

PROCEEDINGS OF THE ST. CLOUD PLANNING COMMISSION

A meeting of the St. Cloud Planning Commission was held on August 9, 2011, at 6:00 p.m. in the St. Cloud City Hall Council Chambers. Members present were Anderson, DeVine (arrived at 6:10 p.m.), Holtberg, Radaich and Thometz. Andzenge and Chirhart were absent. Council representative Goerger was present.

Open Forum: No one was present to speak at the open forum.

Consent Agenda: Holtberg moved to approve the consent agenda as follows:

Acceptance of staff reports for August 9, 2011, as part of the official record.

Approval of minutes from the July 12, 2011 Planning Commission meeting.

Anderson seconded the motion, and it carried unanimously.

Land Development Code Amendment Requested by St. Cloud Planning & Zoning

Department: Matt Glaesman, Planning Director, explained that an outcome of the recent legislative session was a response to the Krummenacher vs. City of Minnetonka case. In that case, the Supreme Court took a strong position on the criteria for granting a variance. The Court's interpretation was very strict requiring the applicant to have virtually no use of the property in order to receive a variance. Municipalities strongly objected to the Court ruling because they lost control to make reasonable decisions, while there was also support for legislation remedying the situation from the development and construction industry. As a result, the Legislature responded with a compromise which is reflected in the proposed amendment to the Land Development Code (LDC). The amendment replaces the word "hardship" with "practical difficulties". The four criteria remain in place. Glaesman stated that the new legislation has been in effect since the beginning of May; therefore, many municipalities have been in conflict with that ruling until they adopt an ordinance amendment. Chairperson Radaich opened the public hearing on a request from the St. Cloud Planning and Zoning Department to amend Article 4 - Land Use Applications and Enforcement, to update the findings of

facts for variances, and update Article 21 – Definitions, to reflect recent changes in Minnesota State Law (LDC-2011-02). There being no one wishing to speak, the public hearing was closed.

Anderson moved to recommend approval of the amendment to Article 4 and Article 21 of the LDC to reflect recent changes in Minnesota State Law. The motion was seconded by Holtberg. Anderson asked if the Supreme Court's ruling would have been the same if Minnetonka's code would have had the practical difficulty language rather than undue hardship. Glaesman answered that the practical difficulty language would have given the City of Minnetonka the right to approve the variance. Goerger inquired as to who brought that case forward. Glaesman responded that it was brought forward by someone in the neighborhood. Goerger asked Matt to address the meaning of "practical difficulty." Glaesman explained that in the Krummenacher case, the practical difficulty would be that it would be difficult for the property owner to sell their home because the garage wasn't big enough. Another example would be that a longer walk around a house would result if a door could not be placed in a certain location. (DeVine arrived at 6:10 p.m.). Chairperson Radaich asked what might happen if an applicant was asking for an additional outbuilding. Glaesman responded that that scenario did occur just after the Krummenacher case. The applicant had a large property and was requesting another large garage in addition to the two garages that were already located on the property. That request was denied based on the Supreme Court decision. If that case were to come back now, it could probably be approved. The practical difficulty would be that the property owner would have to remove trees in order to expand the second garage. Anderson asked if the process would be the same if that applicant requested the same variance under the new definition. Glaesman answered that staff has informed that property owner about the change in interpretation and that there would be a reduced fee if he wanted to reapply for the variance. The motion to recommend approval carried unanimously.

Land Development Code Amendment Requested by the St. Cloud Planning & Zoning

Department: Matt Glaesman, Planning Director, noted that this request is in response to a request that was made at the open forum several months ago. Staff is initiating an amendment because the

ordinance is not clear as to the standards that apply to amateur radio operations. The proposed amendment states that amateur radio towers are permitted as an accessory use to a permitted or conditional use. The amendment also includes the bulk/design standards. Currently, only stealth or camouflage towers are allowed in residential zoning districts. The current standards also restrict the height of the towers in residential districts to the height of the principal use (35'). According to the person speaking at the open forum, that height is insufficient to perform amateur radio operations. Glaesman pointed out the standards from some other MN communities that were included in the packet. Sartell allows a 50' height; Sauk Rapids allows 35'; and Waite Park allows 50'. Chairperson Radaich opened the public hearing on a request from the St. Cloud Planning Commission to amend Article 15 - On Site Development Standards to allow non-commercial wireless communication towers within all of the City's residential districts. (LDC-2011-03). The following persons testified:

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| Linden Hall
3001 8 th St. No. | He is an amateur radio operator and would like to put up a tower in his back yard to increase his ability to talk to other stations. For most HAM operators, the optimum tower height is 65'. He would like to put up a 45' tower. His lot is very narrow, and he wants the tower to be safe. His primary concern is that the ordinance address safety. He does not want to have to meet commercial standards because it is cost prohibitive. The amendment could include language that states that space on an amateur tower cannot be leased. |
| Chairperson Radaich | He supported inclusion of language prohibiting leasing of tower space. |
| Sheila DeVine | She asked Mr. Hall how the 65' was arrived at for the tower height. |
| Linden Hall | He stated that is the optimum height. Most of directional antennas are for a 20 meter band or 14 megahertz band, and one wave length is approximately 66' which gives optimum reception above flat ground for an amateur tower. |
| Jake Anderson | He asked Hall if the towers can be retrofitted with other equipment on them such as for wind energy conversion systems. |
| Lindon Hall | Yes, that is possible. |
| Chairperson Radaich | He asked if staff recommends a specific height limitation. |
| Matt Glaesman | He would not support a 65' height, but an increase to 50' may be appropriate. |

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| Chairperson Radaich | He asked Mr. Hall if the 50' height would be sufficient for the average HAM radio operator. |
| Lindon Hall | A 50' height would be acceptable. Most of the amateur activity is on 20 meters, and the optimum for that would be 65'. |
| Jake Anderson | He asked if there could be a provision for a special use permit if someone wanted a taller tower. |
| Matt Glaesman | Exceptions could be dealt with through the conditional use permit or variance process. |
| Mary Jo Thometz | She asked if fencing around the tower would be required to address safety concerns or plantings to make it more aesthetically pleasing. |
| Matt Glaesman | He stated that neither are typically required. Fencing may not be appropriate, but setbacks can address safety concerns. |
| Chairperson Radaich | He asked if someone owns two adjacent 50' lots, could they place a tower on the 50' lot with no principal structure? |
| Matt Glaesman | They could apply for a variance or combine the lots to allow it. |

There being no one else wishing to speak, the public hearing was closed. DeVine stated that a variance from the height may be easier to grant if applying practical difficulty as compared to undue hardship. She asked if the height of trees would eliminate the effectiveness of a 50' tower as compared to a 65' tower. Hall answered that the trees around his house block his signal when it rains. In his case, a 45' tower would be 5' above the trees on his lot. Antennas should be higher than the treetop level. DeVine asked if many lots in the City would have trees over 50' in height. Glaesman stated that may be a concern in some of the older neighborhoods with more mature trees, but that would be an example of where the practical difficulty test could be used. DeVine suggested a maximum 50' height with the opportunity to apply for a variance. Hall pointed out that amateur radio operators are licensed to operate up to 1,000 watts, and the further they are from the antenna, the better. He does get some interference in his radio room because his antenna is only 25' high. A higher tower is safer for the operator and for the neighbors because there is less radiation, even though it is non-ionizing radiation. Goerger said he understands a 65' height would be optimal, but asked if HAMS can operate at 50'. Hall responded that the signal would bounce off the earth and the

ionosphere at different angles with a 50' and a 65' tower. Goerger asked if a 50' height would help Mr. Hall's situation. Hall answered that a 45' height would suffice for his operation; however, most HAM operators would want 65'. Holtberg asked staff for an explanation of the process to erect a tower. Glaesman stated that the standards in the table are allowed by right. However, the only types of towers allowed in the residential districts are stealth and camouflage. He stated that adding other types of towers by right in the residential district is a big change. A building permit would be necessary to erect a tower. Anderson asked if it would be acceptable for an amateur radio tower to have the capability of converting to a wind energy conversion system. Glaesman answered that would not be allowed. DeVine noted that standards of several other cities allow the towers only in the rear yard and believes that would be appropriate. She stated she didn't have a concern about setbacks. Glaesman said the intent would be for the setbacks to match the rear yard setbacks required for the principal structure of the zoning district. Glaesman added that staff would not support guyed towers in the residential district, but could support monopole and self-support lattice towers. Goerger asked if some language could be incorporated into the ordinance to address safety concerns, particularly for a lattice tower. Glaesman said that staff can draft some language to address safety concerns prior to the ordinance being forwarded to the City Council.

Holtberg moved to approve the draft ordinance as presented with the addition of amending Table 15-3 to allow self-support lattice and monopole towers in the residential districts subject to a 50' height restriction. Anderson seconded the motion, and it carried unanimously.

Beaver Island Trail Phase #4 - Future Project Right-of-Way Investigation: Matt Glaesman, Planning Director, explained that the Beaver Island Trail Phase #4 project is included in the City's Capital Improvements Program (CIP) for construction in 2012. The City received grant funds through the APO to assist with this project. Glaesman stated that the Commission needs to take action on the trail alignment and approval of the investigation of right-of-way for the future trail alignment. The end objective is to make an off-road connection between the 33rd St. So. and Co. Rd. 75 intersection and bring it to the main entrance of River Bluffs Regional Park. This project can be done as a result of

the APO funding and the available sales tax dollars. Glaesman stated that the Commission must consider whether the trail should be separate from the Co. Rd. 75 improvements. The City already owns some right-of-way that was formerly railroad corridor. The remainder of the connection would occur on private property. If the Commission agrees that the trail should be separate from the heavily traveled highway, property would need to be purchased. The other design option would be that the trail come to the signalized intersection of 33rd St. and Co. Rd. 75, staying closer or even sharing the roadway with the Co. Rd. 75 improvements. That design would result in the trail going along the frontage road south to 38th St. Glaesman said a backage road behind the businesses on Co. Rd. 75 is anticipated. Staff supports separating the trail from the roadway and placing it on the former railroad corridor both for safety purposes and because the City will already be in a position to have to purchase right-of-way in that area to provide access into the development that will ultimately occur along Co. Rd. 75. Chairperson Radaich asked if the grant from the APO could also be used to acquire the property for the trail. Glaesman answered that the grant money can also be used for acquisition. The total project cost is estimated at approximately \$900,000; the APO grant is for approximately \$400,000. Anderson asked the life expectancy of a trail before it needs to be resurfaced. Glaesman responded that the average is 15 to 20 years. Anderson inquired as to how many people use the Beaver Island Trail. Glaesman stated that there aren't accurate pedestrian counts. However, staff believes there will be a significant increase in use after the connection to River Bluffs Regional Park is completed. DeVine commented that the trail is currently used by many people and agrees with staff that the connection will increase usage. DeVine asked if the City would only attempt to acquire easements on those private properties. Glaesman answered that the City will attempt to acquire the right-of-way because the City will eventually build a roadway adjacent to the connection for a backage road for Co. Rd. 75. Holtberg and Anderson said they would prefer the design that keeps the trail away from Co. Rd. 75. Devine moved to approve the trail alignment that separates it from Co. Rd. 75 and that the City begin negotiating for acquisition of the right-of-way for the trail. The motion was seconded by Holtberg and carried unanimously.

Other Business: Glaesman reminded the Commission of the upcoming MNAPA conference in St. Cloud and asked that they notify staff if they plan to attend. Holtberg commended City workers who were involved in cleanup after the storm that occurred around the 4th of July. He also thanked those who have made the Summertime by George! possible.

Adjournment: There being no further business, the meeting was adjourned at 7:02 p.m.

Dick Andzenge, Secretary