of Connexus property.

Photo 1: Street view from Ramsey Blvd northbound, north of Sunwood Drive looking east

Photo 2: Sidewalk view in front of Allina Clinic on Ramsey Bldv looking east

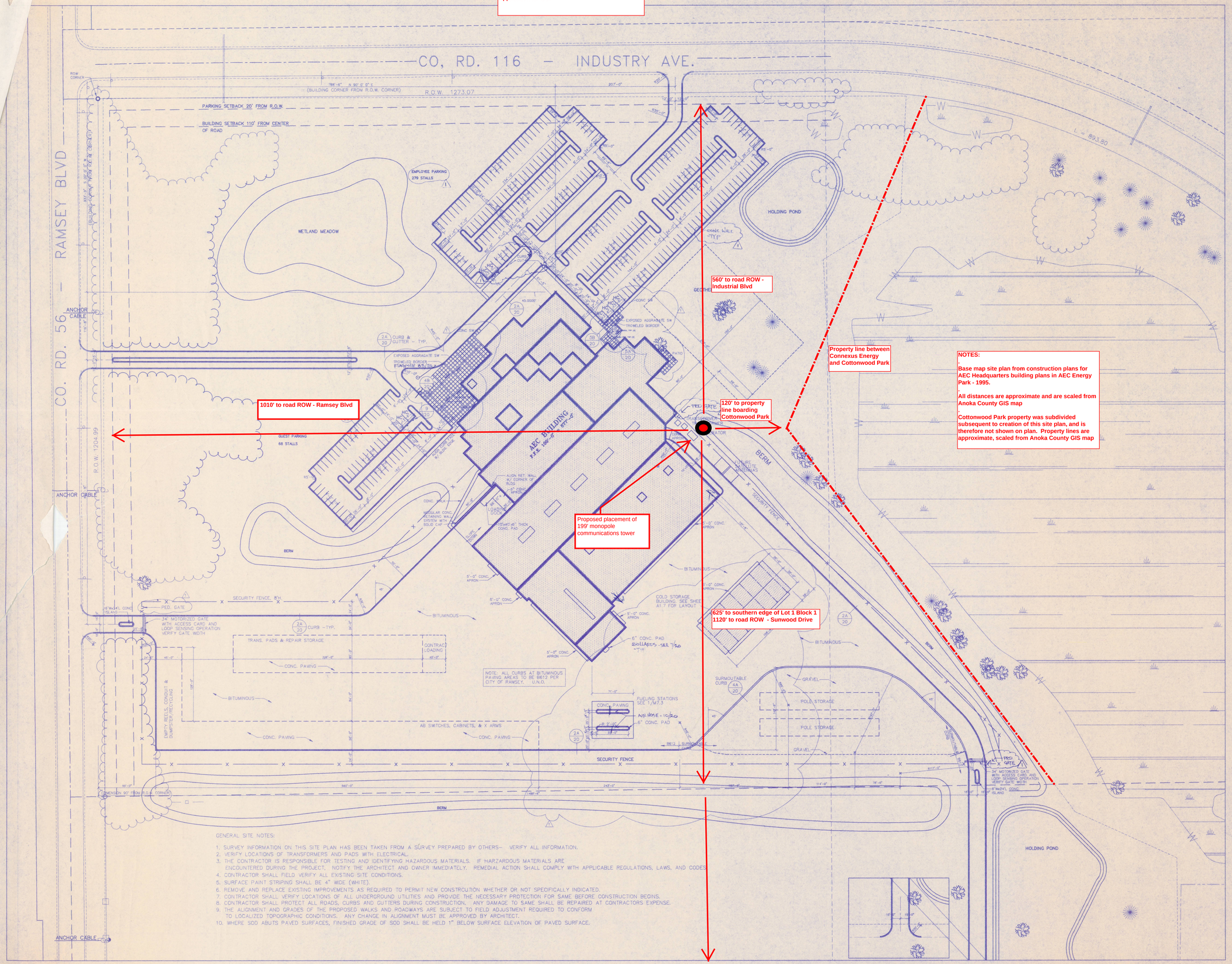
Photo 3: Street view from eastbound Industrial Blvd west of intersection of Sunwood Drive

Photo 4: View approaching Connexus building on Jim Paulson Parkway

Prepared and submitted by:_____

Tom Guttormson, PE; Connexus Energy

Site Plan -
Placement of Proposed Communications Tower
Connexus Energy
Application for CUP



NOTES:
.
Base map site plan from construction plans for AEC Headquarters building plans in AEC Energy Park - 1995.
.
All distances are approximate and are scaled from Anoka County GIS map
.
Cottonwood Park property was subdivided subsequent to creation of this site plan, and is therefore not shown on plan. Property lines are approximate, scaled from Anoka County GIS map

GENERAL SITE NOTES:

1. SURVEY INFORMATION ON THIS SITE PLAN HAS BEEN TAKEN FROM A SURVEY PREPARED BY OTHERS— VERIFY ALL INFORMATION.
2. VERIFY LOCATIONS OF TRANSFORMERS AND PADS WITH ELECTRICAL.
3. THE CONTRACTOR IS RESPONSIBLE FOR TESTING AND IDENTIFYING HAZARDOUS MATERIALS. IF HARZARDOUS MATERIALS ARE ENCOUNTERED DURING THE PROJECT, NOTIFY THE ARCHITECT AND OWNER IMMEDIATELY. REMEDIAL ACTION SHALL COMPLY WITH APPLICABLE REGULATIONS, LAWS, AND CODES.
4. CONTRACTOR SHALL FIELD VERIFY ALL EXISTING SITE CONDITIONS.
5. SURFACE PAINT STRIPING SHALL BE 4" WIDE (WHITE).
6. REMOVE AND REPLACE EXISTING IMPROVEMENTS AS REQUIRED TO PERMIT NEW CONSTRUCTION WHETHER OR NOT SPECIFICALLY INDICATED.
7. CONTRACTOR SHALL VERIFY LOCATIONS OF ALL UNDERGROUND UTILITIES AND PROVIDE THE NECESSARY PROTECTION FOR SAME BEFORE CONSTRUCTION BEGINS.
8. CONTRACTOR SHALL PROTECT ALL ROADS, CURBS AND GUTTERS DURING CONSTRUCTION. ANY DAMAGE TO SAME SHALL BE REPAIRED AT CONTRACTORS EXPENSE.
9. THE ALIGNMENT AND GRADES OF THE PROPOSED WALKS AND ROADWAYS ARE SUBJECT TO FIELD ADJUSTMENT REQUIRED TO CONFORM TO LOCALIZED TOPOGRAPHIC CONDITIONS. ANY CHANGE IN ALIGNMENT MUST BE APPROVED BY ARCHITECT.
10. WHERE SOD ABUTS PAVED SURFACES, FINISHED GRADE OF SOD SHALL BE HELD 1" BELOW SURFACE ELEVATION OF PAVED SURFACE.

SITE PLAN

Scale: 1"=60'-0"

P:\PROJ\AE2\A\AE2SP1

BOARMAN KROOS PFISTER
ARCHITECTURE INTERIOR DESIGN ENGINEERING
222 North Second Street Minneapolis, Minnesota 55401 Phone 612-339-6212 Fax 612-339-3752
Consultants

Certification
I hereby certify that this drawing was prepared by me or under my direct supervision and that I am a duly registered Professional ARCHITECT under the laws of the state of Minnesota.
Registration No. 11355

Date 10-10-95 Checked by
Drawn By PM Commission No. 120.03

Sheet Title SITE PLAN

CONSTRUCTION PACKAGE #1

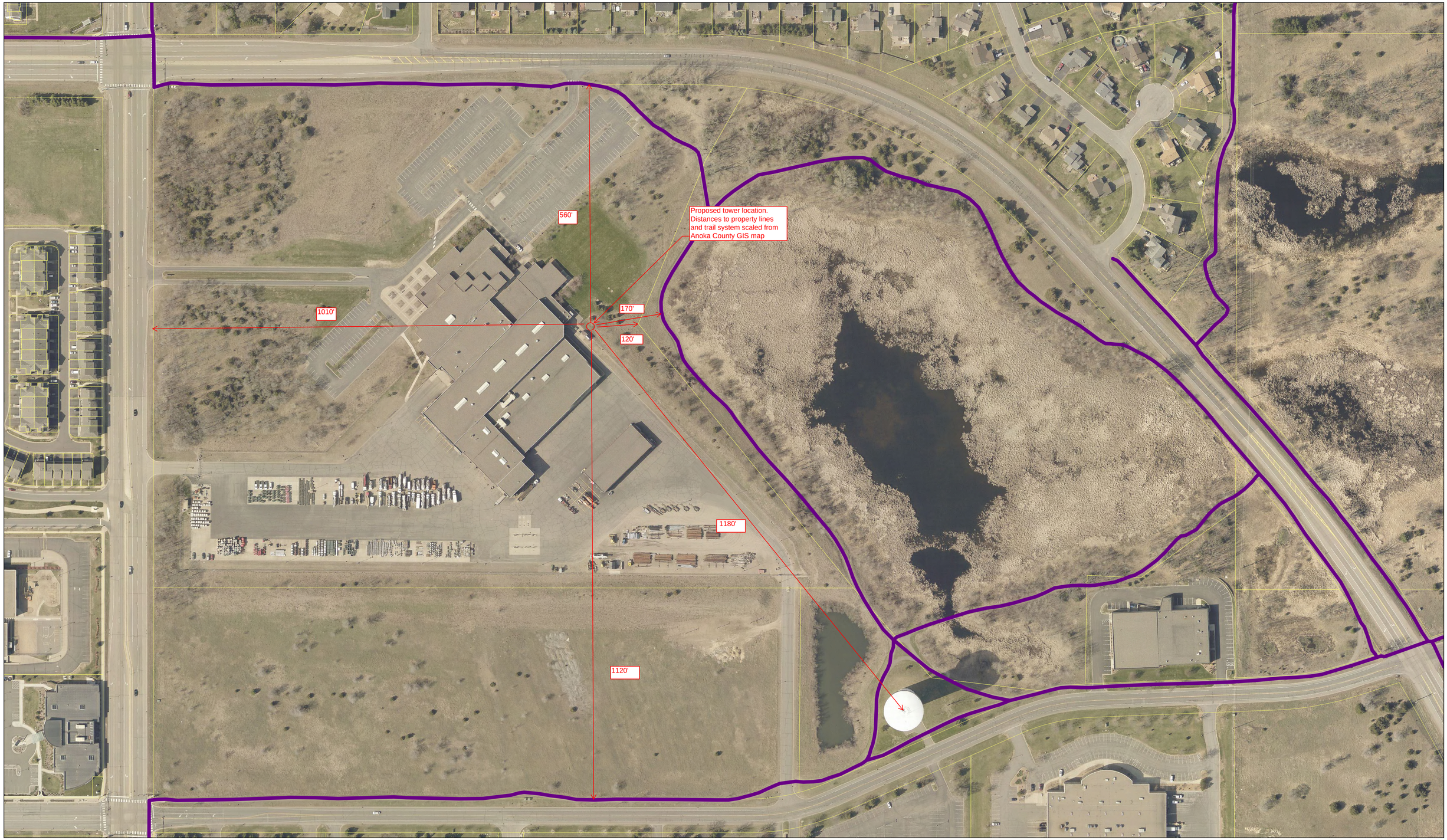
Revisions
CONSTRUCTION PACKAGE #3

No.	Date
1	12/04/95

ANOKA ELECTRIC COOPERATIVE
OPERATIONS CENTER
RAMSEY, MN

C2
Sheet Number

Connexus Area - Cottonwood Park



0 100 200 400 600 800 Feet

N W E S

East Central Electric Association

Elk River Municipal Utilties

Wright-Hennepin Elec. Coop.

Xcel Energy

Anoka Municipal Utility

Mayhew Lake Township
Gilmanton Township
City of Foley
Maywood Township
Milo Township
Bogus Brook Township
Dalbo Township
Maple Ridge Township
Stanchfield Township
Nessel Township
Wyanett Township
Springvale Township
City of Harris
Saint George Township
Glendorado Township
Greenbush Township
Princeton Township
Cambridge Township
Fish Lake Township
Minden Township
City of Saint Cloud
City of Princeton
City of Cambridge
City of North Branch
Palmer Township
Blue Hill Township
Haven Township
Santiago Township
Baldwin Township
Spencer Brook Township
Bradford Township
City of Isanti
Isanti Township
North Branch Township
Amador Township
Sunrise Township
Chisago Lake Township
Oxford Township
Athens Township
Lent Township
Clear Lake Township
Becker Township
Livonia Township
Stanford Township
City of Saint Francis
City of Bethel
Orrock Township
City of Clearwater
City of Becker
Lynden Township
Linwood Township
City of Stacy
City of Center City
City of Lindstrom
Clearwater Township
City of Wyoming
City of Chisago City
Franconia Township
City of Big Lake
City of Nowthen
City of Oak Grove
City of East Bethel
Silver Creek Township
Corinna Township
Big Lake Township
City of Elk River
City of Monticello
City of Forest Lake
City of Columbus
City of Annandale
Monticello Township
City of Otsego
City of Ramsey
City of Ham Lake
City of Maple Lake
Maple Lake Township
City of Albertville
City of Dayton
City of Andover
City of Scandia
City of Buffalo
City of Coon Rapids
City of Blaine
City of Rogers
City of Saint Michael
City of Centerville
City of Hugo
Albion Township
Chatham Township
Buffalo Township
City of Hanover
City of Champlin
May Township
Rockford Township
City of Circle Pines
City of Lino Lakes
City of Maple Grove
City of Lexington
City of Osseo
City of Spring Lake Park
City of Blaine
City of Brooklyn Park
City of Mounds View
White Bear Township
Stillwater Township
City of Corcoran
City of North Oaks
City of Dellwood
Marysville Township
City of Rockford
City of Fridley
City of Vadnais Heights
City of Mahtomedi
City of Grant
City of Waverly
City of Montrose
Franklin Township
City of Greenfield
City of Brooklyn Center
City of New Brighton
City of Arden Hills
City of Birchwood Village
City of Willernie
City of Stillwater
City of Crystal
City of Gem Lake
City of Independence
City of Loretto
City of Medina
City of Hilltop
City of Columbia Heights
City of Saint Anthony
City of Shoreview
City of White Bear Lake
City of Pine Springs
City of Delano
City of New Hope
City of North Saint Paul
City of Robbinsdale
City of Little Canada
City of Plymouth
City of Saint Anthony
City of Roseville
City of Maplewood
City of Lake Elmo
City of Maple Plain
City of Oakdale
Baytown Township
City of Golden Valley
City of Minneapolis

CONNEXUS ENERGY
14601 Ramsey Blvd.
Ramsey, MN 55303

THIS PRINT REPRESENTS THE LOCATION OF ELECTRICAL FACILITIES AS OF THE DATE SHOWN ON THIS PRINT. THIS INFORMATION IS INTENDED FOR GENERAL USE ONLY AND IS NOT TO BE USED FOR EXCAVATION PURPOSES. STATE LAW REQUIRES ANYONE PLANNING EXCAVATION TO CONTACT GOPHER STATE ONE CALL BEFORE ALL UTILITIES. CALL GOPHER STATE ONE CALL FOR A FIELD LOCATION AT 1-800-252-1166.

0 0.5 1 2 3 4 5 Miles

N

Councilmember _____ moved for the adoption of the following findings of fact:

RESOLUTION #15-03-067

A RESOLUTION ADOPTING FINDINGS OF FACT #0943 RELATING TO A REQUEST FOR A CONDITIONAL USE PERMIT FOR A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION AND OPERATION OF A 199-FOOT TELECOMMUNICATIONS TOWER AT 14601 RAMSEY BLVD NW.

WHEREAS, Connexus Energy, hereinafter referred to as "Applicant", has properly applied for a Conditional Use Permit to construct and operate a monopole telecommunications tower ("Tower") on the property located 14601 Ramsey Blvd. NW, or legally described as:

Lot 1, Block 1, AEC Energy Park, Anoka County, Minnesota

(the "Subject Property").

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. That the Applicant appeared before the Planning Commission for a public hearing pursuant to Section 117-51 of the Ramsey City Code on March 5, 2015 and that said public hearing was properly advertised and that the minutes of said public hearing are hereby incorporated by reference.

2. That the Subject Property is guided as Business Park in the Comprehensive Plan. The Subject Property is bordered by area of Low Density Residential to the north, Public/Quasi-Public to the east, Business Park to the south, and Mixed Use (The COR) to the west.

3. That the Subject Property is located within the E-2 Employment District. The Subject Property is bordered by the R-1 Residential (MUSA) District to the north, Public/Quasi-Public District to the east, E-2 Employment District to the south, and The COR District to the west.

4. That telecommunications towers are permitted as a conditional use on the Subject Property, subject to certain conditions.

5. That the Applicant is proposing a 199 foot monopole communications tower to implement a 'smart-grid' communications system, enhancing safety and reliability of the electrical grid, related to their operation supplying electricity to the City and broader service area. A site plan depicting the Tower attached as Exhibit A, attached hereto.

6. That the Tower is at least 120 feet from all property lines at its smallest measurement, and located as far away as 1,120 feet from at least one (1) property line, according to materials submitted by the Applicant.

7. That City Code requires 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.

8. That City Code requires ground mounted equipment to be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the character of the surrounding neighborhood, as determined by City Council. In this instance, equipment will be located within the principal building of Connexus Energy rather than a separate accessory structure.

9. That City Code states that no new tower shall be approved unless the City Council finds that the equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one (1) mile radius of the Tower for various reasons including insufficient height to reasonably function.

10. That the Applicant has stated that there are no existing buildings or structures in the one (1) mile search area of a sufficient height to accommodate the proposed equipment and provide a strong, seamless signal, due to the height of the landfill mound and the signal area necessary for the Applicant to provide coverage over their entire service area with a single tower.

11. That City Code requires newly constructed towers to accommodate at least two (2) additional users.

12. That the proposed use will/will not negatively affect traffic into and from the premises, or to any adjoining road.

13. That the proposed use will/will not be unduly dangerous or otherwise detrimental to persons residing or working in the vicinity of the use, or to the public welfare.

14. That the proposed use will/will not substantially impair the use or market value of surrounding properties.

15. That the proposed use will/will not be harmonious with and in accordance with the specific objectives of the comprehensive plan.

16. That the proposed use will/will not be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and whether such a use will/will not change the essential character of that area.

17. That the proposed use will/will not be hazardous or disturbing to existing or future neighboring uses.

18. That the proposed use will/will not be served adequately by essential public facilities and services.

19. That the proposed use will/will not create excessive additional requirements at public cost for public facilities and services and will/will not be detrimental to the economic welfare of the community.

20. That the proposed use will/will not involve equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

21. That the proposed use will/will not be consistent with the intent and purposes of Chapter 117.

The motion for the adoption of the foregoing resolution was duly seconded by Councilmember _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly passed and adopted by the Ramsey City Council this ____ day of _____, 2015.

_____
Mayor

ATTEST:

_____
City Clerk

Exhibit A
Site Plan

Councilmember ____ introduced the following resolution and moved for its adoption:

RESOLUTION #15-03-068

A RESOLUTION APPROVING THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONSTRUCTION AND OPERATION OF A 199-FOOT TELECOMMUNICATIONS TOWER AT 14601 RAMSEY BLVD NW AND DECLARING TERMS OF SAME

WHEREAS, Connexus Energy has properly applied for a conditional use permit to construct and operate a 199-foot communications tower at their headquarters located at 14601 Ramsey Blvd. NW and legally described as follows:

Lot 1, Block 1, AEC Energy Park, Anoka County, Minnesota

WHEREAS, the Planning Commission met on March 5, 2015 and conducted a public hearing; and

WHEREAS, the CITY Council reviewed the request on _____, 2015.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RAMSEY, ANOKA COUNTY, STATE OF MINNESOTA, as follows:

1. Based on Findings of Fact #0943, a conditional use permit for a telecommunications monopole tower and related equipment building (the "Tower") is hereby granted to Connexus Energy ("PERMITTEE"),

2. The development of the Site shall be in accordance with the approved site plan prepared by Connexus Energy, dated _____, (the "Site Plan"), as shown on Exhibit A, attached hereto.

3. The Tower will not exceed 199 feet in height, and will maintain minimum setbacks as shown on the Site Plan. The setback shall be measured between the base of the tower located nearest the property line and the actual property line.

4. The Tower and associated 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. Tower architectural standards are subject to final CITY approval.

5. The Tower shall be of a monopole design.

6. No part of the 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.

7. The Tower 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 for safety reasons.

8. 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. The Tower shall be designed to accommodate at least two (2) additional users.

10. If the Tower is abandoned, it and its 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.

11. Unused portions of the Tower above a manufactured connection shall be removed within twelve (12) months of the time of antenna relocation. The replacement of portions of the Tower previously removed requires the issuance of a new conditional use permit.

12. The Tower shall not interfere with public safety telecommunications, in accordance with the rules and regulations of the Federal Communications Commission (FCC). The PERMITTEE 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.

13. This permit does not constitute issuance of a Building Permit. The PERMITTEE is responsible for obtaining all required permits and licenses.

14. No signs will be posted on the Tower, equipment building or fencing except applicable warning or equipment information signs.

15. The Tower shall be maintained and kept in good condition. The pole shall remain free of wear or paint deterioration and shall be painted upon the CITY's request.

16. In the event the Tower is not removed within twelve (12) months of the cessation of operations at the site, the tower and associated facilities may be removed by the CITY and the costs of removal assessed against the PERMITTEE. In the event the PERMITTEE fails to remove the tower and associated facilities as required herein, the CITY shall provide notice to the PERMITTEE of the default condition and establish a thirty (30) day time frame in which the PERMITTEE may remedy the default condition. If the PERMITTEE fails to do so within the 30 day time frame, the City Administrator or his/her designee may order the removal with CITY day labor and/or by letting contracts for said removal. Only the City Administrator or his/her designee shall have the authority to direct the removal and assess the costs to the PERMITTEE.

17. The PERMITTEE shall be responsible for all CITY costs incurred in administering and enforcing this conditional use permit. Said expenses shall be paid within 15 days of billing by the CITY and failure to pay the CITY's expenses within the 15 day billing period will permit the CITY to draw upon any of the escrows required by this agreement for payment.

18. The City Administrator and/or his/her designee shall have the right to inspect the premises for compliance and safety purposes annually or at any time upon reasonable request.

19. The PERMITTEE is responsible for obtaining all required permits or licenses from any other regulatory agencies.

20. This Permit is perpetual in its duration so long as the terms imposed herein are complied with.

The motion for the adoption of the foregoing resolution was duly seconded by _____, and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against:

and the following abstained:

and the following were absent:

whereupon said resolution was declared duly adopted by the Ramsey CITY Council this the ___ day of _____, 2015.

CONNEXUS ENERGY

Connexus Energy hereby acknowledges receipt of this permit and has reviewed the conditions of this permit and has agreed to comply with the terms of this permit.

By:_____

Its:_____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me a Notary Public, personally appeared _____, the _____ of Connexus Energy, a domestic cooperative under the laws of the State of Minnesota, whose address is 14601 Ramsey Blvd NW, Ramsey, MN 55303, on behalf of the corporation.

_____
Notary Public

CITY OF RAMSEY:

By: _____ By: _____
Mayor City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On this ____ day of _____, _____, before me, a Notary Public, personally appeared Sarah Strommen and JoAnn M. Thieling, to me personally known, who, being each by me duly sworn did say that they are respectively the Mayor and City Clerk of the City of Ramsey, the Municipal Corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said Municipal Corporation by authority of its City Council and said Sarah Strommen and JoAnn M. Thieling acknowledge said instrument to be the free act and deed of said Municipal Corporation.

_____
Notary Public

This document drafted by:
The CITY of Ramsey
7550 Sunwood Drive
Ramsey, MN 55303

This document reviewed by:
Ratwick, Roszak & Maloney P.A.
730 2nd Ave S #300
Minneapolis, MN 55402

Regular Planning Commission **5. 4.**

Meeting Date: 03/05/2015

By: Chris Anderson, Community Development

Information

Title:

PUBLIC HEARING: Consider Ordinance #15-06 to Amend City Code Sections 117-111 (R-1 Residential District) and 117-349 (Accessory Uses and Buildings)

Purpose/Background:

On January 24th of this year, the 2015 Minnesota State Building Code (MSBC) went into effect. There were several code changes that occurred with the 2015 MSBC that are prompting this proposed Ordinance Amendment. Specifically, the thresholds triggering a building permit for detached accessory buildings and fences have increased and thus, the standards within Zoning Code need to be updated to ensure that there is not contradictory language between the two codes. The proposed amendments are to City Code Sections 117-111 (R-1 Residential District) and 117-349 (Accessory Uses and Buildings).

Notification:

The Public Hearing was published in the Anoka County UnionHerald.

Observations/Alternatives:

Presently, City Code states that all detached accessory buildings greater than 120 square feet in floor area require a building permit, which aligned with the standards of the 2007 MSBC (the edition in effect prior to January 24, 2015). Also, City Code states that all fences greater than six (6) feet in height require a building permit. Additionally, City Code states that all detached accessory buildings 120 square feet or less in floor area and all fences six (6) feet or less in height require a zoning permit. The 2015 MSBC, however, now requires a building permit for detached accessory buildings greater than 200 square feet in floor area and fences over seven (7) feet in height.

The proposed Ordinance Amendment focuses primarily on updating Zoning Code language to reflect the new thresholds in the 2015 MSBC. It clarifies that detached accessory buildings and fences not addressed by MSBC require a zoning permit. This language was preferred over specific heights or square footages to avoid the need for future amendments if the thresholds in the MSBC are revised in the future.

It should be noted that currently, City Code allows for prefabricated plastic storage containers that are 120 square feet or less in size. As drafted, prefabricated plastic storage sheds would still be permissible as long as they don't exceed the threshold triggering the requirement of a building permit. Staff has researched these products and has found several offerings that are larger than 120 square feet but generally less than 200 square feet (pictures of various examples are attached to the case). Staff would like feedback from the Planning Commission specifically on whether these 'larger' plastic storage sheds should be permissible or if their size should remain limited to 120 square feet or less.

The proposed Ordinance Amendment also would eliminate the requirement for a driveway to service any detached accessory building with a doorway opening of eight (8) feet wide by seven (7) feet tall or greater (essentially the equivalent of a single stall garage door). Staff has received quite a bit of feedback, mostly negative, regarding this requirement. The intention was to help reinforce off-street parking standards (vehicles being stored/parked on a prepared surface). However, this can add a substantial cost to a project for an improvement (driveway) that typically would not be accessed or utilized on a regular basis. Furthermore, it has the effect of requiring additional impervious surfacing on a lot, which increases stormwater runoff while simultaneously reducing infiltration on a

property. It is worth noting that the driveway requirement remains applicable for attached garages (or additions thereto) because they generally serve as the primary garage for a property and are regularly accessed.

Finally, there are a couple of clarifications and/or housekeeping items that are being addressed with this Ordinance Amendment. Currently, attached garages are counted toward the total number of accessory buildings allowed on a property. With this Ordinance Amendment, attached garages would be excluded from the calculation of total number of accessory buildings on a property as appears to have been the intent after reviewing the public hearing minutes from 2011. The other housekeeping item addressed is clarifying that only those detached accessory buildings addressed by MSBC are subject to the architectural standards requirement including soffit, fascia, and eave overhangs to match the home.

Funding Source:

This ordinance is being prepared as part of normal Staff duties.

Recommendation:

Staff recommends that the City Council adopt Ordinance #15-06.

Action:

Motion to recommend the City Council adopt Ordinance #15-06.

Attachments

City Code Section 117-349: Redlined Text

City Code Section 117-111: Redlined Text

Photos of Plastic Sheds Over 120 Square Feet in Size

DRAFT Ordinance #15-06

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	Tim Gladhill	02/27/2015 03:00 PM
Form Started By: Chris Anderson		Started On: 02/19/2015 04:20 PM
Final Approval Date: 02/27/2015		

Sec. 117-349. - Accessory uses and buildings.

(a) Sport courts and other impervious surfaces must meet the minimum setbacks established for accessory buildings in section 117-111 unless otherwise specified by this Code.

(b) Every commercial fishing pond shall be enclosed by a fence or wall not less than four feet high to prevent uncontrolled access by small children.

(c) Swimming pools and spas (also see chapter 105, article III).

(1) *Setback requirements.*

a. Swimming pools and spas shall be set back a minimum of ten feet from all adjoining lots. For corner lots, swimming pools and spas shall meet the required side yard setback for buildings in the applicable zoning district (section 117-111(d)). Swimming pools and spas may not extend closer to the front lot line of the parcel than the principal structure located on said parcel, except that on residential parcels of one acre or more in size, a swimming pool or spa may be constructed closer to the front lot line than the principal structure, provided that such swimming pool or spa can maintain a 200-foot setback from the property line.

b. A swimming pool or spa may not be located closer than four feet to the principal structure located on the parcel where the swimming pool or spa is to be constructed.

c. No swimming pool or spa may be constructed within 20 feet of any portion of an on-site sewer system or any private water well.

d. No person shall build, construct, locate or install a swimming pool and walkway or spa within any easement.

(2) *Fencing.*

a. *Temporary fencing.* During the construction of any in-ground swimming pool or spa, the construction area must be secured with a portable fence which is not less than four feet in height.

1. Temporary fencing shall be flush with the ground and securely anchored.

2. Supportive posts shall be placed no more than eight feet apart.

b. *Permanent fencing.*

1. All aboveground swimming pools that have a minimum side-wall height of four feet need not be fenced, but shall have removable steps, which steps shall be removed when the swimming pool is unattended. In the event that an accessory deck to the swimming pool is constructed, which is adjacent to any part of the swimming pool, said deck shall include, on its entire outside perimeter, a 36-inch-high guard rail. The guard rail shall be constructed so that no open space within it is wider than six inches.

2. All outdoor spas shall have either a fence as described in subsection (c)(2)b.1 of this section, or a secured cover.

(3) *Noise.*

a. The swimming pool or spa shall be designed, constructed and sited in such a way as to limit noise generated by its mechanical equipment, so as not to create a nuisance and/or affect the reasonable use and enjoyment of adjacent property owners.

b. The swimming pool and/or spa shall be sited on the parcel so that its mechanical equipment, including heating and filtering equipment, is located at least 30 feet from the inhabited portion of neighboring residential structures.

(4) *Pool walkway deck and deck drains.* Unobstructed deck areas not less than 48 inches wide shall be provided to extend entirely around each in-ground swimming pool. Swimming pool decks shall be constructed above, but not more than nine inches above, the normal water line. The required

deck area shall be constructed of impervious material. The deck shall have a pitch of at least one-fourth inch to the foot, designed so as to prevent back drainage into the pool. If deck drains are provided, drain pipe lines shall be at least two inches in diameter; drain openings shall have an open area of at least four times the cross sectional area of the drain pipe. Deck drains shall not be connected to the re-circulation system pipe.

(5) *Swimming pool drainage.* To the extent feasible, back flush water or water from pool drainage shall be on the owner's property or into approved public drainage ways. Water shall not drain onto adjacent or nearby private land.

(6) *Lighting.* Lights used in conjunction with a swimming pool and/or spa shall be located and constructed so as to deflect away from adjacent property and in such a manner that they do not create a nuisance or affect the reasonable use and enjoyment of adjacent property.

(7) *Permits.* Swimming pools or spas that are less than 5,000 gallons shall be allowed without the issuance of a building permit; however, a zoning permit must be obtained prior to the swimming pool or spa being constructed, installed, or moved onto a property.

(d) *Accessory buildings.*

(1) *Future re-subdivision.* Any proposed accessory building should be located on the parcel of land so as to allow for orderly future re-subdivision of a parcel on which the building is to be located.

(2) *Principal building required*. No accessory building shall be constructed on any lot prior to the time of construction of the principal building.

(3) *Permits.* A permit is required prior to constructing or moving an accessory building on to a property.

a. Zoning Permit. Detached accessory buildings not addressed by Minnesota State Building Code shall require the issuance of a zoning permit ~~with 120 square feet or less of floor area shall be allowed without issuance of a building permit. However, a zoning permit must be obtained~~ prior to the building being constructed or moved onto a property and shall comply with all required setbacks and zoning regulations.

b. Building Permit. Detached accessory buildings addressed by Minnesota State Building Code shall require the issuance of a building permit prior to being constructed or moved onto a property and shall comply with all applicable building codes and zoning regulations.

~~Detached accessory buildings not exceeding 120 square feet shall comply with all required setbacks and zoning regulations. Detached accessory buildings not exceeding 120 square feet of floor area may be finished with hardboard lap siding, vinyl lap siding, metal siding, metal panels, wood (painted) and/or masonry. Prefabricated molded plastic storage containers not exceeding 120 square feet in floor area are permitted.~~

(4) *Agricultural buildings*. Agricultural buildings, as defined in Minn. Stats. § 326B.103, subd. 3, shall require a zoning permit prior to the building being constructed or moved onto a property and shall comply with all other zoning regulations.

~~(5) Detached accessory buildings greater than 120 square feet in floor area shall require a building permit and comply with all applicable building codes and zoning regulations.~~

(~~6~~5) Accessory building height.

a. The height of detached accessory buildings shall not exceed 22 feet on parcels two acres (87,120 square feet) or greater in size.

b. The height of detached accessory buildings shall not exceed 16 feet on parcels less than two acres (87,120 square feet) in size. On parcels less than two acres, the height of side walls shall not exceed fourteen feet.

c. The height of attached accessory buildings shall not exceed the height of the principal structure.

d. A variance will be required to exceed the established height restrictions for accessory buildings. The variance shall be processed in accordance with the procedures established in section 117-53. Criteria governing consideration of a variance request to exceed height restrictions on accessory buildings shall include, but not be limited to the following:

1. Whether the variance will impair an adequate supply of light and air to adjacent property.
2. Whether the variance will have the effect of allowing a use that is prohibited in the applicable zoning district.
3. Whether the variance will impair established property values within the neighborhood.
4. Whether the increased height will be compatible with the principal building on the same parcel.
5. Whether the increased height will be compatible with existing development in the immediate neighborhood.
6. Whether the variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant.

(~~7~~6) Architectural and exterior standards for accessory buildings:

a. Exterior building materials for detached accessory buildings not addressed by Minnesota State Building Code shall be generally consistent with the exterior finish of the principal building or finished with hardboard lap siding, vinyl lap siding, aluminum or metal siding, metal panels, textured wood (painted) and/or masonry. Prefabricated molded plastic storage sheds shall be permissible.

~~a.~~b. Gambrel roofs (barn style) are permitted.

~~b~~c. Where provided, accessory buildings with metal panel exterior finish must include the following:

1. If located in the front yard, shall include at least three of the following:
   (i) Minimum of three complimentary colors
   (ii) Minimum of 35 percent brick on front (street facing) façade.
   (iii) 100 percent vegetative screening. Use of vegetative screening shall require an agreement, recorded against the property with the Anoka County Recorder, specifying replacement standards, species, size of plantings, and other items as required by the zoning administrator.
   (iv) 10 percent window coverage on front (street facing) façade and common property lines.

~~c.~~(7) *Driveways*. ~~shall be required for doorway openings meeting or exceeding eight (8) feet wide by seven feet tall. All driveways must meet underlying zoning district standards in which the property is located, except that Class V shall be permitted as an extension of an existing driveway for the sole purpose of accessing a detached accessory structure if the existing driveway is in compliance with current zoning standards.~~

a. *Attached accessory buildings*. A driveway shall be required for all attached accessory buildings with a doorway opening meeting or exceeding eight (8) feet wide by seven (7) feet tall. The driveway must meet underlying zoning district standards in which the property is located.

b. *Detached accessory buildings*. A driveway is not required to service a detached accessory building; however, if installed, it shall meet the underlying zoning district standards in which

the property is located, except that Class V gravel shall be permitted as an extension of an existing driveway for the sole purpose of accessing the detached accessory building if the existing driveway is in compliance with current zoning standards.

1. If a driveway is not installed to service a detached accessory building, there shall be no off-street parking unless in accordance with City Code Section 117-355.

(8) Detached accessory buildings shall be prohibited from containing complete independent living facilities (accessory apartments), which would include permanent provisions for living, sleeping, eating, and sanitation. Independent living facilities shall be considered those which meet three or more of the criteria in subsection (6)d of this section and have provisions for separating the living space.

(9) Two-story accessory buildings shall be permitted on properties under the following conditions:

a. Within MUSA with the issuance of a conditional use permit in accordance with City Code section 117-51

b. Outside the MUSA on parcels less than two acres in size with the issuance of a conditional use permit in accordance with City Code section 117-51

c. Outside the MUSA on parcels two acres in size or greater.

(10) No part of an accessory building shall extend into a drainage and utility easement or any required setback.

(11) Any accessory building proposed to be within five feet, overhang to overhang, of the principal building shall either be made structurally a part of the principal building or the wall and soffit area of the accessory building that is within five feet of the principal building shall be constructed to a one-hour fire rating.

(12) Accessory building location.

a. On lots two acres (87,120 square feet) or greater in size, the detached accessory building may be located nearer the front property line than the principal building provided the following criteria are met:

1. The placement of the detached accessory building maintains compliance with the standard front yard structure setback requirement for the respective zoning district;

2. The exterior materials used on the detached accessory building match those of the principal building on the subject property unless otherwise provided for in this section;

3. The accessory building is designed with soffit, fascia and eave overhang; and

4. The accessory building does not exceed the height of the principal building or 22 feet, whichever is less.

b. On lots less than two acres (87,120 square feet) in size, the accessory building shall be located in the side or rear yard and shall not be located nearer the front property line than the principal building on that lot, unless a variance is obtained. This provision shall not apply to attached garages that maintain compliance with the applicable front yard setback requirement.

c. Front, side and rear yard accessory building setback requirements are outlined in section 117-111(d).

d. Detached accessory buildings may be located in the front (street facing) yard when located riparian lots in the wild and scenic, critical area, or shoreland overlay districts, provided the structure meets the underlying front yard setback and cannot exceed the height of the principal structure. Detached accessory buildings located nearer the front property line than that of the principal structure must meet the same general design and materials as the principal structure.

(13) All accessory buildings, with the exception of attached garages, shall be included when calculating the maximum square footage of accessory building space allowed on a property. All accessory buildings, ~~including~~ excluding attached garages, shall be included when determining the total number of accessory buildings on a property.

(14) Accessory building size restrictions. Size restrictions and performance standards for accessory buildings in residential districts shall be as follows:

a. *R-1 Residential (MUSA).*

Parcel Size (sq. ft. and acres) (excl. road right-of-way)	Maximum Square Footage Allowed for Accessory Buildings[1]	Maximum # of Acc. Bldgs. Allowed ~~(includes primary garage)~~	Exterior Finish Permitted	Architectural Standards Required (for buildings regulated by MN State Building Code	Maximum Allowable Height in Feet (one story buildings permitted, two with CUP and 2 acres)
0—21,779 (0 to 0.5 acre)	10% of lot, or 1,500 square feet, whichever is smaller	2	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
21,780—43,559 (0.5 acre to 1 acre)	1,800	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
43,560—65,339 (1 acre to 1.49 acres)	2,200	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
65,340—87,119 (1.5 to 1.99 acres)	2,400	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16

87,120—108,899 (2.0 to 2.49 acres)	2,400	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
108,900—152,459 (2.5-3.49 acres)	2,700	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
152,460—196,019 (3.5-4.49 acres)	3,000	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
196,020—239,579 (4.5-5.49 acres)	3,500	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
239,580—283,139 (5.5-6.49 acres)	3,900	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
283,140—326,699 (6.5-7.49 acres)	4,300	5	Same general design and materials as home or color	Soffit, fascia, eave overhang to match home	22 [3]

			compatible metal panels[2]		
326,700—370,259 (7.5-8.49 acres)	4,700	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
370,260—413,819 (8.5-9.49 acres)	5,100	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
413,820—435,599 (9.5 to 9.99 acres)	5,500	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
435,600—871,199 (10 to 19.99 acres)	6,000	6	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
871,200—1,742,399 (20 to 39.99 acres)	8,000	7	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

1,472,400 plus (40 acres or more)	12,000	8	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

[1] A portion of the square footage allowed for accessory buildings shall be utilized or reserved for a primary garage. The primary garage shall be at least 400 square feet in size.

[2] If the accessory building is closer to the front property line than the principal building, then the construction must have the same general design and materials as the home.

[3] If the accessory building is closer to the front property line than the principal building, then the height of the accessory building cannot exceed the height of the principal building or 22 feet, whichever is more restrictive.

b. *R-1 Residential (Rural Developing).*

Parcel Size (sq. ft. and acres) (excl. road right-of-way)	Maximum Square Footage Allowed for Accessory Buildings[1]	Maximum # of Acc. Bldgs. Allowed ~~(includes primary garage)~~	Exterior Finish Permitted	Architectural Standards Required (for buildings regulated by MN State Building Code)	Maximum Allowable Height in Feet (one story buildings permitted, two with CUP and 2 acres)
0—21,779 (0 to 0.5 acre)	10% of lot, or 1,500 square feet, whichever is smaller	2	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16
21,780—43,559 (0.5 acre to 1 acre)	1,800	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16

43,560—65,339 (1 acre to 1.49 acres)	2,200	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16
65,340—87,119 (1.5 to 1.99 acres)	2,400	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16
87,120—108,899 (2.0 to 2.49 acres)	2,400	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
108,900—152,459 (2.5-3.49 acres)	2,700	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
152,460—196,019 (3.5-4.49 acres)	3,000	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
196,020—239,579 (4.5-5.49 acres)	3,500	4	Same general design and materials as home or color	Soffit, fascia, eave overhang to match home	22 [3]

			compatible metal panels[2]		
239,580—283,139 (5.5-6.49 acres)	3,900	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
283,140—326,699 (6.5-7.49 acres)	4,300	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
326,700—370,259 (7.5-8.49 acres)	4,700	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
370,260—413,819 (8.5-9.49 acres)	5,100	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
413,820—435,599 (9.5 to 9.99 acres)	5,500	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

435,600—871,199 (10 to 19.99 acres)	6,000	6	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
871,200—1,742,399 (20 to 39.99 acres)	8,000	7	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
1,472,400 plus (40 acres or more)	12,000	8	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

[1] A portion of the square footage allowed for accessory buildings shall be utilized or reserved for a primary garage. The primary garage shall be at least 400 square feet in size.

[2] If the accessory building is closer to the front property line than the principal building, then the construction must have the same general design and materials as the home or with metal panels as outlined in this section.

[3] If the accessory building is closer to the front property line than the principal building, then the height of the accessory building cannot exceed the height of the principal building or 22 feet, whichever is more restrictive.

(Code 1978, § 9.11.02; Ord. No. 73-05, 5-21-1973; Ord. No. 74-08, 12-21-1974; Ord. No. 79-04, 4-8-1979; Ord. No. 87-4, 8-10-1987; Ord. No. 91-09, 6-30-1991; Ord. No. 91-17, 12-23-1991; Ord. No. 92-09, 7-13-1992; Ord. No. 97-15, 12-1-1997; Ord. No. 98-04, 4-13-1998; Ord. No. 99-05, 5-31-1999; Ord. No. 01-11; Ord. No. 03-30, 9-15-2003; Ord. No. 03-01, 3-7-2003; Ord. No. 05-12, 7-25-2005; Ord. No. 06-05, 3-28-2006; Ord. No. 08-18, § 2, 7-8-2008; Ord. No. 11-08, § 1, 6-14-2011)

Sec. 117-111. - R-1 Residential District.

(a) *Intent.* The intent of the R-1 Residential District is to accommodate single-family dwelling units on suitable land in the 2020 Metropolitan Urban Service Area (MUSA), rural developing, central rural reserve area, and rural preserve areas of the city. All newly created lots, except the remnant of a lot of record not less than five acres in size and located within the 2020 MUSA, shall be serviced by sanitary sewer and municipal water. All developing lots located within the rural preserve, rural developing and central rural preserve areas shall be served with individual septic systems and wells.

(b) *Permitted uses.*

(1) Single-family detached dwellings.

(2) Agriculture, excluding the raising of livestock, poultry, and fowl within the MUSA boundary unless compliance with chapter 10, Animals, can be maintained.

(3) Public parks, municipal fire station.

(4) Single-family/townhome units as part of a PUD located within the 2020 MUSA. PUDs shall be designed in accordance with R-2 residential performance standards established in section 117-112

(5) State-licensed group homes in accordance with state statutes.

(6) Licensed home daycares in accordance with state statute.

(7) Noncommercial horse boarding.

(8) Home occupations as permitted by section 117-351

(9) Accessory uses as permitted by section 117-349

(c) *Uses permitted by conditional use permit.*

(1) Religious institutions.

(2) Commercial horse boarding.

(3) Private dog kennels.

(4) Commercial dog kennels.

(5) Oversizing of accessory structure size.

(6) Two-story accessory buildings.

(7) Cemeteries.

(8) Essential services.

(9) Cell towers in Tower Overlay District.

(10) Commercial garden nurseries or greenhouses with buildings.

(11) Micro-scale WECS.

(d) *R-1 bulk standards.*

	MUSA	Rural Developing	Central Rural Reserve Area	Rural Preserve
Lot size	10,800 square feet	2.5 acres	10 acres	10 acres
Density	3 units per acre/4 units per acre with PUD (net)	1 unit per 2.5 acres (gross)	4 units per 40 acres (gross)	4 units per 40 acres (gross)
Lot width	80 feet/corner lot 90 feet	200 feet	200 feet	200 feet
Front yard setback	30 feet	40 feet	40 feet	40 feet
Side yard setback uninhabitable	6 feet	10 feet	10 feet	10 feet
Side yard setback habitable	10 feet	10 feet	10 feet	10 feet
Side yard setback for corner lots	30 feet	40 feet	40 feet	40 feet
Rear yard setback	30 feet	40 feet	40 feet	40 feet
Rear yard setback when adjoining a parcel zoned Park[3]	20 feet	NA	NA	NA
Major/minor arterial setback measured from the centerline of the road right-of-way	60 feet from right-of-way centerline plus the local applicable setback	60 feet from right-of-way centerline plus the local applicable setback	60 feet from right-of-way centerline plus the local applicable setback	60 feet from right-of-way centerline plus the local applicable setback

Service road setback	35 feet	35 feet	35 feet	35 feet
Maximum building height (measured from mean ground level to mean ground gable)	35 feet	35 feet	35 feet	35 feet
Minimum floor areas: (main floor)				
Rambler withgarage	912 square feet (main floor)	912 square feet (main floor)	912 square feet (main floor)	912 square feet (main floor)
Split level with garage	720 square feet (total of main living areas)	720 square feet (total of main living areas)	720 square feet (total of main living areas)	720 square feet (total of main living areas)
Two story with garage	720 square feet (main floor)	720 square feet (main floor)	720 square feet (main floor)	720 square feet (main floor)
Townhouse with garage	PUD Required	NA	NA	NA
	1 bedroom—700 square feet			
	2 bedrooms—800 square feet			
	3 bedrooms—960 square feet			
	Each additional bedroom 125 square feet			
Duplex dwelling	NA	NA	NA	NA

Twinhome dwelling	NA	NA	NA	NA
Multifamily dwelling	NA	NA	NA	NA
Maximum building lot coverage	35%	35%	35%	35%
Maximum driveway width at street[2]	30 feet; 24 feet on culs-de sac	30 feet; 24 feet on culs-de sac	30 feet; 24 feet on culs-de sac	30 feet; 24 feet on culs-de sac
Maximum number of driveways[2]	1 per street frontage	2	2	2
Side yard setback for driveways[2]	Bituminous or Concrete	Bituminous, Concrete, or Class V	Bituminous, Concrete, or Class V	Bituminous, Concrete, or Class V
Accessory structure setbacks:				
Front[1]	30 feet or same as principal structure, whichever is greater	40 feet or same as principal structure, whichever is greater	40 feet or same as principal structure, whichever is greater	40 feet or same as principal structure, whichever is greater
Rear	5 feet	5 feet	5 feet	5 feet
Side	6 feet	10 feet	10 feet	10 feet
Side Corner	30 feet	40 feet	40 feet	40 feet

[1] Refer to section 117-349 for additional front yard setback provisions for lots two acres and greater in size.

[2] A zoning permit is required to install any driveway that is not associated with work requiring a building permit.

[3] To be eligible for the reduced rear yard setback, the entire rear property line must adjoin the parcel zoned as park.

For lots located within the MUSA where adjacent structures existing as of July 1, 2002, have a different setback from that required herein, the front yard setback shall conform to the prevailing setback of adjacent structures. If adjacent structures have different setbacks from one another, the minimum front yard shall be the average of the two adjacent structures.

(e) *Development eligibility within the rural developing, central rural preserve and rural preserve areas.* When a parcel's acreage is not evenly divisible by ten allowing for a pro rata density of four units per 40 acres, an additional lot may be developed only if the size of the fractional parcel is at least 75 percent of that required for a single or an additional lot. Eligible units per lot are as follows:

Lot Size	Eligible Units
7.5 to 17.49 acres	1
17.5 to 27.49 acres	2
27.5 to 37.49 acres	3
37.5 to 40.0 acres	4

(f) *Resubdivision plans.* All new development proposals in the rural developing area must prepare a resubdivision plan in accordance with article III of this chapter. This plan shall demonstrate how the subject property might be re-subdivided in the future, when and if urban services are brought to the property. The resubdivision plan should be used to help guide the design of the plat itself. The plan must include the following information:

(1) Potential future lots, including the location of house pads.

(2) Potential future streets, particularly future connections to existing streets on adjacent parcels.

(3) Potential greenway or open space areas.

(4) Other information as required by the city council.

(g) *General R-1 residential performance standards.*

(1) *Fences.*

a. *Height.* Fencing or walls (except retaining walls) located in the required front yard setback shall not exceed four feet in height except for "ornamental fences" as defined in section 117-1. Fencing or walls located in the side or rear yard shall not exceed eight (8) feet in height. ~~A building permit is required for any fence that is greater than six feet in height.~~ A zoning permit is required for all fences that are ~~six feet or less in height.~~not addressed by the Minnesota State Building Code.

b. *Materials and construction.* Fences shall be constructed in a workmanlike manner and of substantial material reasonably suited for its intended purpose. Fencing material shall consist only of wood, chain link, wrought iron, maintenance free vinyl, aluminum, or steel. Any other material must be approved by the zoning administrator prior to installation.

1. No boards, planks, or panels shall be larger than 12 inches in width.
2. Link fences shall be constructed such that no barbed ends shall be at the top.
   (i) Agricultural uses.
      A. Fences may be constructed of barbless wire or have the capability to carry an electric charge to accommodate agricultural activities and the raising of livestock and animals as defined by chapter 10, Animals. Lots of record as of July 1, 2002, within the MUSA that are currently used for agricultural activities or the raising of livestock and animals also qualify under this provision.
      B. Electric fences must be set back a minimum of three feet from property lines and must be posted as being electric.
      C. A sketch drawing shall be submitted to the city showing the proposed location of an electric fence.
3. Fence framing must face inward on the fence owner's lot.

c. *Location.* Fencing must be located 100 percent on the fence owner's lot and it is the responsibility of the fence owner to accurately locate property boundaries.

1. For corner lots, no fence shall be located within the vision clearance triangle as described in section 117-348
2. The zoning administrator may require the owner of the property upon which a fence will be constructed to establish the boundary lines of the property by a survey thereof to be made by any registered land surveyor.

(2) *Garbage receptacle storage.* Outdoor garbage receptacles serving multifamily units must be in either the rear or side yard and must be screened from public view and adjacent lots.

(3) *Lot landscaping.*

a. *Number of plantings.* The minimum number of overstory trees on any given lot shall be as required below:

Required planting types	Required number of plantings
Overstory deciduous/coniferous trees	2 trees per dwelling unit

b. *Minimum size of plantings.* Required trees shall be of the following minimum planting size:

Planting Type	Size
Deciduous trees	1-inch diameter as measured six inches above ground
Coniferous trees	5 feet in height

c. *Planting types.* Acceptable plantings shall be determined by the city planting schedule. The compliment of trees fulfilling the landscaping requirements shall not be less than 25 percent deciduous and not less than 25 percent coniferous.

(4) *Lighting.* Lighting used to illuminate an off-street parking area, sign or structure, shall be arranged to deflect light away from adjacent residential districts or public streets. Bulbs emitting in excess of 3,000 lumens (150 watts) shall be directed so that the bulb is not visible from off the property where the light source is located.

(5) *Exterior building materials.* The type of building materials used on exterior walls on all structures in the R-1 Residential District shall be face brick, natural stone, stucco, aluminum, steel, or vinyl siding, wood, masonite products or other compatible residential materials that may be approved by the city.

(Code 1978, § 9.20.11; Ord. No. 73-9, 6-1-1973; Ord. No. 79-5, 7-1-1979; Ord. No. 79-15, 2-24-1980; Ord. No. 86-2, 8-25-1986; Ord. No. 89-33, 1-29-1990; Ord. No. 96-17, 10-28-1996; Ord. No. 96-23, 1-13-1997; Ord. No. 99-19, 1-17-2000; Ord. No. 02-17, 7-15-2002; Ord. No. 03-21, 8-25-2003; Ord. No. 04-10, 5-17-2004; Ord. No. 04-43, 12-27-2004; Ord. No. 05-03, 4-4-2005; Ord. No. 05-12, 7-25-2005; Ord. No. 05-24, 11-7-2005; Ord. No. 07-05, § 2, 2-13-2007; Ord. No. 09-06, § 2, 4-28-2009; Ord. No. 09-12, § 2, 9-8-2009; Ord. No. 11-01, § 1, 2-8-2011)

State law reference— Permitted single-family uses, Minn. Stats. § 462.357, subd. 7.

ORDINANCE #15-06
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA

AN AMENDMENT TO CHAPTER 117 OF THE CITY CODE, WHICH CHAPTER IS KNOWN AS ZONING AND SUBDIVISIONS OF THE CITY CODE OF RAMSEY, MINNESOTA

AN ORDINANCE AMENDING SECTIONS 117-111 (R-1 RESIDENTIAL DISTRICT) AND 117-349 (ACCESSORY USES AND BUILDINGS) OF THE RAMSEY 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 117-111 Subsection (g) (1) a. is amended to read as follows:

a. *Height.* Fencing or walls (except retaining walls) located in the required front yard setback shall not exceed four feet in height except for "ornamental fences" as defined in section 117-1. Fencing or walls located in the side or rear yard shall not exceed eight (8) feet in height. A zoning permit is required for all fences that are not addressed by the Minnesota State Building Code.

Section 117-349 Subsection (d) a. is amended to read as follows:

(d) *Accessory buildings.*

(1) *Future re-subdivision.* Any proposed accessory building should be located on the parcel of land so as to allow for orderly future re-subdivision of a parcel on which the building is to be located.

(2) *Principal building required*. No accessory building shall be constructed on any lot prior to the time of construction of the principal building.

(3) *Permits.* A permit is required prior to constructing or moving an accessory building on to a property.

a. Zoning Permit. Detached accessory buildings not addressed by Minnesota State Building Code shall require the issuance of a zoning permit prior to the building being constructed or moved onto a property and shall comply with all required setbacks and zoning regulations.

b. Building Permit. Detached accessory buildings addressed by Minnesota State Building Code shall require the issuance of a building permit prior to being constructed or

moved onto a property and shall comply with all applicable building codes and zoning regulations.

(4) *Agricultural buildings.* Agricultural buildings, as defined in Minn. Stats. § 326B.103, subd. 3, shall require a zoning permit prior to the building being constructed or moved onto a property and shall comply with all other zoning regulations.

(5) Accessory building height.

a. The height of detached accessory buildings shall not exceed 22 feet on parcels two acres (87,120 square feet) or greater in size.

b. The height of detached accessory buildings shall not exceed 16 feet on parcels less than two acres (87,120 square feet) in size. On parcels less than two acres, the height of side walls shall not exceed fourteen feet.

c. The height of attached accessory buildings shall not exceed the height of the principal structure.

d. A variance will be required to exceed the established height restrictions for accessory buildings. The variance shall be processed in accordance with the procedures established in section 117-53. Criteria governing consideration of a variance request to exceed height restrictions on accessory buildings shall include, but not be limited to the following:

1. Whether the variance will impair an adequate supply of light and air to adjacent property.

2. Whether the variance will have the effect of allowing a use that is prohibited in the applicable zoning district.

3. Whether the variance will impair established property values within the neighborhood.

4. Whether the increased height will be compatible with the principal building on the same parcel.

5. Whether the increased height will be compatible with existing development in the immediate neighborhood.

6. Whether the variance requested is the minimum variance necessary to accomplish the intended purpose of the applicant.

(6) Architectural and exterior standards for accessory buildings:

a. Exterior building materials for detached accessory buildings not addressed by Minnesota State Building Code shall be generally consistent with the exterior finish of the principal building or finished with hardboard lap siding, vinyl lap siding, aluminum or metal siding, metal panels, textured wood (painted) and/or masonry. Prefabricated molded plastic storage sheds shall be permissible.

b. Gambrel roofs (barn style) are permitted.

c. Where provided, accessory buildings with metal panel exterior finish must include the following:

1. If located in the front yard, shall include at least three of the following:

   (i) Minimum of three complimentary colors

   (ii) Minimum of 35 percent brick on front (street facing) façade.

   (iii) 100 percent vegetative screening. Use of vegetative screening shall require an agreement, recorded against the property with the Anoka County Recorder, specifying replacement standards, species, size of plantings, and other items as required by the zoning administrator.

   (iv) 10 percent window coverage on front (street facing) façade and common property lines.

(7) *Driveways.*

a. *Attached accessory buildings*. A driveway shall be required for all attached accessory buildings with a doorway opening meeting or exceeding eight (8) feet wide by seven (7) feet tall. The driveway must meet underlying zoning district standards in which the property is located.

b. *Detached accessory buildings*. A driveway is not required to service a detached accessory building; however, if installed, it shall meet the underlying zoning district standards in which the property is located, except that Class V gravel shall be permitted as an extension of an existing driveway for the sole purpose of accessing the detached accessory building if the existing driveway is in compliance with current zoning standards.

1. If a driveway is not installed to service a detached accessory building, there shall be no off-street parking unless in accordance with City Code Section 117-355.

(8) Detached accessory buildings shall be prohibited from containing complete independent living facilities (accessory apartments), which would include permanent provisions for living, sleeping, eating, and sanitation. Independent living facilities shall be considered those which meet three or more of the criteria in subsection (6)d of this section and have provisions for separating the living space.

(9) Two-story accessory buildings shall be permitted on properties under the following conditions:

a. Within MUSA with the issuance of a conditional use permit in accordance with City Code section 117-51.

b. Outside the MUSA on parcels less than two acres in size with the issuance of a conditional use permit in accordance with City Code section 117-51.

c. Outside the MUSA on parcels two acres in size or greater.

(10) No part of an accessory building shall extend into a drainage and utility easement or any required setback.

(11) Any accessory building proposed to be within five feet, overhang to overhang, of the principal building shall either be made structurally a part of the principal building or the wall and soffit area of the accessory building that is within five feet of the principal building shall be constructed to a one-hour fire rating.

(12) Accessory building location.

a. On lots two acres (87,120 square feet) or greater in size, the detached accessory building may be located nearer the front property line than the principal building provided the following criteria are met:

1. The placement of the detached accessory building maintains compliance with the standard front yard structure setback requirement for the respective zoning district;

2. The exterior materials used on the detached accessory building match those of the principal building on the subject property unless otherwise provided for in this section;

3. The accessory building is designed with soffit, fascia and eave overhang; and

4. The accessory building does not exceed the height of the principal building or 22 feet, whichever is less.

b. On lots less than two acres (87,120 square feet) in size, the accessory building shall be located in the side or rear yard and shall not be located nearer the front property line than the principal building on that lot, unless a variance is obtained. This provision shall not apply to attached garages that maintain compliance with the applicable front yard setback requirement.

c. Front, side and rear yard accessory building setback requirements are outlined in section 117-111(d).

d. Detached accessory buildings may be located in the front (street facing) yard when located riparian lots in the wild and scenic, critical area, or shoreland overlay districts, provided the structure meets the underlying front yard setback and cannot exceed the height of the principal structure. Detached accessory buildings located nearer the front property line than that of the principal structure must meet the same general design and materials as the principal structure.

(13) All accessory buildings, with the exception of attached garages, shall be included when calculating the maximum square footage of accessory building space allowed on a property. All accessory buildings, excluding attached garages, shall be included when determining the total number of accessory buildings on a property.

(14) Accessory building size restrictions. Size restrictions and performance standards for accessory buildings in residential districts shall be as follows:

a. *R-1 Residential (MUSA).*

Parcel Size (sq. ft. and acres) (excl. road right-of-way)	Maximum Square Footage Allowed for Accessory Buildings[1]	Maximum # of Acc. Bldgs. Allowed	Exterior Finish Permitted	Architectural Standards Required (for buildings regulated by MN	Maximum Allowable Height in Feet (one story buildings permitted,

				State Building Code	two with CUP and 2 acres)
0—21,779 (0 to 0.5 acre)	10% of lot, or 1,500 square feet, whichever is smaller	2	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
21,780—43,559 (0.5 acre to 1 acre)	1,800	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
43,560—65,339 (1 acre to 1.49 acres)	2,200	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
65,340—87,119 (1.5 to 1.99 acres)	2,400	3	Same general design and materials as home	Soffit, fascia, eave overhang to match home	16
87,120—108,899 (2.0 to 2.49 acres)	2,400	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
108,900—152,459 (2.5-3.49 acres)	2,700	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

152,460—196,019 (3.5-4.49 acres)	3,000	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
196,020—239,579 (4.5-5.49 acres)	3,500	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
239,580—283,139 (5.5-6.49 acres)	3,900	4	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
283,140—326,699 (6.5-7.49 acres)	4,300	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
326,700—370,259 (7.5-8.49 acres)	4,700	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
370,260—413,819 (8.5-9.49 acres)	5,100	5	Same general design and materials as home or color	Soffit, fascia, eave overhang to match home	22 [3]

			compatible metal panels[2]		
413,820—435,599 (9.5 to 9.99 acres)	5,500	5	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
435,600—871,199 (10 to 19.99 acres)	6,000	6	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
871,200—1,742,399 (20 to 39.99 acres)	8,000	7	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]
1,472,400 plus (40 acres or more)	12,000	8	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

[1] A portion of the square footage allowed for accessory buildings shall be utilized or reserved for a primary garage. The primary garage shall be at least 400 square feet in size.

[2] If the accessory building is closer to the front property line than the principal building, then the construction must have the same general design and materials as the home.

[3] If the accessory building is closer to the front property line than the principal building, then the height of the accessory building cannot exceed the height of the principal building or 22 feet, whichever is more restrictive.

b. *R-1 Residential (Rural Developing).*

Parcel Size (sq. ft. and acres) (excl. road right-of-way)	Maximum Square Footage Allowed for Accessory Buildings[1]	Maximum # of Acc. Bldgs. Allowed	Exterior Finish Permitted	Architectural Standards Required (for buildings regulated by MN State Building Code)	Maximum Allowable Height in Feet (one story buildings permitted, two with CUP and 2 acres)
0—21,779 (0 to 0.5 acre)	10% of lot, or 1,500 square feet, whichever is smaller	2	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16
21,780—43,559 (0.5 acre to 1 acre)	1,800	3	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	16
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1,472,400 plus (40 acres or more)	12,000	8	Same general design and materials as home or color compatible metal panels[2]	Soffit, fascia, eave overhang to match home	22 [3]

[1] A portion of the square footage allowed for accessory buildings shall be utilized or reserved for a primary garage. The primary garage shall be at least 400 square feet in size.

[2] If the accessory building is closer to the front property line than the principal building, then the construction must have the same general design and materials as the home or with metal panels as outlined in this section.

[3] If the accessory building is closer to the front property line than the principal building, then the height of the accessory building cannot exceed the height of the principal building or 22 feet, whichever is more restrictive.

SECTION 3. SUMMARY

The following is the official summary of Ordinance #15-06, which 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.

It is the intent and effect of Ordinance #15-06 to amend Ramsey, Minnesota City Code Sections 117-111 and 117-349 to:

- Clarify fences not addressed by Minnesota State Building Code require a zoning permit.
- Clarify accessory buildings not addressed by Minnesota State Building Code require a zoning permit.
- Eliminate the requirement for a driveway for detached accessory buildings but clarify that off-street parking must still be in compliance with Section 117-355.
- Clarify that the primary garage is not included when determining the maximum number of allowable accessory buildings on a property.
- Clarify that the required architectural standards (soffit, fascia, and eave overhangs) are only required on accessory buildings addressed by Minnesota State Building Code.
- limit the number of vehicles/equipment stored outside in conjunction with a home occupation, to clarify the meaning of employee, to clarify provisions for signage related to home occupations, and to use round-trips rather than vehicle trips when considering traffic generation.

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 24th day of February, 2015.

_____
Mayor

ATTEST:

_____
City Clerk

Introduction Date:
Posting Dates:
Adoption Date:
Publication Date:
Effective Date:

Regular Planning Commission **5. 5.**

Meeting Date: 03/05/2015

By: JoAnn Shaw, Community Development

Information

Title:

Zoning Bulletins

Purpose/Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations/Alternatives:

Funding Source:

Recommendation:

Action:

Attachments

Zoning Bulletins

Form Review

Inbox	Reviewed By	Date
Tim Gladhill	JoAnn Shaw	02/27/2015 03:09 PM
Form Started By: JoAnn Shaw		Started On: 02/25/2015 11:27 AM
Final Approval Date: 02/27/2015		

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Zoning Bulletin

in this issue:

THOMSON REUTERS

Mat #41675397

Proceedings—Neighbor sues landowner, challenging validity of special use permit

Landowner contends such a private action cannot be brought under state law

Citation: *Nord v. Village of Saybrook, 2014 IL App (4th) 140017-U, 2014 WL 5760861 (Ill. App. Ct. 4th Dist. 2014)*

ILLINOIS (11/4/14)—This case addressed the issue of whether a

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private landowner may challenge the validity of a special use permit in an action brought pursuant to Illinois Municipal Code § 11-13-15—which permits private actions to enforce zoning violations.

The Background/Facts: In July 2009, Gene Talley ("Talley") was the zoning officer for the Village of Saybrook, Illinois (the "Village"). While acting as the zoning officer, Talley issued a building permit to himself for the construction of a 42-foot by 72-foot storage structure ("shed") on property he owned in the Village's R-1 residential district. Later, the Village's attorney advised Talley to cease construction until he established a principal use on his property or he applied for a conditional-use permit.

Eventually, the Village adopted a zoning amendment, reestablishing a zoning board of appeals to consider special-use applications. In February 2010, Talley applied for a special-use permit to construct the shed on his property. Through adoption of an ordinance, the Zoning Board of Appeals (the "Board") approved Talley's application for a special use permit to allow the accessory use of the shed on Talley's property. Talley was issued a special use permit and a zoning certificate allowing the use.

In April 2010, Talley's neighbor, Renee Nord ("Nord") filed a complaint against, among others, Talley. In an amended complaint, Nord alleged, among other things, that "Talley's actions violated the zoning ordinance," as the special use permit Talley obtained was "void in that it was arbitrary, capricious, unreasonable, and bore no substantial relationship to the public health, safety, morals, comfort, or general welfare of the Village and its residents."

Talley sought summary judgment. He asked the court to find that there were no material issues of fact in dispute and to decide the matter in his favor on the law alone. Talley argued that he was entitled to summary judgment because § 11-13-15 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/11-13-15) allows a private citizen to enforce zoning violations but does not allow a private citizen to challenge the validity of a zoning regulation.

Section 11-13-15 of the Municipal Code states, in pertinent part:

> In case any building or structure . . . is constructed . . . or any building or structure . . . or land is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal Code, . . . any owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding (1) to prevent the unlawful construction . . . or use, (2) to prevent the oc-

cupancy of the building, structure or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation.(65 ILCS 5/11-13-15 (West 2012).)

The trial court granted summary judgment in favor of Talley. It agreed with Talley that § 11-13-15 of the Municipal Code did not allow a plaintiff to challenge the validity of an ordinance. The court found that Nord's "sole avenue of relief was administrative review pursuant to the Administrative Review Law." (735 ILCS 5/3-101 to 3-113.) Because Nord had not sought administrative review of the ordinance, the court found in favor of Talley.

Nord appealed. Nord maintained that she could bring a private action against Nord for zoning ordinance violations because his special permit allowed the use of property in a manner that would otherwise violate the zoning ordinance. Nord argued that the validity of the special use permit had a direct bearing on whether Talley was violating the zoning ordinance.

DECISION: Judgment of circuit court affirmed.

The Appellate Court of Illinois Fourth District concluded that § 11-13-15 of the Municipal Code did not permit Nord to challenge the validity of the special use permit through an action against a Talley, "a private violator of the Village's zoning ordinance." Rather, the court held, a person challenging the validity of a special use permit must do so through an action against the municipality seeking to invalidate the grant of the permit.

The court explained that a legislative decision such as the enactment of an ordinance granting a variance application is reviewable through a declaratory judgment proceeding challenging the validity of the ordinance. To have an ordinance declared invalid, the complaint "must allege that it is 'arbitrary, capricious and unreasonable' and bears 'no substantial relation to the public health, safety or general welfare' [citation], or in some other way violates the plaintiffs' constitutional rights."

Here, Nord had filed an action against the Village seeking to invalidate Talley's special use permit but she had based that challenge on alleged Open Meetings Act violations. Nord failed to allege that the Village, in granting the special use permit, acted arbitrarily, capriciously, or unreasonably, or that the special use permit bore no rational relationship to the health, safety, welfare, and morals of the public. She had only brought those allegations against Talley.

The court concluded that because Nord failed to "appropriately

challenge" Talley's special use permit, Talley's intended use of his property was not in violation of the Village's zoning ordinance. The special use permit allowed Talley to use the property in a way that would otherwise have violated the underlying ordinance; it allowed him to establish an accessory structure that was 72 feet long, 42 feet wide, and 22 feet high as the primary structure on his property.

Accordingly, the court concluded that summary judgment was properly granted to Talley.

See also: *Young v. City of Belleville, 115 Ill. App. 3d 960, 71 Ill. Dec. 759, 451 N.E.2d 913 (5th Dist. 1983).*

Case Note:

Nord had brought other claims in her action, including claims against the Village, alleging violation of Illinois' Open Meetings Act. The appellate court concluded that those claims failed because Nord had failed to show how the alleged violation was a "step" leading to the issuance of Talley's special use permit, plus the Village had remedied any alleged prior violation of the Open Meetings Act by holding a subsequent public meeting that was in compliance of the Act.

Uses—Hospital seeks to construct helipad

City and hospital dispute whether a helipad is a permitted accessory use in zoning district

Citation: *Cleveland Clinic Found. v. Cleveland Bd. of Zoning Appeals, 2014-Ohio-4809, 2014 WL 5644149 (Ohio 2014)*

OHIO (11/05/14)—This case addressed the issue of whether a helipad was a permissible accessory use of a hospital under the zoning regulations of the City of Cleveland.

The Background/Facts: The Cleveland Clinic Foundation (the "Clinic") owns the Fairview Hospital (the "Hospital") in Cleveland, Ohio (the "City"). The Hospital was constructed in 1952. The Hospital's parcels of land were rezoned in 1964 to "Local Retail Business District." Pursuant to the Cleveland Code of Ordinances ("C.C.O."), such a district allows uses that are "normally required

for the daily local retail business needs of the residents of the locality only." (C.C.O. 343.01(a).)

In October 2010, the Clinic filed an application with the City's Department of Building and Housing seeking approval of three construction projects for the Hospital, including the construction of a helipad on the roof of a proposed two-story addition. The City rejected the Clinic's application for the helipad, citing C.C.O. 343.01(b)(8), which provides that "accessory uses" are allowed "only to the extent necessary normally accessory to the limited types of neighborhood service use permitted under this division." Thus, the City rejected the Clinic's assertions that a helipad was a permitted use for property within a Local Retail Business District.

The Clinic appealed to the City's Board of Zoning Appeals (the "BZA"). Among other things, testimony at the hearing established that nearly 88% of hospitals in and around the City had helipads. It also made clear that a helicopter significantly reduced transportation time for critically ill patients.

Ultimately, the BZA determined that a helipad was not "an accessory use authorized as of right." Citing C.C.O. 343.01(b)(8), the court said this was because "those uses that the Zoning Code characterizes as retail businesses for local or neighborhood needs would not involve a helip[ad] as normally required for the daily local retail business needs of the residents of the locality."

The Clinic appealed the BZA's denial of the helipad. The court of common pleas reversed. The court pointed to C.C.O. 343.01(b)(1), which provides that with limited exceptions, all uses permitted in the Multi-Family District are also permitted in the Local Retail Business District. The common pleas court looked at other provisions of the C.C.O. and concluded that a helipad was "customarily incident to" a hospital and therefore qualified as an "accessory use." The court reasoned that "hospitals and their accessory uses are expressly permitted in the City's Multi-Family District, and are therefore permissible in the City's areas that are zoned 'Local Retail Business District.' '' The common pleas court concluded that because the "record before [the court]" established that a helipad qualified as an "accessory use" in a Multi-Family District, it was "therefore permissible in the instant case."

The BZA appealed. The appellate court reversed. The appellate court held that since the BZA reasonably relied on the code provision—C.C.O. 343.01(b)(8)—in its decision, its determination should hold so long as its decision was "not unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the

preponderance of substantial, reliable, and probative evidence on the whole record." The court held that the BZA had "reasonably relied on C.C.O. 343.01(b)(8) and the evidence in the record" in concluding that a helipad was not an accessory use as of right, and the trial court had abused its discretion "in determining that the administrative order was not supported by reliable, probative, and substantial evidence." It further held that courts must give "due deference" to an agency that has accumulated special expertise.

The Clinic appealed.

DECISION: Judgment of district court of appeals reversed; common pleas court judgment reinstated.

The Supreme Court of Ohio first held that the appellate court had applied the incorrect standard of review when it reversed the common pleas court's decision. The appellate court had analyzed whether the BZA had reasonably interpreted the ordinance. Rather, found the Supreme Court of Ohio, under the proper standard of review, the appellate court should have analyzed whether the common pleas court's decision was properly supported by evidence (not whether the BZA's decision was properly supported by evidence). (R.C. 2506.04.)

The Supreme Court of Ohio found that the common pleas court's decision was properly supported by the evidence. The Supreme Court of Ohio reiterated the common pleas court finding that "hospitals and their accessory uses [were] expressly permitted in the City's Multi-Family District, and [were] therefore permissible in the City's areas that [were] zoned 'Local Retail Business District.' " The parties had not disputed that conclusion. Rather, they had disputed whether a helipad was an accessory use.

The BZA had asserted that because C.C.O. 343.01(b)(8) provided that accessory uses were allowed "only to the extent necessary normally accessory to the limited types of neighborhood service use permitted under this division," a helipad was forbidden because helipads were not "normally required for the daily local retail business needs of the residents of the locality only." The Supreme Court of Ohio rejected that argument, finding it "seem[ed] designed to inject ambiguity into a code that [was] not ambiguous." The court said that the BZA had to look at the Code as a whole.

Looking at the Code as a whole, the court focused on the language of the C.C.O. that defined accessory uses (C.C.O. 325.02 and 325.721) and that defined the types of buildings permissible in the Multi-Family District and the Local Retail Business District (C.C.O. 337.08 and 343.01(b)). Strictly construing the ordinance in favor of

the property owner, and looking at the entire context of the ordinance, the court found that the proposed helipad fit the C.C.O's definitions of "accessory use or building." The helipad would be built on the same lot or parcel as the principal use, and a helipad was customarily incidental to the principal use of the property, a hospital (where as 88% of hospitals in the City's metropolitan area had helipads). Accordingly, the Supreme Court of Ohio concluded that a helipad was a permitted accessory use because it was customarily incident to a hospital, which was a permitted use under the Code, and thus the Hospital was entitled to construct.

See also: *University Circle, Inc. v. City of Cleveland, 56 Ohio St. 2d 180, 10 Ohio Op. 3d 346, 383 N.E.2d 139 (1978).*

Proceedings—Landowners ask court to grant equitable relief, prohibiting town from enforcing ordinance after it already issued related building permit

Town says court action must be dismissed because landowners did not exhaust administrative remedies

Citation: *Dembiec v. Town of Holderness, 2014 WL 5859514 (N.H. 2014)*

NEW HAMPSHIRE (11/13/14)—This case addressed the issues of: (1) whether a zoning board of adjustment has the jurisdiction to decide a municipal estoppel claim; and (2) under what circumstances landowners are not required to exhaust administrative remedies before seeking judicial review.

The Background/Facts: Daryl and Marcy Dembiec (the "Dembiecs") owned property in the Town of Holderness, New Hampshire (the "Town"). Prior to October 2011, the only structure on that property was a two-story boathouse with living quarters on the second floor. The Dembiecs sought to construct a single-family home on their property. In October 2011, the Dembiecs obtained from the Town a permit for construction of a single-family home on their property.

In April 2012, when construction of the Dembiecs home was substantially complete, the Town's compliance officer advised the Dembiecs that he would not issue a certificate of compliance for their new home because the boathouse contained a dwelling unit, and the applicable zoning ordinance allowed two dwellings on a lot only when they were the same structure. The Dembiecs were advised to either obtain a variance or remove all plumbing from the boathouse.

The Dembiecs applied to the Town's zoning board of adjustment (the "ZBA") for an equitable waiver from the ordinance. After that was denied, the Dembiecs sought a variance, which was also denied. The Dembiecs then filed in court a petition for equitable relief. The Dembiecs asked the court to declare that because the Town issued a building permit, it was "estopped from enforcing the one dwelling per unit lot provision of the zoning ordinance as applied to the Property." In other words, the Dembiecs sought the equitable relief of municipal estoppel. They also requested an order requiring the Town to issue certificates of compliance and occupancy for the single family house.

The Town asked the court to dismiss the petition. The Town argued that the court lacked jurisdiction because the Dembiecs had not appealed the decision of the compliance officer to the ZBA, and, therefore, had failed to exhaust their administrative remedies.

The trial court agreed with the Town and dismissed the petition.

The Dembiecs appealed.

DECISION: Judgment of superior court reversed, and matter remanded.

The Supreme Court of New Hampshire held that because the ZBA lacked authority to grant the relief requested by the Dembiecs in their petition, the Dembiecs were not required to exhaust their administrative remedies before bringing their judicial petition.

In its decision, the court acknowledged that, in the interest of "encouraging the exercise of administrative expertise, preserving agency autonomy and promoting judicial efficiency," "[o]rdinarily, parties must exhaust their administrative remedies before appealing to the courts." However, the court also recognized that the exhaustion of administrative remedies is not required under certain circumstances. Such circumstances include, said the court: when it is "unnecessary to burden local legislative bodies and zoning boards with the responsibility for rulings on subjects that are beyond their ordinary competence," such as when "the action raises a question that is peculiarly suited to judicial rather than administrative treat-

ment and no other adequate remedy is available," including with questions of the constitutionality or validity of an ordinance. Circumstances warranting exception to the administrative exhaustion requirement also include, said the court: "when further administrative action would be useless."

Here, the court found that an appeal by the Dembiecs of the compliance officer's decision to the ZBA would fall under that second exception. The court found such an appeal would have been useless because the ZBA lacked the authority to grant the Dembiecs' request of the equitable relief of municipal estoppel. The court explained that zoning boards only have those powers expressly conferred upon them. The court found that the plain language of the pertinent New Hampshire statutes (RSA 674:33 and 674:33-a) did not confer equitable jurisdiction upon a zoning board. It noted that, under those statutes, a zoning board has the authority to grant equitable relief from a zoning ordinance only when the statutory prerequisites for an equitable waiver, a variance, or a special exception are satisfied. The court found that the statutes did not confer upon a zoning board of adjustment the power to grant relief under the equitable doctrine of municipal estoppel.

Accordingly, here, the court concluded that the ZBA would have had "no authority under a municipal estoppel theory to order the compliance officer to issue a certificate of compliance to the petitioners given that their new home indisputably failed to comply with the ordinance." In other words, the ZBA "could not have compelled the compliance officer to violate the ordinance merely because doing so, arguably, would have been 'equitable.' " Moreover, the court found that the ZBA could not have granted any relief to the Dembiecs under the applicable statutes or the Town's ordinance "because their new home violated the ordinance, and they failed to meet the requirements for either a variance or an equitable waiver from dimensional requirements." Under those circumstances, the court concluded that "further pursuit of administrative remedies would have been futile, and, therefore, exhaustion of remedies [was] not required."

Finding that the Dembiecs' municipal estoppel claim was not barred by the exhaustion of administrative remedies, the court remanded the matter to the trial court for further proceedings on the claim.

See also: *McNamara v. Hersh, 157 N.H. 72, 945 A.2d 18 (2008).*

See also: *Porter v. City of Manchester, 151 N.H. 30, 849 A.2d 103, 21 I.E.R. Cas. (BNA) 642 (2004).*

Case Note:

The court noted that its decision comported with decisions in numerous other jurisdictions. (See Fields v. Kodiak City Council, 628 P.2d 927, 931 (Alaska 1981) (zoning board's authority "is restricted to that provided by the zoning ordinance and its enabling legislation" and, under that scheme, board lacked authority to decide equitable questions of estoppel and "clean hands"); Carini v. Zoning Bd. of Appeals of Town of West Hartford, 164 Conn. 169, 319 A.2d 390, 393 (1972) (zoning board's function is not to consider matters such as estoppel or laches in determining whether a variance should be granted); Bianco v. Town of Darien, 157 Conn. 548, 254 A.2d 898, 901 (1969) (exhaustion of administrative remedies is not required for an action seeking equitable relief because such claims "are not susceptible of determination by a zoning board . . . composed of laymen but can only be resolved in a judicial proceeding"); Forest County v. Goode, 219 Wis. 2d 654, 579 N.W.2d 715, 722 (1998) (zoning board "has no equitable power"). But see Vaughn v. Zoning Hearing Bd. of Tp. of Shaler, 947 A.2d 218, 223-24 (Pa. Commw. Ct. 2008) (Pa.Commw.Ct.2008) (zoning board had jurisdiction to grant a "variance by estoppel").)

Case Note:

In its decision, the court distinguished claims of municipal estoppel that were "essentially an appeal of a planning board determination" (which would require exhaustion of administrative remedies), and a municipal estoppel claim not predicated upon a contention that the board or compliance officer erred (such as here) (which is actually a new claim for relief and which the court held would not require the exhaustion of administrative remedies).

Zoning News from Around the Nation

CALIFORNIA

The City of San Clemente has been sued by a group seeking to develop a homeless shelter. The group charges that a new city ordinance "flouts a state mandate designed to facilitate shelters."

The lawsuit says the ordinance makes shelters in the city unfeasible such as by designating sites for shelters, which are actually unavailable, and imposing costly standards. "Since 2007, Senate Bill 2 has required all cities in California to adopt zoning allowing discretion-free shelters."

Source: *OC Register; www.ocregister.com*

NEW JERSEY

Assembly Speaker Vincent Prieto recently announced that he is introducing legislation that would consolidate the New Jersey Meadowlands Commission (the zoning and planning agency for a 30.4-square-mile area in Bergen and Hudson counties) and the New Jersey Sports and Exposition Authority (which promotes athletic contests, horse racing, and other spectator events in the state). Prieto reportedly touts this as a move that would "boost property tax savings, economic growth and job creation in the Meadowlands region." Among other things, the bill would also reestablish the Hackensack Meadowlands Transportation Planning District.

Source: *NJ.com; www.nj.com*

RHODE ISLAND

Providence Mayor Angel Taveras recently signed an ordinance updating the city's zoning rules "for the first time in more than 60 years." The new rules, which go into effect on December 24, reportedly include "streamlining the development process and making changes to encourage more pedestrian friendly development in certain areas of the city."

Source: *The State; www.thestate.com*

VERMONT

The state's Department of Housing and Community Development recently announced that nearly 50 Vermont cities and towns will share $475,000 in state municipal planning grants.

Source: *The Barre Montpelier Times Argus; www.timesargus.com*

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Zoning Bulletin

in this issue:

THOMSON REUTERS

Mat #41675493

Rezoning—Land use commission reverts land use classification to former use

Property owner argues commission's reversion is improper under state statutory law

Citation: *DW Aina Le"a Development, LLC v. Bridge Aina Le"a, LLC., 2014 WL 6674432 (Haw. 2014)*

HAWAI'I (11/25/14)—This case addressed the issue of whether the Hawai'i Land Use Commission ("LUC") properly reverted land to its for-

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mer land use classification pursuant to Hawai'i statutory law, Hawai'i Revised Statutes ("HRS") § 205-4(g).

The Background/Facts: In 1989, the LUC reclassified 1,060 acres of land in Waikoloa on Hawai'i Island from agricultural to urban in order to allow the development of a residential community. The reclassification was subject to numerous conditions, including a condition that at least 60% of the residential units be affordable. Over time, the land changed hands several times, and the LUC granted requests to amend the affordable housing condition. By 2005, the condition required the landowner, Bridge Aina Le'a, LLC ("Bridge"), to construct 20% of the housing units as affordable housing units.

By December 2008, the LUC opined that Bridge and its predecessors in interest had failed to meet the affordable housing conditions of the reclassification. LUC issued an order to show cause ("OSC") pursuant to HRS § 205-4(g) as to why the land should not revert back to its former agricultural land use classification.

Soon after the OSC, Bridge assigned its interest in the land to DW Aina Le'a Development LLC ("DW"). DW then invested more than $20 million in developing the site.

Nevertheless, after OSC proceedings over the course of several years, in April 2011, the LUC issued an order reverting the land to the agricultural use district.

Bridge and DW appealed the LUC's decision and order. Their cases were consolidated in circuit court. The circuit court reversed and vacated the LUC's decision and order. Among other things, the circuit court concluded that the LUC had exceeded its statutory authority and violated HRS Chapter 205. The court found that while the statute granted the LUC authority to establish land use regulations for the major classes of uses and to establish boundaries of the districts for those uses, the responsibility of enforcing the land use classification districts adopted by the LUC was expressly delegated to the counties.

The LUC appealed. On appeal, the LUC argued that reclassification and reversion of property was different under HRS § 205-4(a) and 205-4(g). Specifically, the LUC argued that pursuant to HRS § 205-4(g), it was authorized to impose conditions on a petition seeking to amend a district boundary, to issue an OSC, and to revert property to its former land use classification. In the LUC's view, because reclassification was different than reversion, it was not required to consider other factors set forth in HRS §§ 205-16 and 205-17, or satisfy the requirements of HRS § 205-4(h), or satisfy the 365 day deadline set forth in HRS § 205-4(g).

Bridge and DW argued that, pursuant to the statute, the LUC could only revert property pursuant to an OSC if the petitioner had not substantially commenced use of the property. They pointed to the language of HRS § 205-4(g), which provides: "The [LUC] may provide by condition that absent substantial commencement of the use of land in accordance with

such representations [made to LUC by the petitioner], [the LUC] shall issue and sever upon the party bound by the condition an OSC why the property should not revert to its former land use classification or be changed to a more appropriate classification." They argued that they had substantially commenced use of the property and therefore LUC's reversion was improper.

DECISION: Judgment of circuit court affirmed in part.

The Supreme Court of Hawai'i agreed with Bridge and DW. It held that since DW and Bridge had substantially commenced use of the land in accordance with their representations, the LUC erred in reverting the property without complying with the requirements of HRS § 205-4.

The court explained that once the LUC issues an OSC, the procedures it must follow before reverting land depend upon whether the petitioner has substantially commenced use of the land. While HRS § 204(g) gives the LUC broad authority to impose conditions on boundary amendments, the court noted that enforcement of those conditions was expressly left to counties under HRS § 205-12. HRS § 205-4(g) provides the one exception to that general rule, allowing the LUC to revert property to its former land use condition when substantial commencement of the use of the land has not begun. Thus, where the petitioner has substantially commenced use of the land, the LUC is bound by the requirements of HRS § 205-4, which require the LUC to: find by a clear preponderance of the evidence that the reclassification is reasonable, not violative of HRS § 205-2, and consistent with the policies of HRS §§ 205-16 and 205-17 (HRS § 205-4(h)); obtain six votes in favor of the reclassification (HRS § 205-4(h)); and resolve the reversion or reclassification issue within 365 days (HRS § 205-4(g).) The court further clarified that the LUC may only revert property without following those procedures when the petitioner has not substantially commenced use of the property in accordance with its representations.

Here, the court found that by the time the LUC reverted the property to the agricultural land use district, Bridge and DW had substantially commenced use of the land in accordance with their representations. Specifically, the court found that they had constructed sixteen townhouses on the property, commenced construction of numerous other townhouses, and graded the site for additional townhouses and roads. At that point, more than $20 million had been spent on the project. The court further found that although Bridge and DW had substantially commenced use of the land, the LUC failed to comply with the requirements of HRS § 205-4. Although its order reverting the property to the agricultural land use district had explained how DW and Bridge had failed to comply with representations made to the LUC, the LUC failed to make specific findings as to whether the reversion was "reasonable," not violative of HRS § 205-2, and consistent with the policies and criteria established under HRS §§ 205-16 and 205-17. Moreover, the LUC had failed to resolve the OSC within 365 days as required, but rather had taken several years to resolve it.

Accordingly, because it had not complied with the requirements of HRS

§ 205-4, the court concluded that the LUC erred in reverting the property to the agricultural land use district.

See also: *Lanai Co., Inc. v. Land Use Com'n, 105 Haw. 296, 97 P.3d 372 (2004).*

Case Note:

The court also explained that in cases where the petitioner has not substantially commenced use of the property, then the LUC may revert the property without following the strictures of HRS § 205-4, so long as it otherwise complies with Hawai'i Administrative Rules § 15-15-93.

Case Note:

DW and Bridge had also alleged that their procedural and substantive due process and equal protection rights had been violated by the reversion. The circuit court had agreed. The appellate court disagreed. It noted that with respect to procedural due process, both Bridge and DW had notice of the OSC and that the LUC might revert the property. They also each had a meaningful opportunity to be heard on the proposed reversion. With regard to substantive due process, the court found that the LUC's reversion was not "clearly arbitrary and unreasonable," given the project's long history, the various representations made to the LUC, and the petitioners' failure to meet deadlines. With respect to Bridge's and DW's equal protection arguments, the court concluded that the record failed to establish that the LUC's imposition of a condition and subsequent reversion of the property constituted a violation of equal protection rights.

Standing—Residents appeal county board of commissioner's approval of a zoning application

Court weighs whether residents meet the requirements for standing to appeal

Citation: *Alesi v. Warren Cty. Bd. of Commrs., 2014-Ohio-5192, 2014 WL 6612551 (Ohio Ct. App. 12th Dist. Warren County 2014)*

OHIO (11/24/14)—This case addressed, among other things, the issue of whether third-party property owners had standing (i.e., the legal right) to appeal a county board of commissioner's approval of a zoning application.

The Background/Facts: Pilot Travel Centers LLC ("Pilot") operated

truck stops. It sought to build and operate one of its "Flying J" truck stops on a 10.5-acre lot in an unincorporated area of Turtlecreek Township in Warren County (the "Property"). The Warren County Rural Zoning Code (the "Code") permitted truck stops in the zoning district in which the Property was located, subject to "site plan review" by the Warren County Board of County Commissioners ("BOCC").

Pilot filed an application for a site plan review. The BOCC eventually approved the application, subject to 24 enumerated conditions. Pilot, as well as 78 citizens with postal addresses in the County, appealed the BOCC's decision to the Warren County Court of Common Pleas. That court affirmed the BOCC's decision, but struck and modified some of the BOCC's enumerated conditions.

Pilot, the BOCC, and 58 of the citizens (the "Residents") all appealed. The Residents challenged the approval of the site plan in general.

DECISION: Judgment of court of common pleas affirmed as modified and dismissed in part.

As an initial matter, the Court of Appeals of Ohio, Twelfth District, held that the Residents lacked standing to appeal the BOCC's decision approving the Flying J. Although none of the parties had raised the issue of standing, because standing determined whether the court had jurisdiction in the case, the court addressed the issue.

The court explained that one could not appeal an administrative order absent statutory authority. Here, the court found that Ohio statutory law (R.C. Chapter 2506) permitted appeals of a decision of a board of county commissioners only by "those directly affected by the administrative decision." More specifically, the court explained that for a third-party, private property owner—such as the Residents appealing here—to appeal under R.C. 2506.01, the property owner must at a minimum have been "directly affected" by a board's decision and must have "actively participated" in an administrative hearing.

The court further explained that the "active-participation" element "requires that the third party must have actively participated in an administrative hearing by attending the hearing personally, or through a representative, and voicing opposition to the proposed property use." Also, the "directly-affected" requirement is met "where the property owner shows some unique harm that is distinct from the harm suffered by the community at large."

Here, the court found that although a few of the Residents testified before the BOCC at the hearings, most did not. Moreover, the court also found that none of the Residents who had testified at the BOCC hearings had indicated how they would be uniquely harmed by the proposed travel center. The testimony and briefing all had dealt with harms to the community at large; nowhere did any of the Residents identify any unique harm that he or she would suffer. The court found that there was "simply nothing in the record to even suggest that any of the Residents [would]

suffer any grievance different than what other residents of the community might suffer. Rather, the record evidence demonstrate[d] that the complaints voiced by the Residents consisted of generalized fears as to the impact of the truck stop on the community as a whole."

Finding none of the Residents met the unique-harm requirement, the court concluded that the Residents lacked standing under R.C. 2506.01, and that the lower court should have dismissed their appeal.

See also: *Safest Neighborhood Assn. v. Athens Bd. of Zoning Appeals, 2013-Ohio-5610, 5 N.E.3d 694 (Ohio Ct. App. 4th Dist. Athens County 2013).*

Case Note:

The court went on to evaluate Pilot's objections to certain conditions in the BOCC's resolution. The court agreed with Pilot's assertion that the common pleas court erred in upholding a condition that required Pilot to submit an additional traffic-impact study to the Ohio Department of Transportation ("ODOT"). The court agreed with Pilot that the BOCC lacked authority to order the additional study. Although the Code allowed the BOCC to determine the impact of a proposed site plan on local roadways, the court found that the BOCC exceeded its authority by requiring Pilot to submit another traffic-impact study to ODOT—a state entity over which the BOCC had no control.

Case Note:

The court also dismissed the BOCC's appeal for lack of standing, finding that the BOCC failed to identify any interest adversely affected by the common pleas court's judgment.

Proceedings—After county rezone of their property, property owners bring Harris Act and inverse condemnation claims

County contends claims fail as untimely

Citation: *Hussey v. Collier County, 2014 WL 5900018 (Fla. 2d DCA 2014)*

FLORIDA (11/15/11)—This case addressed the issue of whether causes of action alleged in relation to a zoning challenge were timely. It also ad-

dressed whether the complaint stated causes of action under which the plaintiffs could obtain relief.

The Background/Facts: Since between 1989 and 1991, Frances and Mary Hussey (the "Husseys") owned 979 acres of land (the "Property") in a rural area of Collier County (the "County") known as North Belle Meade. At the time the Husseys purchased the Property, the property was zoned such that mining was an allowed use on the Property. In 2000, the Husseys hired a contractor and "engaged in other activities in pursuit of rock mining endeavors" on the Property.

However, in July 2002, the County amended its comprehensive plan to establish a Rural Fringe Mixed-Use District ("RFMD"). Lands within the RFMD were given one of three use classifications. The Husseys' Property was designated as "Sending Lands," on which mining was precluded and residential development was limited.

In September 2002, the Husseys challenged the Sending Lands designation by filing a petition for formal administration with the Department of Community Affairs. In early 2003, an administrative law judge ("ALJ") issued a recommended order concluding that the County's actions were in compliance with state and local law. The Department of Administrative Hearings ("DOAH") approved the ALJ's recommended order in July 2003. The Husseys then appealed to the First District Court of Appeal, which affirmed DOAH's final order on September 15, 2004.

Subsequently, in accordance with the governing statute (see Fla. Stat. § 70.001(4)(a)), in July 21, 2004, the Husseys gave the County notice that they would seek compensation under the Bert J. Harris Private Property Rights Act (the "Harris Act"). The Harris Act provides a cause of action for aggrieved property owners. Under the Act, if property owners can demonstrate that a governmental action "inordinately burdens" their property, they are entitled to some form of compensation. On July 24, 2008, they filed an amended Harris Act notice. On September 11, 2008, they then filed suit in the circuit court asserting a claim under the Harris Act, as well as a claim for inverse condemnation.

The circuit court dismissed both the Husseys' Harris Act Claim and the inverse condemnation claims. The court did not detail reasons for the dismissals, but court records indicated that they were presumably because the court had determined that both the inverse condemnation claim and the Harris Act only allowed "as applied" challenges (i.e., a challenge that seeks to invalidate a particular application of a statute), while it found that the RFMD amendments were "general" ordinances (not applied to a particular property). The County also challenged both causes of action as being untimely.

The Husseys appealed.

DECISION: Judgment of circuit court affirmed in part, reversed in part, and remanded.

The District Court of Appeal of Florida, Second District, held that the

Husseys' Harris Act claim was sufficient and timely and should not have been dismissed. The court also held that the Husseys' inverse condemnation claim was untimely and was properly dismissed.

In addressing the timeliness of the Harris Act claim, the court noted that, pursuant to the governing statute, Fla. Stat. § 70.001(11), property owners have four years—plus any tolling time—to file their complaint under the Harris Act. The court found that the limitations period commenced on September 15, 2004, which was the date that the First District affirmed the DOAH's determination, thereby ending the Husseys' administrative and judicial proceeding; "it was 'when the last element constituting the cause of action occurred." The court further found that, therefore, the Husseys' September 11, 2008, lawsuit was filed within the four-year limitations period.

The appellate court also concluded that the circuit court had erred by dismissing the Husseys' Harris Act claim under the theory that the RFMD amendments had not been applied specifically to the Husseys' Property. The court found that the RFMD amendments were applied to the Husseys' Property by their very terms. The RFMD amendments specifically identified which lands in the RFMD received which designation, including the Husseys' Property.

As to the Husseys' inverse condemnation claim, the court concluded that it was untimely. The court noted that the limitations period for the inverse condemnation claim was also four years, but, unlike with Harris Act claims, no tolling period applied to inverse condemnation actions based on a regulatory taking. The court said that the statute of limitations began running on the effective date of the RFMD amendments (i.e., "when the governmental entity has made a final decision about the permissible use of the property.") The court found that the County ordinance defined that effective date as the date a final order is issued by the Department of Community Affairs or Administration Commission finding the amendment in accordance with law. Here, that order was issued by the DOAH on July 22, 2003, and thus that was the date that four-year statute of limitations began running. Accordingly, the court concluded that the Husseys' inverse condemnation claim, filed on September 15, 2008, was barred by the statute of limitations.

See also: *M & H Profit, Inc. v. City of Panama City, 28 So. 3d 71 (Fla. 1st DCA 2009).*

Case Note:

The County had also contended that the Husseys' Harris Act notice was improper. The court disagreed. It said that the Husseys were required to notify the County of their Harris Act claim within one year after the RFMD amendments were applied to their land, subject to tolling of the notice period for the time the Husseys' "Sending Lands" designation was being appealed. The court found that the Husseys' notice was timely, and had also honored the statutory mandate that no suit could

be filed until 180 days after the governmental entity is given notice of the claims (Fla. Stat. § 70.011(4)(a)) (which here was July 21, 2004).

Variance—Property owner seeks area variance to convert house to church

City argues that variance is unwarranted because any hardship is personal

Citation: *Faith Walk Fellowship Church v. Cleveland, 2014-Ohio-5035, 2014 WL 6065658 (Ohio Ct. App. 8th Dist. Cuyahoga County 2014)*

OHIO (11/13/14)—This case addressed the issue of whether a landowner was entitled to an area variance.

The Background/Facts: Faith Walk Fellowship Church ("Faith Walk") owned a single-family residence in a single-family residential zoning district in the City of Cleveland, Ohio (the "City"). Faith Walk sought to use the house as a church. A church was a permitted use in the single-family residential zoning district as long as the church was at least 15 feet from any adjoining premises. Because the house that Faith Walk wished to use as a church was less than 15 feet from the adjoining premises, Faith Walk applied to the City for an area variance. Ultimately, the City's Board of Zoning Appeals ("BZA") denied the variance request on grounds that it would have an adverse effect on neighboring property owners, would be inconsistent with the character of the surrounding neighborhood, and would be contrary to the purpose and intent of the City's zoning code.

Faith Walk appealed. The court of common pleas affirmed the BZA's decision.

DECISION: Judgment of court of common pleas affirmed.

The Court of Appeals of Ohio, Eighth District, Cuyahoga County, held that Faith Walk was not entitled to the grant of an area variance because any hardship it suffered was personal.

In so holding, the court explained that, "[u]nlike the more stringent 'use' variance, an 'area' variance will be granted upon a showing of 'practical difficulties rather than unnecessary hardship.' " Under the City's ordinance, in order to obtain the variance, Faith Walk needed to prove three conditions. First, it needed to show that Faith Walk would have practical difficulty using the house as a church without the variance, and that the practical difficulty was peculiar to the premises because of physical size, shape, or other characteristics of the premises (which differentiate it from other premises in the same district and create a difficulty or hard-

ship caused by a strict application of the provisions of this Zoning Code not generally shared by other land or buildings in the same district). In other words, Faith Walk had to show that the 15-foot setback requirement did not refer to conditions personal to it as the owner of the land but rather referred to the conditions especially affecting its lot. Second, it needed to show that refusal of the variance would deprive it of substantial property rights. Third, it needed to show that the granting of the variance would not be contrary to the purpose and intent of the City's zoning code.

The court found that Faith Walk failed to meet the first condition. It found that Faith Walk's difficulties with the 15-foot setback requirement were personal to its preferred way to use the land, not to the property itself. The court found that there was no evidence that Faith Walk could not erect on the property a church that conformed to the setback requirements. That it chose only to use the existing structure but could not use the existing structure on the land for use as a church because of the setback requirements was a condition personal to Faith Walk, not the property. Moreover, the court found no evidence of any physical or topographical attributes of the property that imposed limitations on conforming uses.

See also: *Hulligan v. Columbia Tp. Bd. of Zoning Appeals, 59 Ohio App. 2d 105, 13 Ohio Op. 3d 162, 392 N.E.2d 1272 (9th Dist. Lorain County 1978).*

Case Note:

In its decision, the court also had to construe the words of the ordinance that required the 15-foot distance of a church from "adjoining premises." Faith Walk had argued that an "adjoining premises" should be construed as a house on an adjoining lot. However, the court found that "adjoining premises," considering the ordinary meaning of "premises," meat adjoining land and structures.

Case Note:

Faith Walk had also requested a variance to have an accessory, off-street parking lot. Given its holding in the case, the court concluded that request was arguably moot.

Zoning News from Around the Nation

MICHIGAN

The state House has approved a bill that would move important notices about government actions out of newspapers and onto government Web

sites. More specifically, if passed into law, the bill would phase out, over 10 years, current requirements that notices about new laws, public hearings, or zoning changes be published in a newspaper of general circulation. Instead, local governments would publish their own notices on their government Web sites. Proponents of the bill say it would save municipalities thousands of dollars that are spent each year in newspaper notices.

Source: *Traverse City Record-Eagle; www.record-eagle.com*

NEW YORK

Governor Andrew M. Cuomo's administration recently announced that it would ban hydraulic fracturing ("fracking") in New York State because of concerns over health risks. Governor Cuomo's decision was based on a report by the acting state health commissioner, Dr. Howard A. Zucker. That report had found "significant public health risks" associated with fracking. Such health risks were listed as including water contamination and air pollution.

"Dozens of communities across New York have passed moratoriums and bans on fracking." As well, in June 2014, "the state's highest court, the Court of Appeals, ruled that towns could use zoning ordinances to ban fracking."

Source: *New York Times; www.nytimes.com*

PENNSYLVANIA

The Pittsburgh Planning Commission recently voted to recommend an amendment to the city zoning code to study the residential impact of new development within specially planned districts in the city. This would reportedly give the city council the opportunity to vote to approve code changes by a majority, rather than the super-majority vote previously required.

Source: *Pittsburgh Business Times; www.bizjournals.com*

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Zoning Bulletin

in this issue:

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Permits/Fees—Six years after paying impact fee, developers seek refund

Town points to ordinance that allows current owners of property only to obtain such refund

Citation: *K.L.N. Construction Company, Inc. v. Town of Pelham, 2014 WL 6967664 (N.H. 2014)*

NEW HAMPSHIRE (12/10/15)—This case addressed the issue of whether a statute requiring the refund of municipal fees in certain circum-

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stances allowed refund of the fees to the current property owners rather than to the original payors.

The Background/Facts: Under New Hampshire statutory law, RSA 674:16 and RSA 674:21, municipal impact fee ordinances must: "establish reasonable times after which any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected shall be refunded . . . upon the failure of the legislative body to appropriate the municipality's share of the capital improvement costs within a reasonable time . . . [and no later than] 6 years." In 1999, in accordance with New Hampshire statutory law, the Town of Pelham (the "Town") adopted an impact fee ordinance (the "Ordinance"). That Ordinance allowed the Town to assess fees on new development in order to pay for capital improvements necessitated by the development. The Ordinance also required that if the Town failed to spend or otherwise encumber the impact fees within six years, "[t]he current owners of property on which impact fees have been paid may apply for a full or partial refund of such fees, together with any accrued interest."

K.L.N. Construction Company, Inc., Cormier & Saurman, LLC, and Brian Soucy were all residential real estate developers (the "Developers"). Subsequent to the enactment of the Ordinance, the Developers paid impact fees to the Town pursuant to the Ordinance. After paying the impact fees, the Developers sold the related properties to individual homeowners.

The fees paid by the Developers were not totally spent or otherwise encumbered by March 2012. At that time, the Developers filed an action in superior court. They sought the refund of impact fees that they had paid more than six years earlier.

The Town argued that, under the Ordinance, only a current property owner was entitled to a refund of impact fees. Since the Developers had each sold the related properties, the Town maintained that the Developers lacked standing (i.e., the legal right) to seek a refund of the impact fees.

The superior court agreed with the Town and dismissed the case. The court concluded that the governing state statute, RSV 674:21,V(e), did not prevent municipalities from choosing to direct refunds to the current property owner.

The Developers appealed.

DECISION: Judgment of superior court affirmed.

The Supreme Court of New Hampshire concluded that the Town was within its authority to enact the Ordinance, directing that any refund of impact fees be paid to the current property owner.

In so concluding, the court interpreted the governing statute, RSV 674:21,V(e). Looking at the plain language of the statute, the court found that the term "refund" was not defined. The Developers had argued that, in the absence of a stated recipient for the unencumbered or unspent fees, the term "refund" in the statute must be given its "plain meaning" of "to pay back or to reimburse." Consequently, they asserted that the unencumbered fees must be paid to the original payor or its successor in interest.

The Town maintained that the statute as a whole compelled the conclusion that legislature chose not to limit payment of refunds to the original payor. To emphasize its argument and by way of comparison, the Town pointed to mandatory refund language in the state's exaction fee statute, which directed that a "refund shall be made to the payor or payor's successor in interest."

The court found the Town's argument compelling. The court found the fact that the legislature used different language when addressing impact fees and exaction fees supported a conclusion that the legislature intended different meanings. The court concluded that, under statute, the impact fee refund was not limited only to the "payor or payor's successor in interest," as was the exaction fee refund.

See also: *State Employees Ass'n of New Hampshire, SEIU, Local 1984(SEA) v. New Hampshire Div. of Personnel, 158 N.H. 338, 345, 965 A.2d 1116 (2009).*

Case Note:

Gerald Gagnon, Sr. had also intervened in the matter. He argued that, as a successor-in-interest to Woodview Development Corporation, he was entitled to a refund of impact fees that the corporation had paid prior to selling its properties.

Case Note:

The Developers had also argued that the legislative history supported their interpretation of impact fee "refund." However, because the appellate court did not find the term "refund" ambiguous, it declined to consider the legislative history.

Case Note:

In its decision, the court noted that courts in other jurisdictions have held that a "refunded" fee can be paid to an entity other than the original payor. See, e.g., Washington Urban League v. F.E.R.C., 886 F.2d 1381, 1386 (3d Cir. 1989); Texas Eastern Transmission Corp. v. Federal Power Commission, 414 F.2d 344, 348-49, 80 Pub. Util. Rep. 3d (PUR) 342 (5th Cir. 1969); Southern County Mut. Ins. v. Surety Bank, N.A., 270 S.W.3d 684, 688-89 (Tex. App. Fort Worth 2008); Lake County Bd. of Review v. Property Tax Appeal Bd. of State of Ill., 119 Ill. 2d 419, 116 Ill. Dec. 567, 519 N.E.2d 459, 461-62 (1988).

Inverse Condemnation—Under ordinance, when adjacent lots came under common ownership, they merged

Lot owners alleged merger of lots deprived use of one lot, amounting to a compensable taking

Citation: *Murr v. State, 2014 WL 7271581 (Wis. Ct. App. 2014)*

WISCONSIN (12/23/14)—This case addressed the issue of whether an ordinance that merged two adjacent lots under common ownership deprived the owners of all or substantially all practical use of their property such as to amount to a compensatory taking.

The Background/Facts: Joseph Murr, Michael Murr, Donna Murr, and Peggy Heaver (collectively, the "Murrs") owned adjacent lots—Lot E and Lot F—near a river in St. Croix County (the "County"), Wisconsin. The Murrs' parents had purchased the lots separately in the 1960s. On Lot F, the Murrs' parents built a cabin. Lot E was allegedly purchased as an investment property, with the intention of developing it separate from Lot F or selling it to a third party. Together the lots contained approximately 0.98 acres.

The Murrs' parents transferred Lot F to the Murrs in 1994. They transferred Lot E to the Murrs in 1995. Under a County ordinance, § 17.36I.4.a (the "Ordinance"), the 1995 transfer of Lot E brought the lots under common ownership and resulted in a merger of the two lots. The Ordinance prohibited the individual development or sale of adjacent, substandard lots under common ownership, unless an individual lot had at least one acre of net project area. However, if abutting, commonly owned lots did not each contain the minimum net project area, they together sufficed as a single, buildable lot.

Years later, the Murrs wanted to sell Lot E as a buildable lot. They sought a variance to separately use or sell their two contiguous lots. That variance was denied, and the denial was upheld in court. The Murrs then filed a complaint against the State of Wisconsin (the "State") and the County. The Murrs alleged that the Ordinance resulted in an uncompensated taking of their property. They maintained that the merger of their lots under the Ordinance deprived them of "all, or practically all, of the use of Lot E because the lot [could] not be sold or developed as a separate lot." They alleged that the lot was usable only for a single-family residence, and that without the ability to sell or develop it, the lot was rendered useless.

Finding no material issues of fact, and deciding the matter on the law alone, the circuit court granted summary judgment to the County and State.

The circuit court held that there was no taking here because the Murrs' property, taken as a whole, could be used for residential purposes, among other things.

DECISION: Judgment of circuit court affirmed.

Agreeing with the circuit court, the Court of Appeals of Washington held that the Murrs' takings claim failed on its merits as a matter of law.

The court explained that federal and state constitutions do not prohibit the taking of private property for public use, but they do require that the government provide just compensation for any taking. The court further explained that under Wis. Stat. § 32.10, in the absence of physical occupation, in order to amount to a compensatory taking, the facts alleged must demonstrate that a government restriction "deprives the owner of all, or substantially all, of the beneficial use of his property."

Here, the Murrs had alleged that the Ordinance (a government regulation) effectively was a taking of their property because it deprived them of all, or substantially all, of the beneficial use of their property. The Murrs had argued that the circuit court erred when examining the beneficial uses of Lots E and F in combination. Rather, the Murrs insisted that they were entitled to compensation for the taking of Lot E, which now could not be sold separately and therefore "ha[d] no value."

The appellate court rejected the Murrs' argument. It pointed to a "well-established rule that contiguous property under common ownership is considered as a whole regardless of the number of parcels contained therein." Focusing on the Murrs' property as a whole (Lot E and Lot F combined), the court found it clear that the Murrs' could not establish a compensable taking. The property sufficed as a single, buildable lot under the Ordinance. The Murrs could continue to use their property for residential purposes, including the ability to use Lot E for such purposes (such as by razing the cabin on Lot F and building a new residence on Lot E or a new residence straddling both lots). The court found that the "Murrs' ability to use Lot E for residential purposes, standing alone, was a significant and valuable use of the property." Accordingly, the court concluded that the Murrs had not been denied "all or substantially all practical uses[ ]" of their property and thus failed to establish a takings claim.

See also: *Zealy v. City of Waukesha, 201 Wis. 2d 365, 548 N.W.2d 528, 42 Env't. Rep. Cas. (BNA) 2179 (1996).*

See also: *Howell Plaza, Inc. v. State Highway Commission, 66 Wis. 2d 720, 226 N.W.2d 185 (1975).*

Case Note:

Although the circuit court had ruled on the merits of the Murrs' claim, it had also concluded that the Murrs' claim was time barred. Having held as it did on the merits, the appellate court did not address that issue, but assumed without deciding, that the claim was time barred.

Uses—Property owner seeks conditional use permit

Township says it has no authority to issue such a permit

Citation: *Restore House, Inc. v. Helga Tp., 2014 WL 7237354 (Minn. Ct. App. 2014)*

MINNESOTA (12/22/14)—This case addressed the issue of whether a township had the legal authority to grant a request for a conditional use permit.

The Background/Facts: Restore House, Inc. ("Restore House") operated a six-resident chemical dependency treatment facility ("facility") in Helga Township (the "Township"). The facility was located in a large house on a 14-acre lot zoned "Agricultural/Rural Residential." In that zoning district, state licensed residential facilities serving six or fewer persons was allowed as of right.

In February 2013, Restore House applied for a conditional use permit ("CUP") that would allow it to serve nine, rather than just six, residents on the property. The public objected to the CUP, expressing fear that the residents would menace the community. Ultimately, the Township's Board of Supervisors (the "Board") denied the CUP. The Board's stated reasons for the denial included findings that the planned use would: "be detrimental to the public safety . . . ;" and would be an "incompatible" use, changing the essential character of the primarily residential area.

Restore House sued the Township. It asked the district court to declare that the Board's denial of its CUP request was based on insufficient and discriminatory grounds. Among other things, Restore House argued that the explanations for the denial were factually and legally deficient, and that the denial also discriminated against the disabled.

The Township argued that the governing zoning ordinance did not authorize it to grant the CUP.

The district court entered judgment against Restore House. It agreed with the Township, finding that the governing zoning ordinance gave the Board no legal authority to approve the CUP application.

Restore House appealed.

DECISION: Judgment of district court affirmed.

The Court of Appeals of Minnesota agreed with the Township and the district court. It held that the governing zoning ordinance gave the Board no legal authority to approve the CUP application.

In so holding, the court noted that the state legislature, under Minn. Stat. § 462.357 authorizes town boards to designate land uses by zoning ordinances, and under Minn. Stat. § 462.3595, authorizes town boards "by

ordinance [to] designate . . . certain land development activities as conditional uses under zoning regulations." Notably, the court found that the statute gave a town board "no authority to permit a conditional use that the ordinance has not designated as a conditional use or to issue a permit when the standards 'stated in the ordinance' cannot be satisfied."

Here, the court found that the controlling provision of the Township's ordinance directed that "[o]nly those uses specifically listed in this Ordinance as being allowed within a particular district as a permitted, conditional, interim, or accessory use may occur within that district." (Helga Township, Minn., Land Use Ordinance art. V, § 3 (2011).) The ordinance prohibited a landowner from engaging in any conditional use in a district without a permit. (Township Ordinance, § 1(9).)

Also here, the Ordinance permitted only the following uses in the Agricultural/Rural Residential District where Restore House's property was located: 1. Farms and agricultural uses; 2. Forestry; 3. Single family residences; 4. State licensed residential facilities serving six or fewer persons; 5. Class A home occupations; and 6. Accessory uses and structures to the above principal uses. The Ordinance enumerated no conditional uses for that zoning district.

Since the Board's statutory authority to grant any conditional use was restricted to those conditional uses designated by ordinance, and the Township's Ordinance did not designate any conditional uses (including residential treatment facilities serving more than six residents), the court concluded that: therefore, Restore House could not, as a matter of law, show that the Ordinance's criteria could be satisfied, and therefore, the Board had no legal authority to grant Restore House the requested conditional use permit.

See also: *Costley v. Caromin House, Inc., 313 N.W.2d 21, 27 (Minn. 1981).*

Case Note:

Restore House had also argued that the Township had waived the argument of having no legal authority to issue the CUP because it had failed to raise that argument/issue during the CUP proceedings. The appellate court acknowledged that it generally does not allow landowners to litigate issues that are not raised in the zoning process. However, the court noted that exceptions applied—such as when reviewing an issue first raised on appeal that is "plainly decisive of the entire controversy on its merits." Moreover, here, the court found was the "rare situation" in which, in addition to the municipality's stated reasons for denying the permit, the municipality simply lacked the legal authority to grant the application. The court concluded that courts were not prevented by the doctrine of waiver from affirming a municipality's denial of a conditional use permit based on the municipality's lack of authority to grant the permit even if the municipality first identifies its lack of authority during a judicial proceeding challenging its bases for denying the permit.

Variance—After seawall is constructed in accordance valid building permit, town says it violates zoning setback requirements

Town then denies variance from setback requirements finding no "practical difficulties" would result from denial

Citation: *Caddyshack Looper, LLC v. Long Beach Advisory Bd. of Zoning Appeals, 2014 WL 6843364 (Ind. Ct. App. 2014)*

INDIANA (12/04/14)—This case addressed the issue of whether strict application of an ordinance would result in practical difficulties, supporting the grant of a variance.

The Background/Facts: Caddyshack Looper, LLC ("Caddyshack") owned real property on Lake Shore Drive, adjacent to the Lake Michigan beachfront, in the Town of Long Beach (the "Town"). After a severe storm sheared a five-or six-foot cliff from the property, Caddyshack sought to construct a seawall to protect its property and improvements on the property. Caddyshack, through its contractor, submitted a building permit application to the Town for construction of a seawall. The building permit was issued in January 2011. Construction of the seawall began in early February 2011 and was completed by early March 2011. During construction, the Town's building inspector visited the construction site multiple times.

On March 18, 2011, the Town's Building Commissioner (the "Commissioner") notified Caddyshack and its contractor that the seawall had been constructed in violation of the Town's View Protection Ordinance (the "Ordinance"). The Ordinance prohibited the location of a structure ("i.e., a septic system and steel seawall") further than 106.6 feet from Lake Shore Drive. The Commissioner ordered Caddyshack to remove its seawall.

In July 2011, Caddyshack applied for a variance to "extend the seawall beyond the 106.60 foot setback" and "extend the seawall for 36.6 feet on the west side and 36.4 feet on the East side beyond the 106.60 mark."

The Town's Advisory Board of Zoning Appeals ("BZA") denied Caddyshack's request for a variance. The BZA based the denial on finding

that: "it was injurious to the morals and general welfare of the citizens of the Town to allow a contractor to build a structure that it should have known violated the Ordinance, that the contractor should have known a building permit signed by the Town's Clerk-Treasurer was improperly issued, and that the contractor acted at its peril in relying on the permit." The BZA further found that the use and value of the area adjacent to the property would be affected in a substantially adverse manner. The BZA also found that the strict application of the Ordinance would not result in practical difficulties in the use of Caddyshack's property because it found the record was "devoid of any evidence whatsoever showing that a seawall could not be built within the 106.6 ft. setback as required by [the Ordinance]."

Caddyshack appealed to court. Disagreeing with the BZA, the court found that approval of Caddyshack's requested variance would not be injurious to the public. The court observed that the reasoning of the BZA was based on whether Caddyshack obtained an invalid building permit and had knowledge of the setback requirement, and the court found that this was not a proper evaluation of whether granting a variance would be injurious to the public. Moreover, the court found that Caddyshack and its contractor should not have known that the building permit was invalid. The court also found no evidence that granting of the variance and construction of the seawall would affect the view or property values of surrounding properties. However, the court did find that there was insufficient evidence of economic injury that would result from denial of the variance request, and that there was no evidence that an existing seawall could not be built within the 106.6 foot setback. Thus, the court concluded that the BZA was not arbitrary or capricious when it denied Caddyshack's variance request, finding that strict application of the Ordinance would not result in practical difficulties in the use of the property for which the variance was sought.

Caddyshack appealed.

DECISION: Judgment of superior court reversed, and matter remanded.

The Court of Appeals of Indiana disagreed with the BZA and superior court findings. It concluded that strict application of the setback requirement would result in practical difficulties of the property, and that therefore Caddyshack's variance request should be granted.

In so holding, the court explained that under Indiana statutory law, Ind. Code § 36-7-4-918.5(a), a board of zoning appeals may approve a variance if: (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community; (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and (3) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

Here, the court found that "[t]he evidence before the BZA, as determined

by the trial court and not challenged by the BZA on appeal, did not support the BZA's findings under subsections (1) and (2) of Ind. Code § 36-7-4-918.5." Thus the court focused its analysis on whether the denial of the requested variance would not result in practical difficulties in the use of Caddyshack's property. In its analysis of that issue, the court looked at the following factors: (1) whether "significant economic injury" would result if the ordinance was enforced; (2) whether the injury was self-created; and (3) whether there were feasible alternatives.

Here, the court found the following:

(1) "The evidence . . . shows that the factor of whether significant economic injury will result if the setback requirement is enforced weighs in favor of a finding that compliance with the setback requirement will result in practical difficulties in the use of the property." Though hard to predict potential future damages to the property if a seawall were not installed, the seawall was installed to protect the property from future damage. Past storm damage to the property had included exposure of pipes and the evidence showed that the distance between the edge of the pool and the 106.6-foot setback line was relatively short.

(2) "The factor of whether any injury was self-created does not weigh heavily in favor of a finding that compliance with the setback requirement will or will not result in practical difficulties in the use of the property." Although Caddyshack should have had knowledge of the applicable setback requirements and failed to seek and obtain a variance from the BZA to the setback requirements prior to installing the seawall, a building permit was issued based on information as to location of the seawall and the building inspector visited the construction site without objecting to the seawall setback location.

(3) "The factor of whether there were feasible alternatives which would have complied with the setback requirement which achieved the same goals of the landowner weighs in favor of a finding that compliance with the setback requirement will result in practical difficulties in the use of the property." The seawall was built to protect the home from storm damage. The evidence showed that there would have been few, if any, practical alternatives to a seawall within the 106.6-foot setback requirement that would adequately protect the property and that could be installed within the setback without damaging the improvements—including the existing septic system and the edge of the pool.

(4) Substantial removal or relocation costs, in light of the fact that the Town did not object to the location of the seawall before or during its construction, "provides an additional consideration which favors the conclusion that compliance with the setback requirement will result in practical difficulties in the use of the property."

Based on those findings, the court concluded that Caddyshack demonstrated that strict application of the setback requirement would result in practical difficulties in the use of the property under Ind. Code § 36-7-4-918.5(3). The court reversed the order of the trial court that had affirmed the denial of the variance, and the court remanded the matter.

See also: *Edward Rose of Indiana, LLC v. Metropolitan Bd. of Zoning Appeals, Div. II, Indianapolis-Marion County, 907 N.E.2d 598 (Ind. Ct. App. 2009).*

Zoning News from Around the Nation

CONNECTICUT

Norwalk's Common Council's Ordinance Committee is "working to put some teeth into the enforcement of Norwalk's zoning regulations." A proposed Zoning Citation Ordinance aims to "establish a local means of addressing violation rather than relying solely upon State Superior Court." Currently, Norwalk's Department of Planning and Zoning has the ability to pursue compliance through the courts and seek fines as prescribed under state statutes. Under the proposal, Norwalk "would be able to issue citations, meaning daily fines for zoning violations versus a zoning enforcement action in court." Citations would impose an initial fine of $150 and an additional fine of $150 per day after five days had passed. The recipient of the violation would have 10 days to make an "uncontested payment" of the fine, or to request a hearing.

Source: *The Hour; www.thehour.com*

MASSACHUSETTS

A Massachusetts superior court has heard arguments in a chicken zoning case. The case addresses the issues of: whether any accessory use not listed in a bylaw must be prohibited; and whether chickens meet the town bylaw's three-pronged test for allowable accessory uses (i.e., must be subordinate to the primary use, reasonably-related to the primary use, and customary within the zone).

Source: *The Republican; www.masslive.com*

PENNSYLVANIA

Four Pulaski residents are challenging the constitutionality of the township zoning ordinance. The residents claim that the township's zoning ordinance "fails to protect residential property owners from having to live near heavy industry." More specifically, they object to the township's 2002 zoning ordinance that allows hydraulic fracturing as a "conditional use" in a residential area. The residents argue that the ordinance violates the Pennsylvania constitution "because the zoning ordinance deprives residents 'of their constitutionally guaranteed right to enjoyment of private property without due process of law.' " They maintain that oil and gas drilling via hydraulic fracturing is not compatible or safe in a residential zone.

Source: *New Castle News; www.ncnewsonline.com*

