

MINUTES

CALL TO ORDER

Chair Maddy called the meeting to order at 7:00 P.M.

ROLL CALL

Present: Chair Maddy; Commissioners Eggenberger, Riedel, Huskins and Holker; Planning Director Darling; and, Council Liaison Siakel

Absent: None

1. APPROVAL OF AGENDA

Commissioner Huskins noted that on his copy of the agenda he is marked as absent.

Planning Director Darling explained that she thought he was not going to be in attendance tonight.

Riedel moved, Huskins seconded, approving the agenda for March 1, 2022, as amended. Roll Call Vote: Ayes – all. Motion passed 5/0.

2. APPROVAL OF MINUTES

- **February 15, 2022**

Huskins moved, Riedel seconded, approving the Planning Commission Meeting Minutes of February 15, 2022, as presented.

Roll Call Vote: Ayes – Eggenberger, Huskins, Riedel, Maddy. Motion passed 4/0/1 (Holker abstained).

3. MATTERS FROM THE FLOOR - NONE

4. PUBLIC HEARINGS

Chair Maddy explained the Planning Commission is comprised of residents of the City of Shorewood who are serving as volunteers on the Commission. The Commissioners are appointed by the City Council. The Commission's role is to help the City Council in determining zoning and planning issues. One of the Commission's responsibilities is to hold public hearings and to help develop the factual record for an application and to make a non-binding recommendation to the City Council. The recommendation is advisory only.

A. PUBLIC HEARING – CONDITIONAL USE PERMIT FOR TELECOMMUNICATIONS ANTENNAS

Applicant: SMJ International, LLC for Dish Wireless

Location: 24283 Smithtown Road

Planning Director Darling explained that this is a request for a CUP for co-location of telecommunications antennas on the existing tower located at 24283 Smithtown Road. They are proposing to add three telecommunication antennas and six radio receiving units and various other equipment in a triangular array at about 138 feet above the ground which is just a little higher than midpoint of the tower. She noted that the unusual complication for this application is that there are nesting osprey at the top of the tower so any work on the tower needs to be done outside of nesting season and if the nest will be disturbed, they will need to obtain permits from the DNR. She explained that staff recommends approval, subject to the conditions included in the staff report.

Chair Maddy stated that the City had approved a CUP for this in the past and asked if there was any difference other than the dates on the paperwork.

Planning Director Darling stated that the difference between this application and the previous application is that they are proposing an ice bridge but that is a fairly minor change.

Commissioner Riedel asked about screening of the equipment at the base, its visibility and whether staff felt it was satisfactory.

Planning Director Darling stated that they have not proposed any particular screening with this application. She explained that they are proposing to install equipment on the north side, so from the park, there are many mature trees and a building between the equipment and park users will be. She stated that she thinks the equipment will be fairly invisible and noted that they had previously proposed slats in the chain link fencing, but she finds those to be a long-term maintenance issue and they tend to look worse after just a few years.

Commissioner Huskins asked about the portion of the parcel that was being leased for this tower.

Planning Director Darling gave an overview of the site layout and use using the aerial photograph.

Commissioner Eggenberger asked if the tower was currently being used by an osprey pair.

Planning Director Darling stated that the tower is used every year by osprey that come back year after year. She stated that there was maintenance that occurred at the top of the tower about a year ago and they did have to obtain a permit from the DNR to remove the nest and complete their maintenance. She stated that the osprey came back and rebuilt the nest, but noted that the nest is abandoned in winter.

Commissioner Eggenberger asked if the City needed to be more specific on 'nesting season' and asked whose definition was being used.

Planning Director Darling explained that the City uses the DNR's definition for nesting season.

Commissioner Eggenberger asked about the building on the site and what it was used for.

Planning Director Darling explained that it was used for both storage and for detailing cars that are sold on the lot.

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Commissioner Eggenberger stated that he can remember discussing the fencing during the last application. He noted that he understands the concern about slats not looking good long-term, and realizes that perhaps there will not be many people who will see the chain link fence, but he thinks it looks terrible. He stated that it may be good that it can be seen through, but reiterated that he doesn't think the fencing looks good and suggested that perhaps it was in need of a new one.

Planning Director Darling stated that if the Commission has issues with the maintenance of the fence, she would need to get in contact with the tower owner.

Kristin Swenson, SMJ International, on behalf of Dish Wireless, 49030 Pontiac Trail, Suite 100, Wixom, MI, reviewed their application to accommodate a new wireless carrier that will bring additional options and services to the community. She stated that this is helpful because many people have been getting rid of their landlines and exclusively using wireless services. She stated that the co-location will not adversely affect land owners because the antennas are being added to an existing structure. She stated that they are aware of the conditions being recommended by staff and indicated that they intend to comply with them.

Commissioner Huskins asked if the expert inspector has been selected and if, so, could she identify that person or firm.

Ms. Swenson explained that they have not yet been selected but she ordered the statement of special inspections this morning and expects it to be back within a week.

Chair Maddy opened the Public Hearing at 7:26 P.M. noting the procedures used in a Public Hearing. There being no input, Chair Maddy closed the Public Testimony portion of the Public Hearing at 7:27 P.M.

Commissioner Eggenberger asked that when maintenance is done, even outside of nesting season, that the applicant do whatever they can to not disrupt the osprey.

Riedel moved, Huskins seconded, recommending approval of the Conditional Use Permit for Telecommunications Antennas, for SMJ International, LLC for Dish Wireless at 24283 Smithtown Road, subject to the conditions recommended in the staff report.

Roll Call Vote: Ayes - all. Motion passed 5/0.

Planning Director Darling noted that this item will be on the March 14, 2022 City Council agenda.

B. PUBLIC HEARING – CITY CODE AMENDMENTS FOR URBAN FARM ANIMALS

Applicant: City of Shorewood

Location: City-wide

Planning Director Darling reviewed the proposed amendments to City Code to: add new definitions of enclosures/runs and urban farm birds; add requirements that urban farm bird enclosures/runs/shelters must be fully covered with nets; greater setback for enclosures/runs/shelters to increase distance to side property lines; amend the regulations that do not need to apply to rabbits or bees; and add a means to revoke and deny permits.

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Chair Maddy asked if the Chief of Police still needs to be the referenced enforcer since the City permits and inspects the properties.

Planning Director Darling noted that they Chief of Police is not the enforcer for the urban farm animals but is listed as the enforcer for the rest of the animals.

Chair Maddy pointed out a few grammatical errors that he had found including under Section 705.09 Farm Animals, 2.C. the word 'additional' should be changed to 'addition'; and under 2.D., he believes 'animal' should be made plural. He asked about the language used under Denial of Permits related to inspections and whether it should be changed to make it clear that there was not something the City was supposed to do.

Planning Director Darling suggested changing the language to, '...the applicant has not requested the required inspection for three calendar months.'

Commissioner Huskins asked if there was any language about any minimal size property that would be precluded from having a permit for farm animals.

Planning Director Darling stated that the Commission had asked that restriction be taken out.

Commissioner Riedel explained that part of their discussion and reason for making that change was to have a set number of animals, but increase the setback.

Commissioner Huskins asked if the smallest lot within the City was capable of having six urban farm animals.

Planning Director Darling confirmed that this was accurate.

Commissioner Holker stated that in the prior minutes there was a conversation about neighboring cities and how close the City is to their regulations. She stated that Planning Director Darling had indicated it had been included in a prior packet but would have some information about that at this meeting and asked if there was any information she could share related to neighboring communities.

Planning Director Darling noted that she had forgotten to include that information in their packets but could review the regulations from other communities in the Twin Cities.

Planning Director Darling noted that the City had received a letter from Patrick and Jenna Johnston at 25965 Smithtown Road who opposed some of the new regulations including the 30 foot setback requirement.

Chair Maddy opened the Public Hearing at 7:45 P.M. noting the procedures used in a Public Hearing.

Benton Sellwood, 20775 Garden Road, asked if this would require that any enclosure, such as a chicken run, have netting or a barrier over the top.

Planning Director Darling confirmed that was what was being proposed.

Mr. Sellwood explained that he believes that may be an issue for some enclosures. He stated that he has never had a problem with his birds coming out and noted that he had tried to put an enclosure over the top when he first began, but it proved to be difficult for functionality and

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maintenance and reiterated that his birds have not gotten out. He stated that in the case a predator would get into the enclosure, he would like his birds to be able to at least try to jump out and get into a tree. He asked if there was a way that the City could consider looking at this issue again.

Patrick Johnston, 25965 Smithtown Road, stated that he sent the letter earlier today and wanted to make sure that everyone was able to read it.

There was agreement from the Commission that they had read the letter submitted by Mr. Johnston.

Commissioner Riedel stated that he would like to begin discussion with the issue raised by the residents and asked if the City could consider 'grandfathering'. He asked for opinions on the situation where the Commission was in agreement on a 30 foot setback, related to grandfathering in people who have existing chicken coops that were built when 10 feet was the setback requirement. He stated that the permit has to be renewed and if the chicken coop was considered moveable, there would be no legally non-conforming structures.

Chair Maddy asked what guidance the City received from legal counsel on who would make the choice on whether it was fixed or moveable coop.

Planning Director Darling stated that as it is written now, if it is a structure that is permanently fixed to the ground, then those structures would be considered legally non-conforming and they would be allowed to continue to have chickens in them.

Chair Maddy asked about freestanding sheds that are too big to move.

Planning Director Darling stated that would fall under the same situation, but moveable hutches or coops would have to be moved.

Chair Maddy asked if the inspector would make that determination.

Planning Director Darling stated that the inspector would make that choice. She stated that in the older permits they had to give a description or a diagram of the shelter.

Commissioner Eggenberger explained that he had not thought much about the change from 10 feet to 30 feet until he read Mr. Johnston's letter this afternoon. He asked what the reason was for 30 feet as opposed to 10 feet.

Commissioner Riedel stated that he believes it was the idea of extending the distance to avoid disruption to the neighbors. He stated that it was a proposed compromise to allow people to have chickens on small lots, but not to be able to situate them right next to the property lines. He stated that there is also a provision that the chickens have to be closer to your own property than to your neighbors.

Planning Director Darling noted that increasing the distance also potentially helps with smells relating to waste that is not cleaned up.

Commissioner Eggenberger pointed out that dogs can be within 10 feet and asked how that is different than urban farm animals.

Council Liaison Siakel noted that most dogs do not live outside full-time like a chicken.

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Commissioner Riedel noted that dogs are also much more common than chickens. He stated that he does agree that it does seem arbitrary and having a 30 foot setback requirement could really constrain people.

Commissioner Eggenberger stated that he is not anti-chicken or pro-chicken, but he sees a dichotomy where a person can put up a fence with multiple dogs within 10 feet of the property line, but another person who wants to have guinea fowl cannot.

Commissioner Riedel suggested that 30 feet may be excessive and suggested a compromise of 15 or 20 feet.

Chair Maddy stated that he re-read some of the other cities regulations and was interested in the possibility of a 10 foot setback, but needed to be 50 feet away from a neighbors residence. He stated that it would not need to be those exact numbers, but feels that may be a concept that would work.

Commissioner Huskins asked how many permits have been issued or renewed over the last 5 years. He asked if it would be possible to do a paper study to determine how many of the existing structures would need to be 'grandfathered'.

Planning Director Darling stated that she has a list of all the permit holders because she sent them all notices of this meeting. She stated that she believes there are about a dozen that are permitted with chickens and another 5 or 6 that are keeping farm animals without permits.

Council Liaison Siakel stated that what was kind of guiding these changes were complaints around coops that were right on the property line, closer to the neighbors property than the chicken owner, chickens escaping, smell, and disruption. She stated that there were some pretty heated comments from neighbors that were inconvenienced and not happy with having neighbors that kept chickens. She stated that in her neighborhood there are two families that have chickens but noted she was not sure if either one of them was permitted. She stated that she also believes that another reason for having well defined guidelines that were less ambiguous is because chicken keeping is becoming more popular.

Planning Director Darling stated that one of the individuals that complained was someone who had chickens on all three sides of his property which had been escaping from all three of the properties into his yard and are then causing damage. He stated that he has also been worried that his dogs will attack the chickens which would cause a neighborhood incident.

Council Liaison Siakel stated that there were also concerns about predators coming into the neighborhood because of the chickens and about the City not ending up like a rural farm community.

Planning Director Darling explained that this particular property owner stated that the chickens are getting out on a regular basis and they scratch up and move his landscaping mulch and dig up the plants.

Chair Maddy stated that he is not sure a setback would address those problems.

Commissioner Huskins stated that the regulations from nearby cities that Chair Maddy mentioned with both a setback and a distance from a neighboring home could be something that the City

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considers, especially since they are not recommending a lot size restriction on having urban farm animals.

Planning Director Darling stated that within the last amendments that were reviewed and adopted, there was a change to the setbacks such that the enclosures have to be farther from the adjacent neighbors home than the chicken owners home, but it did not provide a specific distance.

The Commission discussed various setback regulations and how they would affect various sized lots.

Commissioner Holker stated that it sounds like there are some bad chicken owners and asked if there was any type of enforcement options, such as only being allowed a certain number of offenses before their permit was revoked.

Planning Director Darling stated that they are proposing some language that would allow the City to deny or revoke permits for property owners that are adopting poor animal husbandry, for example, allowing their chickens to escape.

Commissioner Holker asked who would make that decision.

Planning Director Darling stated that would usually come to her, but noted that those decisions are appealable to the City Council.

Chair Maddy suggested a 10-foot setback and the requirement to be 50 feet from the neighbors dwelling.

The Commission discussed specifics around being no closer than 10 feet from the property line with the requirement to be 50 feet from the neighbor's home.

Council Liaison Siakel noted that to address the comments made in the letter sent by Mr. Johnston regarding enclosure the coops, she felt some of his points were valid. She asked if there could be something put in that with the first complaint of chickens escaping they would be requiring to enclose the coop and a second violation results in revocation of the permit so there is an escalating penalty.

Chair Maddy noted that all of his neighbors who have chickens have nets, but he is unsure how much more work it creates.

Council Liaison Siakel stated that she has two neighbors who have chickens that roam free on their property and does not believe there is a net.

Commissioner Riedel stated that his view is that the City should simplify enforcement and not complicate it and feels the simpler the rules, in this situation, the better.

Commissioner Eggenberger stated that one of the residents had stated that adding an enclosure would be a hassle due to the snow and leaves. He stated that his thought it that perhaps that is the cost of raising chickens. He stated that it may not be ideal, but it may be just something that they need to do in order to have chickens.

Commissioner Huskins noted that he agreed that it becomes a balance between residents who do not have chickens but have been bothered by them and the responsibility and accountability

of the chicken owner. He stated that he thinks simplifying the rule to require netting for everyone makes sense to him.

Chair Maddy reviewed the items that the Commission agreed upon for the amendments to the Code.

The Commission discussed situations where urban farm animals owners could be grandfathered.

Riedel moved, Holker seconded, recommending approval of the proposed Code amendments to Urban Farm Animal regulations including; the grammatical changes as discussed, a minimum of 10 foot setback from property lines with 50 feet from neighboring homes and are closer to the owners home than to any adjacent neighbor.

Roll Call Vote: Ayes – all. Motion passed 5/0.

Planning Director Darling noted that this item would be in front of the City Council on April 14, 2022.

5. NEW BUSINESS

A. Campaign and Non-Commercial Speech Signs Discussion

Planning Director Darling explained that this agenda item is intended to be a pre-Public Hearing discussion regarding campaign and non-commercial speech signs. She stated that staff has put together some draft language for them to consider. She noted that the Commission had forwarded some potential amendments to the City Council but they did not act on them and continued it, indefinitely. She explained that a new public hearing will be required for any changes to the campaign and non-commercial speech signs. She stated that the main purpose for having any amendments is because the City has a number of regulations for campaign signs that duplicate and overlap each other and shared examples of where it can be difficult to determine when and when not to enforce the rules. She noted that the proposed amendments include adding new definitions; removing the definition of campaign signs; amending the regulations for campaign signs including renaming them as non-commercial signs, clarifying the time period when they are allowed, clarifying the setback; and adding a substitution clause.

Chair Maddy stated that in Reed v. The Town of Gilbert ruling, it says the City may still regulate signs on a reasonable time, place, and manner restrictions. He asked what this meant and if it referred to obscenities.

Planning Director Darling stated that is saying that you cannot regulate the content of the signs, but you can regulate where they sit, how long they sit, and the way they are installed.

Chair Maddy stated that he has had someone contact him saying that obscenities and implied obscenities or swear words are getting more and more popular. He stated that he wanted to clarify that the City will not even talk about restricting what goes on the sign.

Planning Director Darling stated that if the City did that they would likely be challenged with violation of the First Amendment and would be unsuccessful at defending themselves. She stated that she shares the concerns about the lack of civility, in general because of the increasing amount of anger. However, there is a line that the City has to walk and that includes not having regulations that are content based. She gave an overview of the suggestions and feedback made by the City Council on this issue.

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The Commission discussed primary and general election signs.

Planning Director Darling explained that the Commission was only being asked to have a narrow focus right now in order to get any amendments adopted prior to the election season. She noted that there will be some other Code amendments needed in the future.

Chair Maddy asked about the proposed 5-foot setback requirement from a street or paved roadway in a situation where people have a lot of shrubbery right up to the pavement edge and if that meant they would be disallowed from having signs. He asked if they could add a caveat that it has to be 5 feet from the paved surface unless there is something permanently affixed that would be a visual obstruction to people for seeing the sign.

Commissioner Eggenberger expressed concern that if someone wanted to put a sign closer to the street they could just go plant a little shrub so they could do it.

Chair Maddy stated that there would need to be some caveat about visibility but realized that there would be people that would try to 'game' the situation. He explained that he wants to err on the side of allowing people to put out more signs rather than restricting them.

Commissioner Eggenberger stated that his biggest concern with signs too close to the road is kids and safety.

Commissioner Huskins stated that he is a believer in personal choice and part of him says that if it is important to a resident to put a sign out, and the City has a reasonable setback code, then the fact that they have shrubbery does not prevent them from taking out part of the shrubbery to put up a sign. He stated that if they cannot comply and they complain because there is some obstruction in the way, he would question whether that is the responsibility of the homeowner to solve the problem by removing the obstruction.

Commissioner Riedel stated that there will always be a compromise involved and asked if the 5 foot setback was reasonable.

Council Liaison Siakel stated that even with a setback of 5 feet, there are a lot of properties in the City that would not be able to comply with that and noted that in her yard, she would have to take out a whole hedge of trees that were in place when they moved in to be able to comply. She stated that she did not think it has ever really been a problem, but now people have gotten a bit ugly about stuff and would not be surprised if this election season if people are out with tape measures to see how far the yard sign is from the edge of the road. She stated that people should be able to put out a reasonable sign and thinks this issue came up because many people were putting up their signs within the right-of-way areas, such as right near stop signs, which can be a safety issue. She suggested that in that case there needs to be some rules such as that it has to be a 10 foot setback if it is City right-of-way and asked if they could differentiate between private property and public space.

Chair Maddy asked why people are allowed to put non-commercial speech signs on right-of-way that they do not own the property in front of.

The Commission discussed free speech, public land, and obstructions.

There was consensus of the Planning Commission to support the 5 foot setback with no caveat.

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Commissioner Huskins stated that in the packet, Public Works Director Brown had made comments about intersections and setbacks that would be more appropriate and asked if the 5 foot setback would interfere with what he was addressing.

Planning Director Darling stated that referred to the safety triangle and language has been included to address that issue.

Commissioner Holker noted that reading this Code related to the substitution clause, was a bit confusing, but Planning Director Darling spent some time with her talking about it, so she has a better understanding of it, but noted that it was a confusing concept.

Chair Maddy noted that the substitution clause needs to remain in the Code, but the Commission could attempt to simplify it.

Planning Director Darling explained that the substitution clause in the most recent draft is simpler than what was previously included in the ordinance. She read aloud the traffic visibility section of the Code to the Commission and the substitution clause examples.

Chair Maddy stated that it appears as though the Commission is in agreement with the amendments presented by staff.

Planning Director Darling stated that she will make arrangements for a public hearing at the next Planning Commission meeting.

B. Election of Officers

Riedel moved, Eggenberger seconded, to re-appoint Chair Maddy to continue serving as Chair in 2022.

Roll Call Vote: Ayes – all. **Motion carried 5/0.**

Eggenberger moved, Maddy seconded, to re-appoint Commissioner Riedel to continue serving as Vice-Chair in 2022.

Roll Call Vote: Ayes – Eggenberger, Holker, Huskins, and Maddy. **Motion carried 4/0/1 (Riedel abstained).**

Commissioner Eggenberger stated he would like to discuss the issue surrounding the letter received from Mr. Larson and the instruction they had been given not to respond to him.. He stated that when people come to the meetings to speak and they are given 3 minutes to speak. He stated that if the Commission is told not to respond when they send a letter, he questions how residents can communicate with the Commission.

Planning Director Darling clarified that the issue was that he sent the letter and asked for a response from all Commissioners which would have been an open meeting law violation. She explained that Mr. Larson could come to another Matters from the Floor and bring up his points in front of the Commission at that time.

Commissioner Eggenberger asked about the 3 minute time limit and asked how that is regulated and whether people can be allowed to speak more than once.

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Chair Maddy stated that it is up to the Chair and he has only recently followed the 3 minute time limit when people started pushing their comments closer to the 20 minute mark. He stated that sometimes, he would like to have a little dialogue also, as long as it does not turn into a character attack, which came close at the last meeting.

Planning Director Darling noted that the 3 minute rule only applies to Matters from the Floor.

Commissioner Eggenberger stated that he understands the practicality of the rule, but it made him wonder how people can really discuss issues with the Commission.

Council Liaison Siakel explained that Mayor Labadie sent out a poll to mayors throughout the State asking about how other cities handled Matters from the Floor. She stated that the average response was that they allowed each individual about 3 minutes, with some allowing even less time. She explained that she thinks the idea is to allow them to run the meeting in a professional way that allows the City to conduct their business and be able to make decisions versus turning it over a crowd that is more disruptive and often times it is the same argument being repeated over and over. She stated that it is not that the City does not want these individuals to speak, but she feels that the City has put a process in place and has stuck to it, which means everyone is treated the same and gets to be heard.

Commissioner Riedel noted that the Planning Commissioners are not staff at City Hall and should not discuss matters that should be discussed with staff. He stated that the Commission's job is the Planning Commission meetings and that should be their focus.

Commissioner Eggenberger noted that he has never had a discussion with anyone about these kinds of things and explained that he had just been thinking about it because of what happened recently. He stated that he completely agrees with Commissioner Riedel's statement.

The Commission discussed hypothetical situations where Commissioners may be approached for information about City Code or variances by their neighbors or other members of the community.

Planning Director Darling stated that if residents ask a Code question, she would ask that they refer them to staff to ensure there are accurate answers and cautioned the Commission to be careful about giving neighbors a preference towards one position or another prior to the meeting before they have received all the information.

6. OLD BUSINESS - NONE

7. REPORTS

- **Council Meeting Report**

Council Liaison Siakel noted that at the last Planning Commission meeting, Commissioner Eggenberger had asked her about the fiber optic project. She stated that she had spoken with City Administrator Lerud and found out that Jaguar Communication is now MetroNet and they will be installing fiber beginning in late summer of 2022 to be completed in 2023. She noted that she believed the intent was to only lay fiber throughout the communities within Shorewood, Excelsior, and Tonka Bay and they will not be pursuing a franchise agreement with LMCC. She reported on matters considered and actions taken during the Council's recent meetings.

Planning Director Darling noted that the Council had also approved the hiring of a new Planning Technician, Jason Carlson, who will begin work at the end of March.

- **Draft Next Meeting Agenda**

Planning Director Darling stated the Public Hearing for the campaign and non-commercial speech signs will be held at the next meeting as well as a site plan amendment for the redevelopment of a commercial building.

8. ADJOURNMENT

Riedel moved, Holker seconded, adjourning the Planning Commission Meeting of March 1, 2022, at 9:10 P.M.

Roll Call Vote: Ayes – all. Motion passed 5/0.