



Joint Wayzata Planning Commission and City Council Workshop Meeting Agenda

Monday, August 17, 2015

Community Room,
600 Rice Street East,
Wayzata, Minnesota

- 5:30 p.m.** **1. Call to Order and Roll Call**
- 2. Joint Planning Commission and City Council Workshop Items:**
- a. Update on Telecommunications Ordinance and Discussion of
 Feedback from Telecommunications Vendors
- 7:00 p.m.** **3. Regular Planning Commission Business:**
- a. Approval of July 20th and August 3rd Meeting Minutes
- b. Review and Adoption of Planning Commission Report and
 Recommendation on 133 Ridgeview Drive East Variance Application
- c. Review of Development Activities
- d. Other items
- 9:00 p.m.** **4. Adjournment**

NOTES:

¹ Time(s) are estimated and provided for informational purposes only.

² Members of the Planning Commission and some staff may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

³ A quorum of City Council members may be present at this meeting.

CITY OF WAYZATA



PLANNING DEPARTMENT

MEMORANDUM

To: Planning Commission and City Council
From: Bryan Gadow, Director of Planning and Building
Date: August 13, 2015
Re: Joint Planning Commission and City Council Workshop on Cellular/Wireless Telecommunications Facilities Ordinance

As part of the Telecommunications Study, the City Council and Planning Commission are updating the City's Telecommunications Ordinance in order to better regulate the location of new cellular towers and other equipment. This is in part because our current Communication Devices Ordinance (Section 31 of the Zoning Ordinance) does not contain much guidance on the subject.

At the March 3, 2015 council meeting, the City Council adopted a six month moratorium on new wireless communications facilities and towers pending study and consideration of changes to the city's regulations and official controls.

At the July 21st meeting, the City Council asked Staff to provide a copy of the working draft of the Telecom Ordinance to each of the four Telecom vendors for their review and comment. Each of the vendors have received a copy of the attached draft ordinance and have been invited to the August 17th workshop meeting to provide their feedback and insight on telecommunications regulations to both the Planning Commission and City Council. Written feedback was received from Verizon, which is attached.

Staff and the City Attorney will review any feedback received on the draft ordinance, make any necessary modifications, and schedule the ordinance for a formal public hearing in September.

Attachments:

- Attachment A: Working Draft of Wayzata Telecommunications Ordinance
- Attachment B: Verizon Feedback
 - o Attachment B-1: Verizon Narrative Letter
 - o Attachment B-2: Verizon Draft Ordinance Redline
 - o Attachment B-3: Copy of Federal Statute 47 U.S.C. 1455(a)

Attachment A

SECTION 31

COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL
ACCESSORY COMMUNICATIONS DEVICES

Section 801.31:

- 801.31.1: Purpose and Intent
- 801.31.2: Definitions
- 801.31.3: Exemptions
- 801.31.4: Permit Required for Telecommunication Facilities
- 801.31.5: Minimum Requirements for Telecommunication Facilities
- 801.31.6: Building and Design Standards for Telecommunication Facilities
- 801.31.7: General Standards for Telecommunication Facilities
- 801.31.8: Applications for Telecommunication Facilities Permit
- 801.31.9: Review of Permit Applications
- 801.31.10: Appeals
- 801.31.11: Revocation of Permit
- 801.31.12: No Recourse Against the City
- 801.31.13: Indemnification
- 801.31.14: Severability
- 801.31.15: Residential Accessory Uses

1. Purpose and Intent.

The purpose of this section is to establish objective and balanced regulations for the siting, screening and operation of wireless telecommunication facilities and equipment in order to accommodate Wireless Communication systems within the City while minimizing any adverse impacts on the City's natural resources, aesthetics, public spaces, surrounding neighborhood property values, and the general health, safety and public welfare, all as allowed under applicable Federal law. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. The specific purposes of this section are to:

- A. Specify allowed locations of commercial Telecommunication Facilities and Towers in the City;
- B. Protect residential, recreational and park areas from encroachment by commercial operations, including, but not limited to, Telecommunication Facilities and Towers;
- C. Minimize adverse visual impacts of Telecommunication Facilities and Towers through careful design, optimum siting, appropriate landscaping, and innovative camouflaging techniques;
- D. Require the co-location of Telecommunications Towers and Antenna support structures as a primary option rather than construction of multiple single-use Towers;

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- E. Require utilization of technological designs that either eliminate or reduce the need for erection of new Tower structures to support Telecommunications Facilities;
- F. Minimize potential damage to property caused by Telecommunication Facilities and Towers by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or are determined to be structurally unsound;
- G. Ensure that Telecommunication Facilities and Towers are compatible with surrounding land uses;
- H. Provide development standards for Wireless Telecommunication Facilities that are consistent with the requirements of the Federal Telecommunications Act of 1996, as amended, or other applicable laws;

2. Definitions.

For the purposes of this section, the terms below have the meaning given to them, unless the context clearly indicates a different meaning:

- A. **“Accessory Equipment”** means the wires, cables, generators, air conditioning units, and other equipment or facilities that are used with Antennas.
- B. **“Applicant”** means any person or entity who files an application for any permit or is party to any lease agreement required by this Ordinance for the construction, replacement, installation, or alteration of wireless communication facility or any component thereof.
- C. **“Antenna”** means any exterior transmitting or receiving device mounted on a Tower, Monopole, building, or other structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals. “Antenna” does not include a lightning rod.
- D. **“Antenna Support Structure”** means any new or existing Tower, building, water tower, or electric transmission tower carrying over 200 kilo volts of electricity that can be used for the location of Antennas without increasing the height or mass of the existing structure.
- E. **“Engineer”** means a radio, electrical, structural, or mechanical engineer licensed by the state of Minnesota.
- F. **“Equipment Shelter”** means an enclosed structure at the base of or near a Telecommunication Facility, Tower, or Antenna within which are housed, among other things, batteries, generators, air conditioning units, wireless communications or electrical

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equipment, or other Accessory Equipment, which may be connected to the Telecommunications Facility, Tower or Antenna by cable.

G. **“Co-location”** means the sharing of structures by two or more wireless service providers on a single support structure or otherwise sharing a common location.

H. **“Monopole”** means a slender self-supporting Tower used to support Antennas and Accessory Equipment.

I. **“Permit Holder”** a person or entity who holds a permit issued pursuant to this Ordinance for a Telecommunications Facility.

J. **“Public Utility Structure”** means a structure which is owned by a governmental agency or utility company and which is used to support illumination devices or lines and other equipment carrying electricity or communications.

K. **“Residential Accessory Communication Devices”** means any satellite dishes, television Antennas, radio Antennas, amateur radio Antennas, and similar communication transmission/reception devices and associated Accessory Equipment that are a permitted accessory use within a residential district.

L. **“Stealth Design”** means state-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include architecturally screening roof-mounted Antennas and Accessory Equipment; integrating Telecommunications Facilities into architectural elements; nestling Telecommunications Facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the Telecommunications Facilities; and designing Towers to appear other than as Towers, such as light poles, power poles, flag poles, and trees.

M. **“Telecommunications Equipment”** means Antennas, Accessory Equipment, or Towers.

N. **“Telecommunications Facilities”** means any facility or location maintained by a commercial enterprise where Telecommunications Equipment is located.

The following shall not be considered Telecommunication Facilities, and shall be regulated under subsection 801.31.15 below:

- i. Licensed amateur (ham) radio Antennas.
- ii. Television Antennas and satellite dish Antennas for reception within individual homes or businesses.
- iii. Temporary Telecommunication Facilities placed in service during an emergency declared by a government agency.

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O. **“Tower”** means any of the following: a ground or roof mounted pole; spire; free standing, self-supporting lattice or monopole structure; or combination thereof taller than fifteen (15) feet, including but not limited to supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an Antenna, meteorological device, or similar apparatus above grade (except amateur radio Antennas).

P. **“Wireless Communications”** means any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless Telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

3. **Permit Required for Telecommunication Facilities.**

Prior to the construction or operation of a Telecommunications Facility, the owner and operator of the Telecommunications Facility must obtain a permit for the proposed Telecommunications Facility according to the provisions of this Ordinance, termed a “Telecommunication Facilities Permit”.

4. **Building and Design Standards and Allowed Locations for Telecommunications Facilities.** All Telecommunications Facilities shall be constructed and maintained in accordance with the following standards:

A. **Existing Telecommunication Facilities.**

Existing Telecommunications Facilities located on or attached to existing structures, prior to the adoption of this Ordinance, are regulated by the provisions of the zoning district for each such parcel. Once the leases for existing Telecommunication Facilities expire or are otherwise terminated, the owner of the Telecommunication Facilities shall apply for a permit under this Ordinance and those existing Telecommunications Facilities shall be required to conform to all requirements of this Ordinance for new Telecommunication Facilities. The City may, among other remedies, require relocation of equipment, at the Telecommunication Facilities expense, to permitted areas under this Ordinance.

B. **New Telecommunications Facilities.**

- i. New Telecommunications Towers shall be located only on the following parcels owned and controlled by the City of Wayzata without a conditional use permit, with the exact location on such parcels determined at the sole discretion of the Wayzata City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
City of Wayzata Public Works Facility	01-117-23-22-0004
<u>Wayzata West Middle School</u>	<u>06-117-22-22-0008</u>

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- ii. Antennas shall be located on a new or replacement Tower at the locations permitted for Telecommunications Facilities only if the Applicant complies with the following requirements, in additions to the other requirements of this Ordinance:
 - a) The Applicant shall provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Antennas is necessary to meet the coverage and capacity needs of its system. The Applicant shall provide a network map describing all of the Applicant's Telecommunications Facilities which provide any coverage within the City's limits. The analysis shall also show the Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis;
 - b) The new or replacement Telecommunications Facilities shall use as many Stealth Design techniques as reasonably possible. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques. The Applicant shall provide a report every three (3) years showing non-proprietary information on stealth design technology.
 - c) The new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds the increase in height would not have a significant visual impact, would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or Antenna is-if used wholly or partially for essential public services, such as public safety.
 - iii. A new Antenna may be attached to an existing public utility structure within a right of way if:
 - a) The Antenna does not extend more than fifteen (15) feet above the top of the existing utility structure.
 - b) The Antenna is no larger than three (3) cubic feet and has no individual surface larger than four (4) feet.
 - c) The Antenna extends outward from the utility structure no more than three (3) feet.

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- 2 d) There is no ground mounted equipment.
- 3
- 4 e) There is no interference with public safety communications or with the
- 5 original use of the public utility structure.
- 6
- 7 f) The Applicant agrees that the Antenna must be removed and relocated, at
- 8 Applicant's expense, when the road authority requires the removal and
- 9 relocation of the public utility structure.

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11 **C. Conditional Use Permits.**

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- 13 i. Telecommunication Facilities may not be located on any sites other than
- 14 those that are designated in Section 801.31.6.B unless the Applicant first obtains a
- 15 conditional use permit for the location. Such a conditional use permit may be
- 16 approved provided all of the following are met:
- 17
- 18 a) The requirements of Section 801.04 have been considered and
- 19 satisfactorily meet.
- 20
- 21 b) Antennas attached to an existing building do not extend more than ~~twenty~~
- 22 (20)fifteen (15) feet above the highest point of the building.
- 23
- 24 c) The Applicant provides an analysis prepared by a radio or electrical
- 25 engineer demonstrating that the proposed location of the
- 26 Telecommunication Facility is necessary to meet the coverage and
- 27 capacity needs of its system. The Applicant shall provide a network map
- 28 describing all of the Applicant's Telecommunications Facilities which
- 29 provide any coverage within the City's limits. The analysis must also
- 30 show the Telecommunication Facilities would not cause interference with
- 31 other existing or approved Telecommunications Equipment. The
- 32 Applicant must also pay the reasonable expenses of a radio or electrical
- 33 engineer retained by the City, at the City's option, to review this analysis.
- 34
- 35 d) The new or replacement Telecommunications Facilities must use as many
- 36 Stealth Design techniques as reasonably possible. Economic
- 37 considerations alone are not justification for failing to provide Stealth
- 38 Design techniques.
- 39
- 40 g) New or replacement Tower and Antennas, including attachments other
- 41 than lightning rods, shall not exceed 100 feet in height, measured from
- 42 grade. The City Council may, but shall not be required to, increase this
- 43 height to up to 190 feet if the Council finds that the increase in height
- 44 would not have a significant negative visual or property value impact on
- 45 surrounding properties because of proximity, topography or screening by
- 46 trees or buildings or because the proposed Tower and/or Antenna would

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1 accommodate two or more users. The City Council may waive this height
2 limitation for a Tower and/or Antenna is used wholly or partially for
3 essential public services, such as public safety.
4

- 5 ii. The City shall have the following priority ranking of land uses (as defined in
6 the City of Wayzata Comprehensive Plan) suitable for potential new or
7 replacement Telecommunication Facilities when considering a conditional use
8 permit application, with (a) being the highest priority and (d) being the lowest
9 priority:

- 10 a) City Owned Property that is adjacent to highway rights of way and
11 not adjacent to or adjoining residential property.
12 b) Institutional/Public Property that is not adjacent to or adjoining
13 residential property.
14 c) Semi-Public/Private Property that is not adjacent to or adjoining
15 residential property.
16 d) Mixed Use Commercial or Service Commercial properties that are
17 not adjacent to or adjoining residential property.
18

19 If the proposed site is not the highest priority listed above, then a detailed
20 explanation shall be provided as to why a site of a higher priority was not
21 selected. The explanations shall include the reason or reasons why such a
22 Conditional Use Permit should be granted for the proposed site and a
23 description of the hardship that would be incurred by the Applicant if the
24 permit were not granted for the proposed site.
25

- 26 iii. CUPs for new or replacement Telecommunication Facilities shall be
27 prohibited in the following land use categories, as defined in the City of
28 Wayzata Comprehensive Plan:

- 29 a) Parcels guided and utilized for residential purposes, including
30 single family and multiple family.
31 b) Parcels guided and utilized for Park or Public Open Spaces
32 c) Parcels guided and utilized for Central Business District, Mixed
33 Use Residential, or Downtown Mixed Use District.
34

35 **5. General Standards for Telecommunication Facilities.**
36

37 All Telecommunications Facilities must comply with the following standards.
38

- 39 A. **Vertical projection on Antenna support structures.** Antennas mounted on an
40 existing Antenna support structure shall not extend more than 15 feet above the
41 height of the structure to which they are attached. Wall or façade-mounted
42 Antennas shall not extend above the cornice line and shall be constructed of a
43 material or color that matches the exterior of the building.
44

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- 1 B. **Horizontal projection.** Antennas shall not project out from the side of the
2 existing Antenna support structure, Tower or wall or facade by more than three
3 feet.
4
- 5 C. **Fall Zone Analysis.** The Applicant must submit a fall zone analysis report
6 completed by a qualified and licensed engineer which shows the
7 Telecommunications Facilities do not pose a threat to general health, safety and
8 welfare of the City.
9
- 10 D. **Setbacks.** A new Tower shall meet the building setback that is established for the
11 district where it is to be located and the following additional standards:
12
- 13 i. The Tower shall be setback from all residential property lines at least one
14 (1) foot for each foot in height, but shall have a minimum setback of at
15 least one hundred (100) feet. The Tower setbacks may be increased by the
16 City Council dependent on the results of the engineered fall zone analysis
17 report submitted by the Applicant as part of the permit application.
18
- 19 ii. Towers and Telecommunications Facilities shall not encroach upon any
20 easements unless written permission is obtained from the underlying
21 property owner burdened by the easement and the beneficiary of the
22 easement.
23
- 24 iii. The required setbacks may be reduced or the location in relation to a
25 public street modified, at the sole discretion of the City Council, when the
26 Telecommunications Facility is integrated into an existing or proposed
27 structure such as a building, light or utility pole.
28
- 29 E. **Height.** The height of an Antenna and Tower shall be the minimum necessary to
30 meet the Applicant's coverage and capacity needs, as verified by an electrical
31 engineer or other appropriate professional. The new or replacement Tower and
32 Antenna, including attachments other than lightning rods, shall not exceed 150
33 feet in height, measured from grade. The City Council may, but shall not be
34 required to, increase this height up to 190 feet if the Council finds the increase in
35 height would not have a significant visual impact, would not have a negative
36 property value impact on surrounding properties because of proximity,
37 topography or screening by trees or buildings or would accommodate two or more
38 users. The City Council may waive this requirement if additional height is
39 appropriate for co-location opportunities.
40
- 41 F. **Exterior surfaces.** Towers and Antennas shall be painted a non-contrasting color
42 consistent with the surrounding area such as: blue, gray, green, brown, or silver,
43 or have a galvanized finish to reduce visual impact. Metal Towers shall be
44 constructed of, or treated with, corrosion-resistant material.
45

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- 1 G. **Underground Equipment Storage.** Accessory Equipment or equipment storage
2 facilities shall be required to be designed and built underground adjacent to the
3 Telecommunications Facility, unless deemed infeasible by the City Council.
4 Only in situations where underground storage is deemed unfeasible, shall above-
5 ground or ground-mounted equipment be permitted, subject to the restrictions of
6 this Ordinance, including, but not limited to screening of existing equipment.
7
- 8 H. **Ground-mounted equipment.** If deemed unfeasible by the City Council to be
9 built underground, ground-mounted Accessory Equipment or buildings shall be
10 architecturally designed to blend in with the surrounding environment, including
11 the principal structure, or shall be screened from view by suitable vegetation,
12 except where a design of non-vegetative screening better reflects and
13 compliments the character of the surrounding neighborhood. No more than one
14 Equipment Shelter or accessory building is permitted for each Tower. Equipment
15 Shelters or accessory buildings shall be designed to accommodate additional
16 space needed for the co-location of additional Antennas at the site. Design of the
17 building or equipment cabinet, screening and landscaping are subject to a site plan
18 review by City Staff, Planning Commission, and City Council, and any applicable
19 Design Standards criteria under Section 801.09 of the Wayzata Zoning Ordinance.
20 The Applicant shall be responsible for maintaining the structure in a high-quality
21 condition. If the Applicant abandons or vacates the structure, it shall be forfeited
22 to the City or torn down by the Applicant at their expense, at the discretion of the
23 City Council.
24
- 25 I. **Construction.** Telecommunications shall be in compliance with all buildings and
26 electrical code requirements. All applicable federal, state and local agency
27 licenses and/or permits shall be obtained. A Tower shall be designed and certified
28 by a licensed structural engineer to be structurally sound and in conformance with
29 the building code. Structural design, mounting and installation of the
30 Telecommunications Facilities shall be in compliance with the manufacturer's
31 specifications. If, upon inspection, the City concludes that a Tower or other
32 portion of a Telecommunications Facility fails to comply with such codes and
33 standards and constitutes a danger to persons or property, then upon notice being
34 provided to the owner of the Telecommunication Facility or Tower, the owner
35 shall have thirty (30) days to bring such Tower or Facility into compliance with
36 such standards. Failure to bring such Tower or Facility into compliance with such
37 thirty-day period shall constitute grounds for the removal of the Tower or Facility
38 at the owner's expense.
39
- 40 J. **Interference with Public Safety Telecommunications.** No Tower or Facility
41 shall interfere with public safety Telecommunications. All Towers and Facilities
42 shall comply with FCC regulations and licensing requirements.
43
- 44 K. **Security Fencing and Screening.** Telecommunication Facilities and Towers
45 shall be enclosed by security fencing not less than the height of the equipment and
46 shall also be equipped with an appropriate anti-climbing device. Fencing within

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one hundred (100) feet of a residential or parking property shall be constructed of a well-designed fence of wood or other environmentally sound material, and be compatible with the surrounding character of the area. The Facilities and Towers shall also include a landscape screen, at least six (6) in height, around the perimeter of equipment area, as approved by the City Council.

- L. **Other Protections.** The City may require shields to protect from ice falling from Towers, anti-climbing devices to prevent unauthorized persons from climbing Towers, or other appurtenances necessary to protect life and property.
- M. **Noise.** If the proposed Telecommunications Facility includes equipment that causes significant sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings. The Applicant shall submit an acoustical analysis (measured to the property line) and report prepared by a licensed and/or accredited sound engineer certifying that the noise to be generated from the proposed Telecommunication Facility shall not impact adjacent properties. Said report shall include, without limitation, a written description of all noise generated by the Facility, including retractable monopole motors, Antenna rotators, power generation, heating or air conditioning, and related equipment, and shall include the estimated times, frequency, duration and decibel levels of the noise. All equipment shall conform to Minnesota Pollution Control Agency decibel standards.
- N. **Sensitive Habitats.** No Telecommunication Facility shall be located in environmentally sensitive habitats, including but not limited to wetlands, shorelines, established animal habitats, conservation districts, and significant tree groups, unless mitigation measures can be adopted which would reduce potential impacts to levels of non-significance.
- O. **Radio Frequency Emissions.** Telecommunications Facilities shall comply with Federal Communication Commission standards for radio frequency emissions and interference.
- P. **Interference.** No Telecommunication Facility shall be permitted that causes interference with commercial or private use and enjoyment of other legally operating Telecommunications devices including, but not limited to, radios, televisions, personal computers, telephones, personal communications devices, garage door openers, security systems, and other electronic equipment and devices. An Applicant shall furnish a state registered engineer's certification that no such interference shall occur, or identify what interference may occur and how the Applicant shall mitigate any potential interference that may occur.
- Q. **Risk of Danger.** Telecommunications Facilities and Towers shall not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive or hazardous materials. Telecommunication Facilities, Towers, Antennas, and Accessory Equipment shall be subject to state and federal

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1 regulations pertaining to non-ionizing radiation and other health hazards related to
2 such Facilities. If new, more restrictive standards are adopted, the Facilities shall
3 be made to comply or continued operations may be restricted by the City Council.
4 The cost of verification of compliance shall be borne by the Applicant.
5

6 **R. Maintenance.** All Telecommunication Facilities and Towers shall at all times (i)
7 be kept and maintained in good condition, order and repair so that the same shall
8 not menace or endanger the life or property of any person, and (ii) allow sufficient
9 access for service vehicles and personnel. Maintenance of equipment shall be
10 scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of
11 emergency. Service vehicles for equipment maintenance shall be parked on city
12 streets, whenever possible. In the case of maintenance of Telecommunication
13 Facilities on the City Water Tower, service vehicles shall park on the service
14 entrance of the City Water Treatment Plant, whenever possible.
15

16 **S. Co-location opportunity.** The Applicant, the Tower owner, the landowner,
17 and their successors and assigns shall allow the shared use of the Tower if an
18 additional user agrees in writing to meet reasonable terms and conditions for
19 shared use, shall submit a dispute over the potential terms and conditions to
20 binding arbitration, and shall sign the conditional use permit agreeing to these
21 requirements. The City Council may waive these co-location requirements if
22 necessary to implement stealth design.
23

24 i. All Telecommunications Facility providers shall cooperate with each other
25 in co-locating Telecommunication Facilities and shall exercise good faith
26 in co-locating with other licensed carriers and in the sharing of sites,
27 including the sharing of technical information necessary to evaluate the
28 feasibility of collocation. In the event a dispute arises as to a co-location
29 issue, the City may require a third-party technical study to evaluate the
30 feasibility of co-locating at the expense of either or both wireless
31 telecommunications providers;
32

33 ii. All proposed new Towers shall be designed to accommodate both the
34 Applicant's Antennas and Antennas for as many other licensed carriers as
35 can be technically located thereon, but not less than one additional;
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37 iii. All new Towers and Facilities owned by a telecommunications provider
38 shall be made available for use by the owner or initial user thereof,
39 together with as many other licensed carriers as can be technically located
40 thereon, but not less than one additional;
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42 iv. All proposed new Towers shall be designed to allow for future
43 rearrangement of Antennas or Tower modifications, and to accept
44 Antennas mounted at varying heights;
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- 1 T. **Successors and Assigns.** Any Permit or lease for a Telecommunications
2 Facility shall run with the Property, and shall be binding upon and inure to the
3 benefit of the parties, their respective successors, personal representatives, and
4 assigns.
5
- 6 U. **External messages.** No advertising message or identification signs, other than
7 warning or equipment information signs as legally required, shall be affixed to the
8 Telecommunications Facilities.
9
- 10 V. **Lighting.** Telecommunications Facilities or Towers shall not be artificially
11 illuminated unless required by law or by a governmental agency to protect the
12 public's health and safety or unless necessary to facilitate service to ground-
13 mounted equipment. Any lighting or artificial illumination utilized shall be
14 shielded and not cast glare onto adjacent properties. All lighting shall be
15 measured to the property line.
16
- 17 W. **On-site employees.** There shall be no employees on the site at a
18 Telecommunications Facility on a permanent basis. Occasional or temporary
19 repair and service activities are allowed.
20
- 21 X. **Advances in Technology.** All Applicants/Permit Holders shall use and apply
22 any readily available advances in technology that lessen the negative aesthetic
23 effects of Telecommunication Facilities and Towers to the residential
24 communities within the City. The City may review existing structures and
25 compare the visual impact with available technologies in the industry for the
26 purpose of removal, relocation or alteration of these structures in keeping with the
27 general intent of this Ordinance. Such removal, relocation or alteration may be
28 required by the City pursuant to its zoning power and authority.
29
- 30 Y. **Removal.** After thirty (30) days' notice from the City to the Permit Holder all
31 Telecommunications Facilities, Antennas, or Towers shall be required to be
32 removed at the Permit Holder's expense, if such improvement is found to be in
33 violation of any portion of this Ordinance by the City and such violation is not
34 cured within such thirty day time period. Obsolete or unused
35 Telecommunications Facilities and all related equipment shall be removed within
36 six (6) months after cessation of their use at the site, unless an exemption is
37 granted by the City Council. Telecommunications Facilities and related
38 equipment that have become hazardous shall be removed or made not hazardous
39 within 30 days after written notice to the current Permit Holder and to any
40 separate landowner, unless an exemption is granted by the City Council. Notice
41 may be made to the address listed in the application, unless another one has
42 subsequently been provided, and to the taxpayer of the property listed in the
43 Hennepin County tax records. Telecommunications Facilities and all related
44 equipment that are not removed within this time are declared to be public
45 nuisances and may be removed by the City. The City may assess its costs of
46 removal against the Property.

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2 Z. **No Recourse Against the City.** Every permit shall provide that, without limiting
3 such immunities as the City or other persons may have under applicable law, an
4 Applicant/Permit Holder shall have no monetary recourse whatsoever against the
5 City or its elected officials, boards, commissions, agents, employees or volunteers
6 for any loss, costs, expense or damage arising out of any provision or requirement
7 of this Ordinance or because of the enforcement or lack of enforcement of this
8 Ordinance or the City's exercise of its authority pursuant to this Ordinance, a
9 permit, a lease, or other applicable law, unless the same shall be caused by
10 criminal acts or by willful gross negligence. Nothing herein shall be construed as
11 a waiver of sovereign immunity.
12

13 **6. Applications for Telecommunications Facilities Permit.**

14
15 Permit Application. In addition to an Applicant's name, address, certificate of survey,
16 grading and landscaping plans, and other such similar information, an application for a
17 permit under this Section shall include the following:
18

- 19 A. A scaled site plan clearly indicating the location, type and height of the proposed
20 Telecommunication Facility, Tower, or Antenna, on-site land uses and zoning,
21 adjacent land uses and zoning, adjacent roadways, proposed means of access,
22 setbacks from property lines, elevation drawings of the proposed equipment and
23 any structures, topography, parking and any other information deemed by the City
24 Staff to be necessary to assess compliance with this Section.
25
26 B. A visual simulation of the proposed Telecommunication Facility Tower or
27 Antenna. Visual simulation shall consist of either a physical mock-up of the
28 Telecommunication Facility Tower or Antenna, balloon simulation, computer
29 simulation, or other similar simulation. In instances where the proposed
30 Telecommunications Facility Tower or Antenna is located near a residential area,
31 photos shall be submitted of the proposed Telecommunication Facility Tower or
32 Antenna from the nearest residential neighbors.
33
34 C. A report from a qualified and licensed professional engineer which:
35 i. Demonstrates that the Telecommunication Facility, Tower, Antenna
36 and/or Accessory Equipment comply with the structural and electrical
37 standards of this Section.
38 ii. Describes the Tower height, if utilized.
39 iii. Documents the height above grade for all potential mounting positions for
40 co-locating Antennas and the minimum separation distance between
41 Antennas.
42 iv. Describes the Tower's capacity, if utilized, including the number and type
43 of Antennas it can accommodate.
44 v. A network map describing all of the Applicant's Telecommunications
45 Facilities which provide any coverage within the City's limits.

Attachment A

- 1 vi. Documents what steps the Applicant shall take to avoid interference with
2 established public safety Telecommunications.
3 vii. Includes an engineer's stamp and registration number.
4

5 D. A written statement acknowledging that failure to comply with this Section and
6 the conditions of permit approval shall result in the revocation of the permit and
7 removal of the Telecommunications Facility, Antenna, and/or Tower;
8

9 E. Documentation that the Applicant has applied for and/or obtained any licenses
10 and/or approvals that are required by federal and state agencies.
11

12 F. A written statement indicating that the expenses incurred by the City to review
13 and process the application, and to enforce the provisions of the permit shall be
14 reimbursed by the Applicant.
15

16 G. A written statement which requires the Applicant to utilize the procedures
17 established by the Federal Communications Commission to resolve any
18 complaints received relating to interference allegedly caused by the
19 Telecommunications Facility, Antenna, and/or Tower.
20

21 H. A written statement indicating that the Applicant shall cooperate in good faith and
22 fair dealing in co-locating Telecommunications Facilities, Antenna and/or
23 Towers.
24

25 I. A written statement indicating that the Telecommunications Facility, Antenna,
26 and/or Tower shall be maintained in good and safe condition and its original
27 appearance and concealment, disguise or camouflage elements incorporated into
28 the design at the time of approval shall be preserved. Such maintenance shall
29 include, but not be limited to, painting, repair of equipment, and maintenance of
30 landscaping.
31

32 J. A written statement authorizing the City to conduct periodic inspections to
33 determine that the Telecommunications Equipment complies with the provisions
34 of this Section, any conditions of approval and all safety and building codes and
35 permits issued. This statement shall give the City the right to conduct such
36 inspections at any time upon a reasonable notice of five (5) business days to the
37 Applicant, and that all expenses related to such inspections shall be borne by the
38 Applicant.
39

40 K. A written statement indicating that the Applicant understands that
41 Telecommunications Facilities, Antennas, and/or Towers which have not been
42 used for six (6) months shall be deemed abandoned, and shall be removed
43 pursuant to this Section.
44

45 L. A written statement requiring the Applicant or current Permit Holder to notify the
46 City that the Telecommunications Facility, Antenna, and/or Tower continue to be

Attachment A

1 in operation. The notice of continuing operation shall be sent to the City Manager
2 annually by certified mail within the last two (2) weeks of the month of
3 December.
4

7. Review of Permit Applications.

5
6
7 The City shall process all applications for Telecommunication Facilities Permits in a
8 timely manner and in accordance with established procedures and City Code.
9

8. Appeals.

10
11
12 At any time within thirty (30) days after a written order, requirement, determination or
13 final decision has been made by the Zoning Administrator or other official interpreting or
14 applying this Section, except for actions taken in connection with prosecutions for
15 violations thereof, the Applicant or any other person affected by such action may appeal
16 the decision in accordance with the provisions of the Zoning Ordinance.
17

9. Revocation of Permit.

18
19
20 A material breach of any terms and conditions of a permit issued for a
21 Telecommunication Facility under this Section and the Zoning Ordinance may result in
22 the revocation of the permit by the City. Penalties for a violation of a permit or this
23 Section may include fines and removal of the Telecommunication Facility, Tower, or
24 Antenna at the Applicant's/Permit Holder's expense.
25

10. No Recourse Against the City.

26
27
28 Every application for and issued permit shall provide a written acknowledgement,
29 agreement and release from the Applicant and Permit Holder that, without limiting such
30 immunities as the City or other persons may have under applicable law, an Applicant and
31 Permit Holder shall have no monetary recourse whatsoever against the City or its elected
32 officials, boards, commissions, agents, employees or volunteers for any loss, costs,
33 expense or damage arising out of any provision or requirement of this Ordinance or
34 because of the enforcement or lack of enforcement of this Ordinance or the City's
35 exercise of or failure to exercise its authority pursuant to this Ordinance, a permit, a lease,
36 or other applicable law, unless the same shall be caused by criminal acts or by shallful
37 gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.
38
39

11. Indemnification.

40
41
42 Each permit issued pursuant to this Section shall have as a condition of the permit, a
43 requirement that the Applicant indemnify and hold harmless the City and its officers,
44 agents, and employees from actions or claims of any description brought on account of
45 any injury or damages sustained by any person or property resulting from the issuance of
46 the permit and conduct of the activities authorized under said permit.

Attachment A**12. Severability.**

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

13. Residential Accessory Uses.

Residential Accessory Communication Devices are a permitted accessory use within residential districts provided they meet the following conditions:

- A. **Use.** They are for use by residents upon whose property the Residential Accessory Communication Devices are located.
- B. **Height.** A ground mounted Residential Accessory Communication Device height shall not exceed fifteen (15) feet unless approved as a conditional use permit by the City Council.
- C. **Yards.** The Residential Accessory Communication Device shall not be located within the required front yard setback, a required side yard or any side yard abutting a street. Communication devices shall be located five (5) feet or more from rear lot lines and shall not be located within a utility easement.
- D. **Roofs.** The Residential Accessory Communication Device may be placed on the roof of any authorized structure on the premises. The height of the Residential Accessory Communication Device shall not exceed six and one-half (6-1/2) feet above the peak of the roof, unless approved by a conditional use permit by the City Council.
- E. **Neighboring Property Impact.** In cases where no building permit is required, the Residential Accessory Communication Device shall be so located that in the event it falls, it shall not fall on adjoining property.
- F. **Building Permits.** A building permit shall be required for the installation of any Residential Accessory Communication Device which requires a conditional use permit, or for any device which has a structural surface exposure of greater than nine (9) square feet. Building permit applications shall be accompanied by a site plan and structural components data for the Residential Accessory Communication Device, including details of anchoring. The Building Official shall approve the plans before installation.

Attachment A

- 1 G. **Color/Content.** Residential Accessory Communication Devices shall be of a
2 neutral color and shall not be painted with scenes or contain letters or messages.
3
- 4 H. **Lightning Protection.** Each Residential Accessory Communication Device shall
5 be grounded to protect against natural lightning strikes in conformance with the
6 National Electrical Code as adopted by the City of Wayzata.
7
- 8 I. **Electrical Code.** Residential Accessory Communication Device electrical
9 equipment and connections shall be designed and installed in conformance with
10 the National Electrical Code as adopted by the City of Wayzata.
11
- 12 J. **Effective Date.** The provisions of this Section shall be applicable to all
13 communication reception/transmission devices erected after _____, 2015.
14 All such structures existing prior to this date shall be addressed as legal non-
15 conforming uses.
16
- 17 K. **Conditional Use Permit.** Residential Accessory Communication Devices not
18 qualifying as a permitted accessory use may be considered and approved through
19 conditional use standards established by Section 801.04 of this Ordinance.
20



August 12, 2015

SENT VIA E-MAIL ONLY

Wayzata City Council and Planning Commission
Attn: David Dudinsky, Dir. of Public Service
City of Wayzata
299 Wayzata Blvd. W.
Wayzata, MN 55391

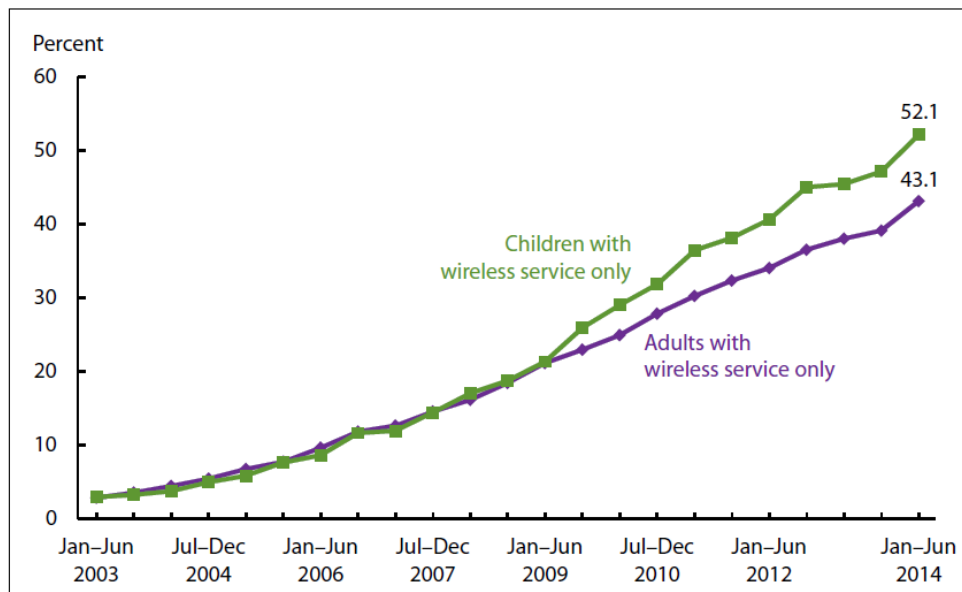
Re: Proposed Amendments to City of Wayzata Zoning Ordinance
Related to Commercial Telecommunications Facilities
Verizon Wireless Comments

To the Wayzata City Council and Planning Commission:

As we mentioned in our original comments related to the proposed relocation of the Verizon Wireless facilities from the City of Wayzata water tower, more than 40% of adults in the United States have only a wireless telephone, with no traditional landline telephone service at all:

Wireless-Only Households, 2003-2014¹

Figure. Percentages of adults and children living in households with only wireless telephone service: United States, 2003–2014



NOTE: Adults are aged 18 and over; children are under age 18.
DATA SOURCE: CDC/NCHS, National Health Interview Survey.

¹ See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Wireless Substitution: State-level Estimates from the National Health Interview Survey, January–June 2014* (December, 2014) at p. 1 available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf>.

*Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
August 12, 2015
Page 2 of 4*

In the Midwest, 46.9% of adults live in households with no wired phone. (*Id.* at Table 2, p.7.)

For this reason Congress recently adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (hereinafter referred to as the “Spectrum Act”), to make wireless network development less complicated in the United States. 47 U.S.C. § 1455(a) (*available at* <https://www.law.cornell.edu/uscode/text/47/1455>).

That federal statute provides as follows:

Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

47 U.S.C. § 1455(a) (*available at* <https://www.law.cornell.edu/uscode/text/47/1455>).

The FCC in turn adopted rules in October of last year which apply this federal statute. *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Dockets Nos. 13-238, 13-32; WC Docket No 11-59, FCC 14-153, adopted October 17, 2014; rel. October 21, 2014 (*available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1.pdf). We have included a copy of those rules, which are located at 47 C.F.R. § 1.40001 (2015) (*available at* http://www.ecfr.gov/cgi-bin/text-idx?SID=07cddd0b0ef193e662da5cce7d044b0b&mc=true&node=se47.1.1_140001&rpn=div8).

This statute and the resulting rules now make it clear that, once a City approves a permit to allow a tower or other structure to be used for a cell site, it “may not deny, and shall approve, any eligible facilities request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” 47 U.S.C. § 1455(a) and 47 C.F.R. § 1.40001(c). Federal law also provides as follows:

Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

47 C.F.R. § 1.40001(c)(1). Unfortunately, it seems that some provisions of the ordinance were drafted without regard to this federal law. As a result, neither the Wayzata City council nor any

*Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
August 12, 2015
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wireless service provider will need to expend valuable time and financial resources to assemble, submit or evaluate extensive materials when a tower or other structure is already being used as a cell site. As long as the structure was legally built in the first place, and provided the additional antennas or other equipment does not require a substantial change to the structure (as defined by the federal rules), no further work is necessary. Certainly, an application must be filed to show that such a modification is being proposed. But no more is (or can be) required.

The Spectrum Act and the related federal rules do more than limit the review that can be conducted for collocations and modifications to existing sites. For example, Cities now have only 60 days to review and approve a complete application for installations on existing sites that are not substantially changed. 47 C.F.R. § 1.40001(c)(2). There is no provision under federal law to extend this time for an additional 60 days, as can be the case under Section 15.99 of the Minnesota Statutes – as long as the application is complete. (Of course, that important Minnesota law has long meant that the wireless providers can already depend on cities like Wayzata to handle applications efficiently.)

In any case, the enclosed redline of the draft ordinance contains a number of revisions that would make the ordinance comply with this relatively new set of federal laws. We have also revised a few typographical errors and included other suggested revisions for your consideration. We will be in attendance at the workshop meeting on August 18 to answer questions related to the development of the Verizon Wireless infrastructure in general, and to address any other issues related to these proposed revisions. If any reader of this letter has questions in the meantime, please do not hesitate to contact me.

We continue to look forward to working with the City to maintain – and improve – Verizon Wireless service.

Sincerely,



Jaymes D. Littlejohn

Attorney at Law
P: (612) 877-5274 F: (612) 877-5047
Jay.Littlejohn@lawmoss.com

JDL/dmr
Enclosures



*Verizon Wireless Comments on Proposed Amendments to
City of Wayzata Commercial Telecommunications Facilities Ordinance
August 12, 2015
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cc: Cynthia Shuck, Verizon Wireless (via e-mail)
Scott Chamberlain (via e-mail)

Attachment B-2: Verizon Ordinance Redline

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SECTION 31

COMMERCIAL TELECOMMUNICATIONS FACILITIES AND RESIDENTIAL ACCESSORY COMMUNICATIONS DEVICES

Section 801.31:

- 801.31.1: Purpose and Intent
- 801.31.2: Definitions
- 801.31.3: Exemptions
- 801.31.4: Permit Required for Telecommunication Facilities
- 801.31.5: Minimum Requirements for Telecommunication Facilities
- 801.31.6: Building and Design Standards for Telecommunication Facilities
- 801.31.7: General Standards for Telecommunication Facilities
- 801.31.8: Applications for Telecommunication Facilities Permit
- 801.31.9: Review of Permit Applications
- 801.31.10: Appeals
- 801.31.11: Revocation of Permit
- 801.31.12: No Recourse Against the City
- 801.31.13: Indemnification
- 801.31.14: Severability
- 801.31.15: Residential Accessory Uses

1. Purpose and Intent.

The purpose of this section is to establish objective and balanced regulations for the siting, screening and operation of wireless telecommunication facilities and equipment in order to accommodate Wireless Communication systems within the City while minimizing any adverse impacts on the City's natural resources, aesthetics, public spaces, surrounding neighborhood property values, and the general health, safety and public welfare, all as allowed under applicable Federal law. This section recognizes that these wireless communication systems provide a valuable service to the public but that they are not a public utility. The specific purposes of this section are to:

- A. Specify allowed locations of commercial Telecommunication Facilities and Towers in the City;
- B. Protect residential, recreational and park areas from encroachment by commercial operations, including, but not limited to, Telecommunication Facilities and Towers;
- C. Minimize adverse visual impacts of Telecommunication Facilities and Towers through careful design, optimum siting, appropriate landscaping, and innovative camouflaging techniques;

Attachment B-2: Verizon Ordinance Redline

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- 1 D. Require the co-location of Telecommunications Towers, ~~and~~ Antenna support structures
2 and other, existing structures in the City as a primary option rather than construction of
3 multiple, single-use Towers;
4
5 E. Require utilization of technological designs that either eliminate or reduce the need for
6 erection of new Tower structures to support Telecommunications Facilities;
7
8 F. Minimize potential damage to property caused by Telecommunication Facilities and
9 Towers by ensuring such structures are soundly and carefully designed, constructed,
10 modified, maintained, and removed when no longer used or are determined to be
11 structurally unsound;
12
13 G. Ensure that Telecommunication Facilities and Towers are compatible with surrounding
14 land uses;
15
16 H. Provide development standards for Wireless Telecommunication Facilities that are
17 consistent with the requirements of the Federal Telecommunications Act of 1996, as
18 amended, or other applicable laws;

20 2. Definitions.

21
22 For the purposes of this section, the terms below have the meaning given to them, unless the
23 context clearly indicates a different meaning;
24

- 25 A. “**Accessory Equipment**” means the wires, cables, generators, air conditioning units, and
26 other equipment or facilities that are used with Antennas.
27
28 B. “**Applicant**” means any person or entity who files an application for any permit or is
29 party to any lease agreement required by this Ordinance for the construction,
30 replacement, installation, or alteration of wireless communication facility or any
31 component thereof.
32
33 C. “**Antenna**” means any exterior transmitting or receiving device mounted on a Tower,
34 Monopole, building, or other structure and used in communications that radiate or
35 capture electromagnetic waves, digital signals, analog signals, radio frequencies
36 (excluding radar signals), wireless telecommunications signals or other communications
37 signals. “Antenna” does not include a lightning rod.
38
39 D. “**Antenna Support Structure**” means any new or existing Tower, building, water tower,
40 or electric transmission tower carrying over 200 kilo volts of electricity that can be used
41 for the location of Antennas without increasing the height or mass of the existing
42 structure.
43
44 E. “**Engineer**” means a radio, electrical, structural, or mechanical engineer licensed by the
45 state of Minnesota.
46

Attachment B-2: Verizon Ordinance Redline

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- 1 F. **“Equipment Shelter”** means an enclosed structure at the base of or near a
2 Telecommunication Facility, Tower, or Antenna within which are housed, among other
3 things, batteries, generators, air conditioning units, wireless communications or electrical
4 equipment, or other Accessory Equipment, which may be connected to the
5 Telecommunications Facility, Tower or Antenna by cable.
6
7 G. **“Co-location”** means the sharing of structures by two or more wireless service providers
8 on a single support structure or otherwise sharing a common location.
9
10 H. **“Monopole”** means a slender self-supporting Tower used to support Antennas and
11 Accessory Equipment.
12
13 I. **“Permit Holder”** a person or entity who holds a permit issued pursuant to this Ordinance
14 for a Telecommunications Facility.
15
16 J. **“Public Utility Structure”** means a structure which is owned by a governmental agency
17 or utility company and which is used to support illumination devices or lines and other
18 equipment carrying electricity or communications.
19
20 K. **“Residential Accessory Communication Devices”** means any satellite dishes, television
21 Antennas, radio Antennas, amateur radio Antennas, and similar communication
22 transmission/reception devices and associated Accessory Equipment that are a permitted
23 accessory use within a residential district.
24
25 L. **“Stealth Design”** means state-of-the-art design techniques used to blend the object into
26 the surrounding environment and to minimize the visual impact as much as reasonably
27 possible. Examples of stealth design techniques include architecturally screening roof-
28 mounted Antennas and Accessory Equipment; integrating Telecommunications Facilities
29 into architectural elements; nestling Telecommunications Facilities into the surrounding
30 landscape so that the topography or vegetation reduces their view; using the location that
31 would result in the least amount of visibility to the public, minimizing the size and
32 appearance of the Telecommunications Facilities; and designing Towers to appear other
33 than as Towers, such as light poles, power poles, flag poles, and trees.
34
35 M. **“Telecommunications Equipment”** means Antennas, Accessory Equipment, or Towers.
36
37 N. **“Telecommunications Facilities”** means any facility or location maintained by a
38 commercial enterprise where Telecommunications Equipment is located.
39

40 The following shall not be considered Telecommunication Facilities, ~~and shall be~~
41 ~~regulated under subsection 801.31.15 below:~~

- 42
43 i. Licensed amateur (ham) radio Antennas, which are regulated under subsection
44 801.31.13 below.
45 ii. Television Antennas and satellite dish Antennas for reception within individual
46 homes or businesses, which are regulated under subsection 801.31.13 below.

Comment [1]: Note that there is no subsection 801.31.15.

Attachment B-2: Verizon Ordinance Redline

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iii. Temporary Telecommunication Facilities placed in service during an emergency declared by a government agency or for special events requiring wireless service capacity or coverage that not available from existing wireless facilities.

O. **“Tower”** means any of the following: a ground or roof mounted pole; spire; free standing, self-supporting lattice or monopole structure; or combination thereof taller than fifteen (15) thirty (30) feet, including but not limited to supporting lines, cables, wires, braces, and masts, intended primarily for the purpose of mounting an Antenna, meteorological device, or similar apparatus above grade (except amateur radio Antennas).

Comment [2]: Increasing this height to 30 feet would promote the development of small cell installations.

P. **“Wireless Communications”** means any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless Telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

3. Permit Required for Telecommunication Facilities.

Prior to the construction or operation of a Telecommunications Facility, the owner and operator of the Telecommunications Facility must obtain a permit for the proposed Telecommunications Facility according to the provisions of this Ordinance, termed a **“Telecommunication Facilities Permit”**.

Comment [3]: Elsewhere in this draft, there is reference to a “conditional use permit” being required. It is unclear whether 2 categories of permits are now required, or if all references to a conditional use permit should be revised to use this term.

4. Building and Design Standards and Allowed Locations for Telecommunications Facilities. All Telecommunications Facilities shall be constructed and maintained in accordance with the following standards:

A. Existing Telecommunication Facilities.

Existing Telecommunications Facilities located on or attached to existing structures, prior to the adoption of this Ordinance, are regulated by the provisions of the zoning district for each such parcel. Once the leases for existing Telecommunication Facilities expire or are otherwise terminated, the owner of the Telecommunication Facilities shall apply for a permit under this Ordinance and those existing Telecommunications Facilities shall be required to conform to all requirements of this Ordinance for new Telecommunication Facilities. The City may, among other remedies, relocation of equipment, at the Telecommunication Facilities expense, to permitted areas under this Ordinance.

Comment [4]: This provision is prohibited by Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, codified in 47 U.S.C. § 1455(a) (2014) and the FCC rules adopted as a result of that Statute, located at 47 C.F.R. § 1.40001. See Verizon Wireless comments dated August 11, 2015.

B. New Telecommunications Facilities.

Attachment B-2: Verizon Ordinance Redline

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- i. New Telecommunications Towers shall be located only on the following parcels owned and controlled by the City of Wayzata without a conditional use permit, with the exact location on such parcels determined at the sole discretion of the Wayzata City Council:

<u>Property Name</u>	<u>Property Identification Number</u>
City of Wayzata Public Works Facility	01-117-23-22-0004

- ii. Antennas shall be located on a new or replacement Tower at the locations permitted for Telecommunications Facilities only if the Applicant complies with the following requirements, in additions to the other requirements of this Ordinance:

- a) ~~Unless the Applicant is a provider of Wireless Communications, the~~ The Applicant shall provide an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Antennas is necessary to meet the coverage and capacity needs of its system. ~~All Applicants shall provide documentation prepared by a radio or electrical engineer to~~ The analysis shall also show the Antennas would not cause interference with other existing or approved Telecommunications Equipment. The Applicant shall also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis;
- b) The new or replacement Telecommunications Facilities shall use as many Stealth Design techniques as reasonably possible. Economic considerations or hardships shall not be the sole justification for failing to provide Stealth Design techniques.
- c) The new or replacement Tower and Antenna, including attachments other than lightning rods, shall not exceed 150 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height up to 190 feet if the Council finds the increase in height would not have a significant visual, would not have a negative property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or Antenna is used wholly or partially for essential public services, such as public safety.

- iii. A new Antenna may be attached to an existing public utility structure within a right of way if:

- a) The Antenna does not extend more than fifteen (15) feet above the top of the existing utility structure.

Comment [5]: It appears that this should refer to the new "Telecommunications Facilities Permit," rather than a conditional use permit.

Comment [6]: Although tower companies may be motivated to build towers that are not currently needed to provide service, the Wireless Communications service providers have absolutely no reason to do so, any more than a grocery store chain would seek approval to build a grocery store that is not needed.

Attachment B-2: Verizon Ordinance Redline

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- b) The Antenna is no larger than three (3) cubic feet and has no individual surface larger than four (4) feet.
- c) The Antenna extends outward from the utility structure no more than three (3) feet.
- d) There is no ground mounted equipment.
- e) There is no interference with public safety communications or with the original use of the public utility structure.
- f) The Applicant agrees that the Antenna must be removed and relocated, at Applicant's expense, when the road authority requires the removal and relocation of the public utility structure.

C. Conditional Use Permits.

- i. Unless an Applicant requests a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station as provided under 47 C.F.R. § 1.40001 (as amended), Telecommunication Facilities may not be located on any sites other than those that are designated in Section 801.31.4.B ~~801.31.6.B~~ unless the Applicant first obtains a conditional use permit for the location. Such a conditional use permit may be approved, provided all of the following are met:
 - a) The requirements of Section 801.04 have been considered and satisfactorily ~~meet~~met.
 - b) Antennas attached to an existing building do not extend more than twenty (20) feet above the highest point of the building.
 - c) Unless the Applicant is a provider of Wireless Communications, the ~~The~~ Applicant provides an analysis prepared by a radio or electrical engineer demonstrating that the proposed location of the Telecommunication Facility is necessary to meet the coverage and capacity needs of its system. All Applicants shall provide documentation prepared by a radio or electrical engineer to ~~The analysis must also show the~~ Telecommunication Facilities would not cause interference with other existing or approved Telecommunications Equipment. The Applicant must also pay the reasonable expenses of a radio or electrical engineer retained by the City, at the City's option, to review this analysis.
 - d) The new or replacement Telecommunications Facilities must use as many Stealth Design techniques as reasonably possible. Economic considerations alone are not justification for failing to provide Stealth Design techniques.

Comment [7]: Although tower companies may be motivated to build towers that are not currently needed to provide service, the Wireless Communications service providers have absolutely no reason to do so, any more than a grocery store chain would seek approval to build a grocery store that is not needed.

Attachment B-2: Verizon Ordinance Redline

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g) New or replacement Tower and Antennas, including attachments other than lightning rods, shall not exceed 100 feet in height, measured from grade. The City Council may, but shall not be required to, increase this height to up to 190 feet if the Council finds that the increase in height would not have a significant negative visual or property value impact on surrounding properties because of proximity, topography or screening by trees or buildings or because the proposed Tower and/or Antenna would accommodate two or more users. The City Council may waive this height limitation for a Tower and/or Antenna is used wholly or partially for essential public services, such as public safety.

ii. The City shall have the following priority ranking of land uses (as defined in the City of Wayzata Comprehensive Plan) suitable for potential new or replacement Telecommunication Facilities when considering a conditional use permit application, with (a) being the highest priority and (d) being the lowest priority:

- a) City Owned Property that is adjacent to highway rights of way and not adjacent to or adjoining single family residential property.
- b) Institutional/Public Property that is not adjacent to or adjoining single family residential property.
- c) Semi-Public/Private Property that is not adjacent to or adjoining single family residential property.
- d) Mixed Use Commercial or Service Commercial properties that are not adjacent to or adjoining single family residential property.

If the proposed site is not the highest priority listed above, then a detailed explanation shall be provided as to why a site of a higher priority was not selected. The explanations shall include the reason or reasons why such a Conditional Use Permit should be granted for the proposed site and a description of the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.

iii. CUPs for new or replacement Telecommunication Facilities shall be prohibited in the following land use categories, as defined in the City of Wayzata Comprehensive Plan:

- a) Parcels guided and utilized for residential purposes, including single family and multiple family.
- b) Parcels guided and utilized for Park or Public Open Spaces
- c) Parcels guided and utilized for Central Business District, Mixed Use Residential, or Downtown Mixed Use District.

5. General Standards for Telecommunication Facilities.

All Telecommunications Facilities must comply with the following standards.

Comment [8]: There are very few locations within Wayzata that are not adjacent to or adjoining residential property of some type, making this provision operative in almost every instance.

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- 1 | A. **Vertical projection on Antenna support structures.** Modifications to existing
2 | towers or base stations that do not exceed the limitations set forth under 47 C.F.R.
3 | § 1.40001 (as amended) shall be allowed without a conditional use permit. All
4 | other antennas ~~Antennas~~ mounted on an existing Antenna support structure shall
5 | not extend more than 15 feet above the height of the structure to which they are
6 | attached, and wall ~~Wall~~ or façade-mounted Antennas shall not extend above the
7 | cornice line and shall be constructed of a material or color that matches the
8 | exterior of the building.
9 |
10 | B. **Horizontal projection.** Modifications to existing towers or base stations that do
11 | not exceed the limitations set forth under 47 C.F.R. § 1.40001 (as amended) shall
12 | be allowed without a conditional use permit. All other antennas ~~Antennas~~ shall
13 | not project out from the side of the existing Antenna support structure, Tower or
14 | wall or facade by more than three feet.
15 |
16 | C. **Fall Zone Analysis.** For any application requiring the construction of a new
17 | tower, the ~~The~~ Applicant must submit a fall zone analysis report, to be completed
18 | by a qualified and licensed engineer which shows the Telecommunications
19 | Facilities do not pose a threat to general health, safety and welfare of the City.
20 |
21 | D. **Setbacks.** A new Tower shall meet the building setback that is established for the
22 | district where it is to be located and the following additional standards:
23 |
24 | i. The Tower shall be setback from all residential property lines at least one
25 | (1) foot for each foot in height, but shall have a minimum setback of at
26 | least one hundred (100) feet. The Tower setbacks may be increased or
27 | reduced by the City Council dependent on the results of the engineered fall
28 | zone analysis report submitted by the Applicant as part of the permit
29 | application.
30 |
31 | ii. Towers and Telecommunications Facilities shall not encroach upon any
32 | easements unless written permission is obtained from the underlying
33 | property owner burdened by the easement and the beneficiary of the
34 | easement.
35 |
36 | iii. The required setbacks may be reduced or the location in relation to a
37 | public street modified, at the sole discretion of the City Council, when the
38 | Telecommunications Facility is integrated into an existing or proposed
39 | structure such as a building, light or utility pole.
40 |
41 | E. **Height.** The height of an Antenna and Tower shall be the minimum necessary to
42 | meet the Applicant's coverage and capacity needs, as verified by an electrical
43 | engineer or other appropriate professional. The City Council may waive this
44 | requirement if additional height is appropriate for co-location opportunities.
45 |

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F. **Exterior surfaces.** Towers and Antennas shall be painted a non-contrasting color consistent with the surrounding area such as: blue, gray, green, brown, or silver, or have a galvanized finish to reduce visual impact. Metal Towers shall be constructed of, or treated with, corrosion-resistant material.

G. ~~Underground Equipment Storage. Accessory Equipment or equipment storage facilities shall be required to be designed and built underground adjacent to the Telecommunications Facility, unless deemed infeasible by the City Council. Only in situations where underground storage is deemed unfeasible, shall above-ground or ground mounted equipment be permitted, subject to the restrictions of this Ordinance, including, but not limited to screening of existing equipment.~~

H. **Ground-mounted equipment.** ~~If deemed unfeasible by the City Council to be built underground, ground mounted~~ Accessory Equipment or buildings shall be architecturally designed to blend in with the surrounding environment, including the principal structure, or shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and compliments the character of the surrounding neighborhood. ~~No more than one Equipment Shelter or accessory building is permitted for each Tower. Equipment Shelters or accessory buildings shall be designed to accommodate additional space needed for the co-location of additional Antennas at the site.~~ Design of the building or equipment cabinet, screening and landscaping are subject to a site plan review by City Staff, Planning Commission, and City Council, and any applicable Design Standards criteria under Section 801.09 of the Wayzata Zoning Ordinance. The Applicant shall be responsible for maintaining the structure in a high-quality condition. If the Applicant abandons or vacates the structure, it shall be forfeited to the City or torn down by the Applicant at their expense, at the discretion of the City Council.

I. **Construction.** Telecommunications Facilities shall be in compliance with all buildings and electrical code requirements. All applicable federal, state and local agency licenses and/or permits shall be obtained. A Tower shall be designed and certified by a licensed structural engineer to be structurally sound and in conformance with the building code. Structural design, mounting and installation of the Telecommunications Facilities shall be in compliance with the manufacturer's specifications. If, upon inspection, the City concludes that a Tower or other portion of a Telecommunications Facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the Telecommunication Facility or Tower, the owner shall have thirty (30) days to bring such Tower or Facility into compliance with such standards. Failure to bring such Tower or Facility into compliance with such thirty-day period shall constitute grounds for the removal of the Tower or Facility at the owner's expense.

Comment [9]: This provision must have been taken from a state with no snowfall and limited rainfall. As a result of our weather and ground moisture conditions, underground equipment is never feasible in Minnesota.

Comment [10]: This is a value judgment for the City to consider. Does Wayzata mean to have equipment buildings that are triple the originally required size, just so that it is built to accommodate every possible collocator?

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J. **Interference with Public Safety Telecommunications.** No Tower or Facility shall interfere with public safety Telecommunications. All Towers and Facilities shall comply with FCC regulations and licensing requirements.

K. **Security Fencing and Screening.** Telecommunication Facilities and Towers shall be enclosed by security fencing not less than the height of the equipment and shall also be equipped with an appropriate anti-climbing device or otherwise constructed to prevent climbing by unauthorized personnel. Fencing within one hundred (100) feet of a residential or parking property shall be constructed of a well-designed fence of wood or other environmentally sound material, and be compatible with the surrounding character of the area. The Facilities and Towers shall also include a landscape screen around the perimeter of equipment area, as approved by the City Council.

L. **Other Protections.** The City may require shields to protect from ice falling from Towers, anti-climbing devices to prevent unauthorized persons from climbing Towers, or other appurtenances necessary to protect life and property.

M. **Noise.** If the proposed Telecommunications Facility includes equipment that causes significant sound levels, sound buffers may be required including but not limited to, baffling, barriers, enclosures, walls and plantings. The Applicant shall submit an acoustical analysis and report prepared by a licensed and/or accredited sound engineer certifying that the noise to be generated from the proposed Telecommunication Facility shall not impact adjacent properties. Said report shall include, without limitation, a written description of all noise generated by the Facility, including retractable monopole motors, Antenna rotators, power generation, heating or air conditioning, and related equipment, and shall include the estimated times, frequency, duration and decibel levels of the noise.

N. **Sensitive Habitats.** No Telecommunication Facility shall be located in environmentally sensitive habitats, including but not limited to wetlands, shorelines, established animal habitats, conservation districts, and significant tree groups, unless mitigation measures can be adopted which would reduce potential impacts to levels of non-significance.

O. **Radio Frequency Emissions.** Telecommunications Facilities shall comply with Federal Communication Commission standards for radio frequency emissions and interference.

P. **Interference.** Telecommunications Facilities shall comply with Federal Communication Commission standards related to radio frequency interference. No Telecommunication Facility shall be permitted that causes interference with commercial or private use and enjoyment of other legally operating Telecommunications devices including, but not limited to, radios, televisions, personal computers, telephones, personal communications devices, garage door openers, security systems, and other electronic equipment and devices. An

Comment [11]: Monopoles that are constructed without climbing pegs on the lower portion of the pole need no additional, anti-climbing protections.

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~~Applicant shall furnish a state registered engineer's certification that no such interference shall occur, or identify what interference may occur and how the Applicant shall mitigate any potential interference that may occur.~~

Comment [12]: RF Interference falls under the exclusive jurisdiction of the FCC, and should be treated the same way as in the prior subsection.

Q. **Risk of Danger.** Telecommunications Facilities and Towers shall not pose a risk of explosion, fire, or other danger due to its proximity to volatile, flammable, explosive or hazardous materials. Telecommunication Facilities, Towers, Antennas, and Accessory Equipment shall be subject to state and federal regulations pertaining to non-ionizing radiation and other health hazards related to such Facilities. If new, more restrictive standards are adopted, the Facilities shall be made to comply or continued operations may be restricted by the City Council. The cost of verification of compliance shall be borne by the Applicant.

R. **Maintenance.** All Telecommunication Facilities and Towers shall at all times (i) be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life or property of any person, and (ii) allow sufficient access for service vehicles and personnel. Maintenance of equipment ~~installed in residentially zoned areas~~ shall be scheduled for between 7:00am-6:00pm, Monday through Friday, unless in case of emergency. ~~Service vehicles for equipment maintenance shall be parked on city streets, whenever possible.~~ In the case of maintenance of Telecommunication Facilities on the City Water Tower, service vehicles shall park on the service entrance of the City Water Treatment Plant, whenever possible.

Comment [13]: Some non-emergency maintenance activities must occur during times when the wireless system is not in use, during very early morning hours.

Comment [14]: For the safety of Verizon Wireless workers, parking should be off-street.

S. **Co-location opportunity.** The Applicant, the Tower owner, the landowner, and their successors and assigns shall allow the shared use of the Tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use, shall submit a dispute over the potential terms and conditions to binding arbitration, and shall sign the conditional use permit agreeing to these requirements. The City Council may waive these co-location requirements if necessary to implement stealth design.

i. All Telecommunications Facility providers shall cooperate with each other in co-locating Telecommunication Facilities and shall exercise good faith in co-locating with other licensed carriers and in the sharing of sites, including the sharing of technical information necessary to evaluate the feasibility of collocation. In the event a dispute arises as to a co-location issue, the City may require a third-party technical study to evaluate the feasibility of co-locating at the expense of ~~either or both each~~ wireless telecommunications providers ~~involved in any such third-party study~~;

ii. All proposed new Towers shall be designed to accommodate both the Applicant's Antennas and Antennas for as many other licensed carriers as can be technically located thereon, but not less than one additional;

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iii. All new Towers and Facilities owned by a telecommunications provider shall be made available for use by the owner or initial user thereof, together with as many other licensed carriers as can be technically located thereon, but not less than one additional;

iv. All proposed new Towers shall be designed to allow for future rearrangement of Antennas or Tower modifications, and to accept Antennas mounted at varying heights, unless Stealth Design techniques dictate otherwise;

T. **Successors and Assigns.** Any Permit or lease for a Telecommunications Facility shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, and assigns.

U. **External messages.** No advertising message or identification signs, other than warning or equipment information signs as legally required, shall be affixed to the Telecommunications Facilities.

V. **Lighting.** Telecommunications Facilities or Towers shall not be artificially illuminated unless required by law or by a governmental agency to protect the public's health and safety or unless necessary to facilitate service to ground-mounted equipment. Any lighting or artificial illumination utilized shall be shielded and not cast glare onto adjacent properties.

W. **On-site employees.** There shall be no employees on the site at a Telecommunications Facility on a permanent basis. Occasional or temporary repair and service activities are allowed.

X. **Advances in Technology.** All Applicants/Permit Holders shall use and apply any readily available advances in technology that lessen the negative aesthetic effects of Telecommunication Facilities and Towers to the residential communities within the City. The City may review existing structures and compare the visual impact with available technologies in the industry for the purpose of removal, relocation or alteration of these structures in keeping with the general intent of this Ordinance. Such removal, relocation or alteration may be required by the City pursuant to its zoning power and authority.

Y. **Removal.** After thirty (30) days' notice from the City to the Permit Holder all Telecommunications Facilities, Antennas, or Towers shall be required to be removed at the Permit Holder's expense, if such improvement is found to be in violation of any portion of this Ordinance by the City and such violation is not cured within such thirty day time period. Obsolete or unused Telecommunications Facilities and all related equipment shall be removed within six (6) months after cessation of their use at the site, unless an exemption is granted by the City Council. Telecommunications Facilities and related

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equipment that have become hazardous shall be removed or made not hazardous within 30 days after written notice to the current Permit Holder and to any separate landowner, unless an exemption is granted by the City Council. Notice may be made to the address listed in the application, unless another one has subsequently been provided, and to the taxpayer of the property listed in the Hennepin County tax records. Telecommunications Facilities and all related equipment that are not removed within this time are declared to be public nuisances and may be removed by the City. The City may assess its costs of removal against the Property.

- Z. **No Recourse Against the City.** Every permit shall provide that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant/Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of its authority pursuant to this Ordinance, a permit, a lease, or other applicable law, unless the same shall be caused by criminal acts or by willful gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

6. Applications for Telecommunications Facilities Permit.

Permit Application. In addition to an Applicant's name, address, certificate of survey, grading and landscaping plans, and other such similar information, an application for a permit under this Section shall include the following:

- A. A scaled site plan clearly indicating the location, type and height of the proposed Telecommunication Facility, Tower, or Antenna, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed equipment and any structures, topography, parking and any other information deemed by the City Staff to be necessary to assess compliance with this Section.
- B. A visual simulation of the proposed Telecommunication Facility Tower or Antenna. Visual simulation shall consist of either a physical mock-up of the Telecommunication Facility Tower or Antenna, balloon simulation, computer simulation, photo simulation, or other, similar simulation. In instances where the proposed Telecommunications Facility Tower or Antenna is located near a residential area, ~~photos~~ simulations shall be submitted of the proposed Telecommunication Facility Tower or Antenna from the nearest residential neighbors, unless the owners of such residential property refuse to allow the required photos to be taken.
- C. A report from a qualified and licensed professional engineer which:

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- 1 i. Demonstrates that the Telecommunication Facility, Tower, Antenna
2 and/or Accessory Equipment comply with the structural and electrical
3 standards of this Section.
4 ii. Describes the Tower height, if utilized.
5 iii. Documents the height above grade for all potential mounting positions for
6 co-locating Antennas and the minimum separation distance between
7 Antennas.
8 iv. Describes the Tower's capacity, if utilized, including the number and type
9 of Antennas it can accommodate.
10 v. A network map describing all of the Applicant's Telecommunications
11 Facilities ~~which provide any coverage~~ within the City's limits.
12 vi. Documents what steps the Applicant shall take to avoid interference with
13 established public safety Telecommunications.
14 ~~vii. Includes an engineer's stamp and registration number.~~
15
16 D. A written statement acknowledging that failure to comply with this Section and
17 the conditions of permit approval shall result in the revocation of the permit and
18 removal of the Telecommunications Facility, Antenna, and/or Tower;
19
20 E. Documentation that the Applicant has applied for and/or obtained any licenses
21 and/or approvals that are required by federal and state agencies.
22
23 F. A written statement indicating that the expenses incurred by the City to review
24 and process the application, and to enforce the provisions of the permit shall be
25 reimbursed by the Applicant.
26
27 G. A written statement which requires the Applicant to utilize the procedures
28 established by the Federal Communications Commission to resolve any
29 complaints received relating to interference allegedly caused by the
30 Telecommunications Facility, Antenna, and/or Tower.
31
32 H. A written statement indicating that the Applicant shall cooperate in good faith and
33 fair dealing in co-locating Telecommunications Facilities, Antenna and/or
34 Towers.
35
36 I. A written statement indicating that the Telecommunications Facility, Antenna,
37 and/or Tower shall be maintained in good and safe condition and its original
38 appearance and concealment, disguise or camouflage elements incorporated into
39 the design at the time of approval shall be preserved. Such maintenance shall
40 include, but not be limited to, painting, repair of equipment, and maintenance of
41 landscaping.
42
43 J. A written statement authorizing the City to conduct periodic inspections to
44 determine that the Telecommunications Equipment complies with the provisions
45 of this Section, any conditions of approval and all safety and building codes and
46 permits issued. This statement shall give the City the right to conduct such

Comment [15]: This PE is readily available for structural analysis (and is required elsewhere in the ordinance). RF analysis can be performed by an electrical engineer, but such personnel are in short supply.

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inspections at any time upon a reasonable notice of five (5) business days to the Applicant, and that all expenses related to such inspections shall be borne by the Applicant.

- K. A written statement indicating that the Applicant understands that Telecommunications Facilities, Antennas, and/or Towers which have not been used for six (6) months shall be deemed abandoned, and shall be removed pursuant to this Section.

~~L. A written statement requiring the Applicant or current Permit Holder to notify the City that the Telecommunications Facility, Antenna, and/or Tower continue to be in operation. The notice of continuing operation shall be sent to the City Manager annually by certified mail within the last two (2) weeks of the month of December.~~

7. Review of Permit Applications.

The City shall process all applications for Telecommunication Facilities Permits in a timely manner and in accordance with established procedures and City Code.

8. Appeals.

At any time within thirty (30) days after a written order, requirement, determination or final decision has been made by the Zoning Administrator or other official interpreting or applying this Section, except for actions taken in connection with prosecutions for violations thereof, the Applicant or any other person affected by such action may appeal the decision in accordance with the provisions of the Zoning Ordinance.

9. Revocation of Permit.

A material breach of any terms and conditions of a permit issued for a Telecommunication Facility under this Section and the Zoning Ordinance may result in the revocation of the permit by the City. Penalties for a violation of a permit or this Section may include fines and removal of the Telecommunication Facility, Tower, or Antenna at the Applicant's/Permit Holder's expense.

10. No Recourse Against the City.

Every application for and issued permit shall provide a written acknowledgement, agreement and release from the Applicant and Permit Holder that, without limiting such immunities as the City or other persons may have under applicable law, an Applicant and Permit Holder shall have no monetary recourse whatsoever against the City or its elected officials, boards, commissions, agents, employees or volunteers for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement or lack of enforcement of this Ordinance or the City's exercise of or failure to exercise its authority pursuant to this Ordinance, a permit, a lease,

Comment [16]: There is a substantial risk that one or more providers may neglect to send such a notice, since this is not a requirement in any other City in which we have represented Verizon Wireless in the upper Midwest. If this must remain, then we respectfully ask that the City have a mechanism in place to send a reminder in the event that the notice is not sent. Also, if the City is the Lessor, such a notice seems unnecessary. If the companies continue to pay rent, then the City has an effective notice that the site is still in use.

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or other applicable law, unless the same shall be caused by criminal acts or by shallful gross negligence. Nothing herein shall be construed as a waiver of sovereign immunity.

11. Indemnification.

Each permit issued pursuant to this Section shall have as a condition of the permit, a requirement that the Applicant indemnify and hold harmless the City and its officers, agents, and employees from actions or claims of any description brought on account of any injury or damages sustained by any person or property resulting from the issuance of the permit and conduct of the activities authorized under said permit.

12. Severability.

If any section, subsection, sentence, clause or phrase of this Section is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Section. The City Council hereby declares that it would have passed this Section and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases may be declared invalid.

13. Residential Accessory Uses.

Residential Accessory Communication Devices are a permitted accessory use within residential districts provided they meet the following conditions:

- A. **Use.** They are for use by residents upon whose property the Residential Accessory Communication Devices are located.
- B. **Height.** A ground mounted Residential Accessory Communication Device height shall not exceed fifteen (15) feet unless approved as a conditional use permit by the City Council.
- C. **Yards.** The Residential Accessory Communication Device shall not be located within the required front yard setback, a required side yard or any side yard abutting a street. Communication devices shall be located five (5) feet or more from rear lot lines and shall not be located within a utility easement.
- D. **Roofs.** The Residential Accessory Communication Device may be placed on the roof of any authorized structure on the premises. The height of the Residential Accessory Communication Device shall not exceed six and one-half (6-1/2) feet above the peak of the roof, unless approved by a conditional use permit by the City Council.

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- 1 E. **Neighboring Property Impact.** In cases where no building permit is required,
2 the Residential Accessory Communication Device shall be so located that in the
3 event it falls, it shall not fall on adjoining property.
4
- 5 F. **Building Permits.** A building permit shall be required for the installation of any
6 Residential Accessory Communication Device which requires a conditional use
7 permit, or for any device which has a structural surface exposure of greater than
8 nine (9) square feet. Building permit applications shall be accompanied by a site
9 plan and structural components data for the Residential Accessory
10 Communication Device, including details of anchoring. The Building Official
11 shall approve the plans before installation.
12
- 13 G. **Color/Content.** Residential Accessory Communication Devices shall be of a
14 neutral color and shall not be painted with scenes or contain letters or messages.
15
- 16 H. **Lightning Protection.** Each Residential Accessory Communication Device shall
17 be grounded to protect against natural lightning strikes in conformance with the
18 National Electrical Code as adopted by the City of Wayzata.
19
- 20 I. **Electrical Code.** Residential Accessory Communication Device electrical
21 equipment and connections shall be designed and installed in conformance with
22 the National Electrical Code as adopted by the City of Wayzata.
23
- 24 J. **Effective Date.** The provisions of this Section shall be applicable to all
25 communication reception/transmission devices erected after _____, 2015.
26 All such structures existing prior to this date shall be addressed as legal non-
27 conforming uses.
28
- 29 K. **Conditional Use Permit.** Residential Accessory Communication Devices not
30 qualifying as a permitted accessory use may be considered and approved through
31 conditional use standards established by Section 801.04 of this Ordinance.
32

Attachment B-3: Federal Statute 47 U.S.C. 1455(a)

Title 47: Telecommunication

PART 1—PRACTICE AND PROCEDURE

Subpart CC—State and Local Review of Applications for Wireless Service Facility Modification

§1.40001 Wireless Facility Modifications.

(a) *Purpose.* These rules implement section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

(1) *Base station.* A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

(2) *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) *Eligible facilities request.* Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- (i) Collocation of new transmission equipment;
- (ii) Removal of transmission equipment; or
- (iii) Replacement of transmission equipment.

(4) *Eligible support structure.* Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

Attachment B-3: Federal Statute 47 U.S.C. 1455(a)

(5) *Existing*. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) *Site*. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

(7) *Substantial change*. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside the current site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in §1.40001(b)(7)(i) through (iv).

(8) *Transmission equipment*. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Attachment B-3: Federal Statute 47 U.S.C. 1455(a)

(9) *Tower.* Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) *Review of applications.* A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) *Documentation requirement for review.* When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) *Timeframe for review.* Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) *Tolling of the timeframe for review.* The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) *Failure to act.* In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) *Remedies.* Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

[80 FR 1269, Jan. 8, 2015]

**WAYZATA PLANNING COMMISSION
WORKSHOP MEETING MINUTES
JULY 20, 2015**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Chair Vanderheyden called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Vanderheyden, Young, Gruber, Gonzalez, Ramy, and Iverson. Absent and excused was: Commissioner Gnos. Director of Planning and Building Management Gadow, City Attorney Schelzel and Planning Intern Peters were also present.

Chair Vanderheyden stated the minutes to be reviewed are from the July 6, 2015 workshop meeting.

Chair Vanderheyden stated on page 3, line 1, the word "would" should be changed to "may".

Commissioner Ramy made a motion, Seconded by Commissioner Iverson, to approve the July 6, 2015 workshop meeting minutes, as amended by the Chair. The motion carried unanimously.

AGENDA ITEM 2. Workshop Items:

a. Alternative Energy Ordinance Discussion

Mr. Gadow stated the Commission expressed interest in discussion on the topic of alternative energy, and review of local ordinances on wind turbines and other forms of energy. The purpose of this workshop session is to discuss some general parameters for a potential draft Wayzata ordinance, and identify questions and areas for additional research.

Mr. Peters presented information on geothermal, ground source heat pump systems (GSHPs), solar energy and wind energy. He reviewed ordinances from Woodbury, Maplewood, Delano, Ramsey, and Watertown. The ordinances reviewed generally required a building permit for these energy sources, only closed loop circuits were allowed in all zoning districts and the codes contained abandonment language. For solar energy, these ordinances look at where it will be mounted, the height, and the ground coverage. Some communities require a Conditional Use Permit for wind energy and most communities state wind energy units are allowed in specific zones only, there is a limit of one unit per parcel and there must be a manufacturer's warranty or maintenance agreement in place. One thing to consider with wind energy is the maximum height of the hub and how high the blades would go.

Commissioner Ramy asked why some communities were only choosing to address one type of alternative energy, such as wind only.

1 Mr. Gadow stated there was not a lot of legislative history to explain why these cities chose the
2 sources they did.

3
4 Commissioner Gonzalez asked what the definition was for an Interim Conditional Use and what
5 the limitation would be for time. She asked why the City would chose an Interim Conditional
6 Use Permit over a variance or Conditional Use Permit.

7
8 Ms. Gadow explained an Interim Use Permit is something that was included in several city
9 ordinances years ago. Wayzata has moved away from using the Interim Use Permit but that it
10 had included things such as the outdoor market in the Shopping District.

11
12 Commissioner Gonzalez clarified the Interim Use Permit is not something that would go with
13 the land or property.

14
15 Mr. Gadow stated he would recommend staying away from the Interim Use and instead identify
16 the areas in the City that these items could be permitted, such as allowing roof mounted solar and
17 geothermal units as permitted in all districts, and wind or ground mounted solar a conditional use
18 in designated districts or areas of the City.

19
20 Commissioner Gruber asked if the City had a time frame for establishing these ordinances.

21
22 Mr. Gadow stated there is no time frame established at this time.

23
24 Commissioner Gonzalez asked if community solar gardens should be added to the definitions,
25 and if this was something the City would want to allow.

26
27 Mr. Gadow stated Legislature had reviewed community solar gardens and this would be
28 something the City should discuss and review as part of the overall ordinance.

29
30 Commissioner Young asked if there were any applications coming to the City pertaining to
31 alternative energy that would require the City to establish a particular Ordinance first.

32
33 Mr. Gadow stated he was not aware of any local wind energy unit applications and the City will
34 occasionally see applications for roof mounted solar energy systems. There has been interest in
35 geothermal but he is not aware of anyone moving forward with this currently. The City is
36 looking at the possibility of adding a solar component if there were a parking ramp constructed
37 on Mill Street. He suggested the Commission start by discussing what systems would be a good
38 fit for Wayzata, where they would allow these systems and what systems would not be a fit for
39 the City. He clarified there are some State requirements that allows for solar. The Ordinance
40 should be designed to provide clarity and guidance for those interested in putting in these
41 systems. The community is more concerned about the wind energy systems and where the City
42 would allow these systems.

43
44 Chair Vanderheyden asked if it would be reasonable to address all three (3) energy systems in
45 the same ordinance. He recommended the Commission start discussions with geothermal
46 systems. He agreed with the example ordinances that open looped systems should not be

1 allowed. This would allow the option of field implementation or drilled implementation. He
2 stated the Commission should discuss and decide if this could be laid in a lake or a body of
3 water.

4
5 Mr. Gadow stated he did not believe the City would have jurisdiction over decisions regarding
6 the lake. The Lake Minnetonka Conservation District or the Minnehaha Watershed District may
7 have jurisdiction over any geothermal involving Lake Minnetonka. Staff would look into this
8 further.

9
10 Chair Vanderheyden stated the field system and the drilled system should be permitted uses.

11
12 Commissioner Gruber suggested that the Commission invite an expert in each alternative energy
13 area to make a presentation to the Commission regarding these systems so the Commission can
14 be have a better understanding of the systems and what concerns they should be addressing.

15
16 Mr. Gadow stated Staff could arrange this for the Commission.

17
18 Commission Gonzalez stated when the Bay Center was originally presented there were plans to
19 include geothermal energy. She asked if this had been done, if it was working for them and what
20 their experience has been with the systems.

21
22 Mr. Gadow stated he would talk with the Bay Center to get more information on their experience
23 with the geothermal system they use. He clarified he is not requesting the Commission to draft
24 an ordinance at this time, but rather to provide feedback on what the Commission would like
25 more information on, or if there are other things that the Commission would be interested in
26 addressing, such as height and setbacks.

27
28 Commissioner Iverson asked if communities had provided incentives to residents to install these
29 types of systems and how this had worked for those communities.

30
31 Mr. Steve Tyacke, 292 Grace Point Court, Wayzata, stated it is important to review the City's
32 Comprehensive Plan because this does provide guidance and specifics on alternative energy.

33
34 Chair Vanderheyden stated after reviewing the sample ordinances he did have concerns on the
35 height for roof mounted wind systems.

36
37 Commissioner Ramy asked what the thoughts would be on allowing only one system for a set
38 area or if these systems should be allowed for each parcel.

39
40 Commissioner Iverson stated it may be more advantageous to plan for fewer and larger systems
41 and place these systems in centralized areas to allow several people to benefit from them rather
42 than several smaller systems.

43
44 Chair Vanderheyden stated some of these systems do not generate enough power to distribute
45 over a large area.

46

1 Commissioner Gonzalez stated the City of Ramsey Ordinance Wind Energy references clean
2 wind versus dirty wind and that they must be a certain height over surrounding obstacles and
3 four (4) energy conversion systems that can be used. She would like to have more information
4 on these systems in order to understand what each one does and how they differ. She stated she
5 would also like to have information on the flight paths of migrating birds in order to understand
6 how these wind systems may impact these.

7
8 Commissioner Gruber suggested that Commissioners put together a list of key questions that
9 they would like to have answered then Staff can work on finding experts in these areas to meet
10 with the Commission and discuss these questions and concerns.

11
12 Commissioner Iverson stated she would like more information on the noise generated by these
13 systems.

14
15 Commissioner Young stated the Commission could be comprehensive with the ordinance but if,
16 after the overview with the experts, the Commission may find there is a need to split these
17 different energy sources into separate ordinances.

18
19 Chair Vanderheyden stated Ramsey addressed the use of alternative energy systems on City
20 property and leasing City property. He would recommend the City not get involved with
21 allowing these systems on City property for private use.

22
23 Commissioner Iverson asked at what point the Commission would receive community input and
24 feedback.

25
26 Mr. Gadow stated once the experts have talked with the Commission, they would be able to plan
27 what to include in a draft ordinance and how to communicate this to get feedback from the
28 community.

29
30 Commissioner Young requested Mr. Peters forward a copy of the ordinances from Excelsior for
31 review.

32
33 Commissioner Gonzalez asked what the State guidelines were for each of these systems.

34
35 Mr. Peters clarified according to the State provisions, the City would not be able to ban these
36 systems but the City would be able to put restrictions on them in regard to height and location.

37
38 Chair Vanderheyden stated he like the tables included in the Watertown Ordinance on pages 4
39 and 5, and the drawing on page 10 in regard to the height of solar panels. He stated he also liked
40 the general and environmental standards section in the City of Maplewood Ordinance on page 7
41 and 8. He did feel some of these environmental standards were excessive for residents.

42
43
44 **AGENDA ITEM 3. Other Items:**

45
46 **a. Review of Development Activities**

1
2 Mr. Gadow stated the August 3 agenda would potentially include an application for a side yard
3 setback variance for a garage addition, and one for a variance for a fence height along Bushaway
4 Road. National Night Out is August 4. Staff is preparing a draft version of the
5 Telecommunications Ordinance for a public hearing on August 18.

6
7 **b. Other Items**
8

9 Commissioner Gonzalez provided an update from the July 14 Heritage Preservation Board
10 meeting. She stated they would be having a workshop on October 9 for people who have
11 renovated their homes. She suggested possibly having someone familiar with alternative energy
12 sources available for this meeting.
13

14 Mr. Gadow provided an update on City Council actions to deny the variance request for a tennis
15 court and the 250 Bushaway Road subdivision was postponed to July 21.
16
17

18 **AGENDA ITEM 4. Adjournment.**
19

20 There being no further business, Commissioner Gruber made a motion, seconded by
21 Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.
22

23 The meeting was adjourned at 8:00 p.m.
24

25 Respectfully submitted,
26

27 Tina Borg
28 *TimeSaver Off Site Secretarial, Inc.*

**WAYZATA PLANNING COMMISSION
MEETING MINUTES
AUGUST 3, 2015**

AGENDA ITEM 1. Call to Order, Roll Call and Approval of Minutes.

Chair Vanderheyden called the meeting to order at 7:00 p.m.

Present at roll call were Commissioners: Vanderheyden, Gonzalez, Ramy, Young, and Gruber. Absent and excused was: Commissioner Iverson and Gnos. Director of Planning and Building Gadow, Intern Peters, and City Attorney Schelzel were also present.

Chair Vanderheyden stated there were no minutes of the previous meeting to review, and they would be reviewed at the next meeting.

AGENDA ITEM 2. Regular Agenda Public Hearing Items:

- a. **133 Ridgeview Drive E – Graham and Nancy Gnos**
 - i. **Sidyard Setback Variance for Garage Addition**

Mr. Gadow stated Graham and Nancy Gnos have submitted a development application requesting approval of a variance to construct a 4-foot wide by 25-foot long (100 square foot) expansion to an existing attached garage at 133 Ridgeview Drive E that would encroach 5.6-feet into the 10-foot sidyard setback to allow for the location of a driveway to a side-loading garage. He reviewed the site plan and building plans.

Mr. Gadow noted that Commissioner Gnos had informed the Chair of his Application, and had recused himself from discussing or voting on this item as a commissioner.

Mr. Graham Gnos, 133 Ridgeview Drive E, Wayzata, provided background on the home and reasons for requesting a variance at this time. He explained the objective of bumping the garage out by 4-feet is to bring the garage and home back into rhythm of the neighborhood where every house has a two car garage. He explained there would be no trees removed from the property.

Commissioner Gruber asked Mr. Graham to explain the reactions of potential buyers of the property with the home only having a single car garage.

Mr. Gnos stated several potential buyers had told them they would have made an offer on the home if it had a two car garage. Having only a one car garage has prevented them from selling the home.

Commissioner Gonzalez asked if the black top would need to be expanded in front of the addition.

1 Mr. Gnos stated the existing apron and black top would remain the same. The existing door is a
2 two car garage door and this would be shifted over to allow for two cars to be parked in the
3 garage.

4
5 Commissioner Gonzalez asked if the applicant had talked with the neighbors regarding the
6 expansion.

7
8 Mr. Gnos stated he had discussed the plans with neighbors and they have stated they are open to
9 the expansion. He also let them know the Planning Commission would be holding a public
10 hearing on the application today.

11
12 Commissioner Gonzalez asked if the height of the existing structure would change.

13
14 Mr. Gnos clarified the existing structure height would not change.

15
16 Chair Vanderheyden asked if there was a formal easement for how the neighbor's driveway sits
17 on Mr. Gnos' property.

18
19 Mr. Gnos stated he was not aware of a formal easement.

20
21 Chair Vanderheyden opened the public hearing at 7:12 p.m.

22
23 There being no comments from the public, Chair Vanderheyden closed the public hearing at 7:13
24 p.m.

25
26 Commissioner Ramy asked if there had been other situations in the City where the building had
27 created the hardship. He stated the situation was an economic one because the owner still had
28 reasonable use of the land and building.

29
30 Commissioner Gonzalez clarified the Planning Commission's role was to determine if there were
31 practical difficulties, not a hardship, and if the request is reasonable.

32
33 City Attorney Schelzel stated the Commissioner should focus on the standards in the Zoning
34 Ordinance. He stated the Ordinance states that a variance can be granted if the applicant
35 establishes that there are practical difficulties in complying with the Ordinance, and there are
36 three criteria outlined in the Ordinance that must be met in order to establish practical
37 difficulties. He clarified if the applicant was requesting the variance for economic
38 considerations only, then the variance should be denied; but if the applicant establishes there are
39 additional reasons for the variance request then the Commission may chose to grant the variance.

40
41 Commissioner Gonzalez recommended approval of the variance request for the following
42 reasons: there are practical difficulties because it is an existing building and the applicant has no
43 alternatives for expansion, the existing setback is currently non-conforming and the request will
44 not affect the neighboring property, the trees on the property will remain, the height of the
45 structure will not change, the difficulties are unique to the property because all of the homes in

1 this neighborhood have double garages and this property does not have alternatives for this, the
2 variance will not alter the essential character of the neighborhood and the request is reasonable.

3
4 Commissioner Ramy stated the house was designed with a two car garage, and the home could
5 be a two car garage if the applicant were to put the kitchen back to the way the original design
6 had been and moved the kitchen from the garage.

7
8 Commissioner Gonzalez clarified that her decision is not based on knowing the applicant. The
9 application as presented meets the standards in the Ordinance for granting a variance. The
10 practical difficulties are established.

11
12 Commissioner Young stated the previous owner made the change and the applicant bought the
13 house knowing of the change. But based on the application, he would support the variance.

14
15 Chair Vanderheyden stated he would also support the request. The current landowner did not
16 create the practical difficulties. He understands there could be cascading effects that may occur
17 with this over time if the Commission sets a precedent by granting the variance. But the request
18 does not alter the character of the locality. This is a neighborhood of two car garages, and the
19 applicant has a single stall garage. Further, being able to park two cars inside is beneficial to the
20 neighborhood in that it keeps more cars off the street and out of sight.

21
22 Commissioner Gruber stated she would not support the request because of the language “the
23 plight of the landowner is due to circumstances unique to the property, and not created by the
24 landowner”. In this case, a landowner created the circumstances, and the applicant has lived in
25 the home for 12-years and has known about the situation and lived with a single stall garage for
26 that time. She stated economic considerations have become paramount for the applicant, as he
27 has been unable to sell the home with a single stall garage. This is an opportunity to negotiate on
28 the price of the property. She expressed concerns about setting a precedent for future applicants
29 that may have unique circumstances created by previous landowners.

30
31 Commissioner Ramy stated this is a reasonable request and would improve the aesthetics of the
32 neighborhood as pointed out by the Chair. He stated he would support the variance request.

33
34 Commissioner Young made a motion, Seconded by Commissioner Gonzalez, to direct Staff
35 prepare a Planning Commission Report and Recommendation of approval for a sideyard setback
36 variance at 133 Ridgeview Drive E for reasons discussed by the Planning Commission. The
37 motion carried 4 ayes; 1 nay (Gruber).

38 39 40 **AGENDA ITEM 3. Other Items:**

41 42 **a. Review of Development Activities**

43
44 Mr. Gadow stated the August 17 meeting would start with a joint workshop with the City
45 Council at 5:30 to discuss the proposed Telecommunications Ordinance. The regular agenda
46 would include a variance application for a fence at 324 Bushaway Road. The City received an

1 application for design review of a medical office building at 1120 Wayzata Boulevard and this
2 may be presented in September.

3
4
5 **b. Other Items**
6

7 Mr. Gadow informed the Commission that he would be leaving his position with the City of
8 Wayzata at the end of August to take a position in Wisconsin. The consulting firm of WSB may
9 be asked to assist with the transition to a new City Planner.

10
11 Mr. Gadow provided an update on City Council actions including a denial for a subdivision at
12 250 Bushaway Road and parking study discussion. There would be a Lake Effect celebration
13 and review on August 19.

14
15 Commissioner Gruber stated she would attend the August 11 Heritage Preservation Board
16 meeting.

17
18 Commissioner Ramy asked if there had been a review of the success of the temporary docks and
19 if there had been any proposal to put in permanent docks.

20
21 Mr. Gadow stated they are looking at the possibility of permanent docks as part of the Lake
22 Effect. Currently the City is seeing more boat traffic at the Broadway docks than the Depot
23 docks. The City is planning to have the temporary docks next season and will reevaluate at that
24 time.

25
26 Commissioner Gruber stated the three (3) finalists (Civitas, Perkins+Will, and Coen+Partners),
27 for firms interested in working with the City on the Lake Effect project will be interviewed
28 August 18.

29
30
31 **AGENDA ITEM 4. Adjournment.**
32

33 There being no further business, Commissioner Gruber made a motion, seconded by
34 Commissioner Ramy, to adjourn the meeting. The motion passed unanimously.

35
36 The meeting was adjourned at 7:38 p.m.

37
38 Respectfully submitted,

39
40 Tina Borg
41 *TimeSaver Off Site Secretarial, Inc.*



WAYZATA PLANNING COMMISSION

August 17, 2015

REPORT AND RECOMMENDATION ON APPLICATION FOR SIDE YARD SETBACK VARIANCE AT 133 RIDGEVIEW DRIVE EAST

SUMMARY OF RECOMMENDATION

- Approval* of Side Yard Setback Variance

** subject to certain conditions noted in Section 4 of this Report*

REPORT AND RECOMMENDATION

Section 1. BACKGROUND

- 1.1 **Project.** Graham and Nancy Gnos (collectively, the “Owner” or “Applicant”) have submitted a development application (the “Application”) requesting approval to construct a four (4) ft wide by twenty five (25) ft long, one hundred square foot (100 SF) expansion to an existing attached garage (the “Project”) at 133 Ridgeview Drive E (the “Property”). The Application requests approval of a variance to encroach 5.6 ft into the ten (10) ft sideyard setback to allow for the location of a driveway to a side loading garage.
- 1.2 **Application Request.** As part of the Application, the Applicant is requesting approval of the following item:
- A. A variance from the required ten (10) ft Sideyard Setback in the R-2 District (Section 801.54.6.B.1.b) to allow encroachment of 5.6 ft into the setback (the “Setback Variance”)
- 1.3 **Property.** The street address, property identification number and owner of the Property are:

133 Ridgeview Drive E	31-118-22-33-0023	Graham and Nancy Gnos
-----------------------	-------------------	-----------------------

- 1.4 Land Use. Uses in the general vicinity are single family detached residential. The Property and adjacent properties are zoned R-2 (5,000 SF minimum lot sizes).
- 1.5 Notice and Public Hearing. Notice of a public hearing on the Application was published in the *Lakeshore Weekly* on July 21, 2015. A copy of the notice was mailed to all property owners located with 350 feet of the Property on July 23, 2015. The required public hearing was held at the August 3, 2015 Planning Commission meeting.

Section 2. STANDARDS

- 2.1 Side Yard Setback. The front yard setback in the R-2 District is ten (10) feet. Section 801.54.6.B.1.b.
- 2.2 Zoning Ordinance Variance Standards. Section 801.05.1.C provides the criteria for reviewing variances from the standards of the Zoning Ordinance. The variance review criteria are as follows:
- A. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of the Zoning Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
 - B. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with this Ordinance.
 - C. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by the Zoning Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
 - D. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
 - E. Variances shall be granted for earth sheltered construction as defined in Minnesota Statutes, section 216C.06, subdivision 14, when in harmony with this Ordinance.
 - F. The City Council shall not permit as a variance any use that is not allowed under this Ordinance for property in the zoning district where the affected

person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.

- G. The City Council may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.
- H. An application for a variance shall set forth reasons that the variance is justified under the criteria of this section in order to make reasonable use of the land, structure or building.

Section 3. FINDINGS

Based on the Application materials, staff reports, public comment presented at the hearing, and Wayzata's Zoning Ordinance, the Planning Commission of the City of Wayzata makes the following findings of fact with respect to the Setback Variance:

3.1 Variance.

- A. The Setback Variance requested in the Application does not change the current single family residential use. The Setback Variance requested is in harmony with the general purposes and intent of the Ordinance and is consistent with the Comprehensive Plan.
- B. A previous property owner remodeled the kitchen, prior to the Applicant purchasing the Property, and extended the kitchen four (4) ft into the garage area, which created a practical difficulty utilizing the existing attached garage as a two stall attached garage. The Applicant's Setback Variance request is to address the practical difficulty created by the previous property owner.
- C. The Setback Variance requested is reasonable, due to circumstances driven by the existing lot layout and the previous property owner's interior remodel project. If granted, the Setback Variance would not alter the essential character of the locality in that the height of the building would not change, no trees would be lost, the existing driveway would remain unaltered, and many residences in the neighborhood have two car garages.
- D. The practical difficulties necessitating the Setback Variance are not solely economic in nature. The existing interior layout of residence on the Property is a significant factor in the practical difficulty with meeting the ordinance requirements.
- E. The proposed uses for the Property, including the attached garage, are permitted accessory uses within the R-2 District.

- F. The conditions for granting approval of the Setback Variance listed below in Section 4 of this Report should be considered by City Council.
- G. The Applicant has provided the reasons that the Setback Variance is justified under the criteria of this section in order to make reasonable use of the land, structures and buildings on the Property.

Section 4. RECOMMENDATION

- 4.1 Planning Commission Recommendation. Based on the findings in section 3 of this Report, the Planning Commission recommends approval of Setback Variance request included the Application (Attachment A), subject to the following conditions:
- A. The Applicant must secure all necessary building permits for construction, and all laws and regulations applicable to the Project.
 - B. All expenses of the City of Wayzata, including consultant, expert, legal, and planning incurred must be fully reimbursed by the Applicant.

Adopted by the Wayzata Planning Commission this 17th day of August 2015.

Chair, Planning Commission

Attachment A

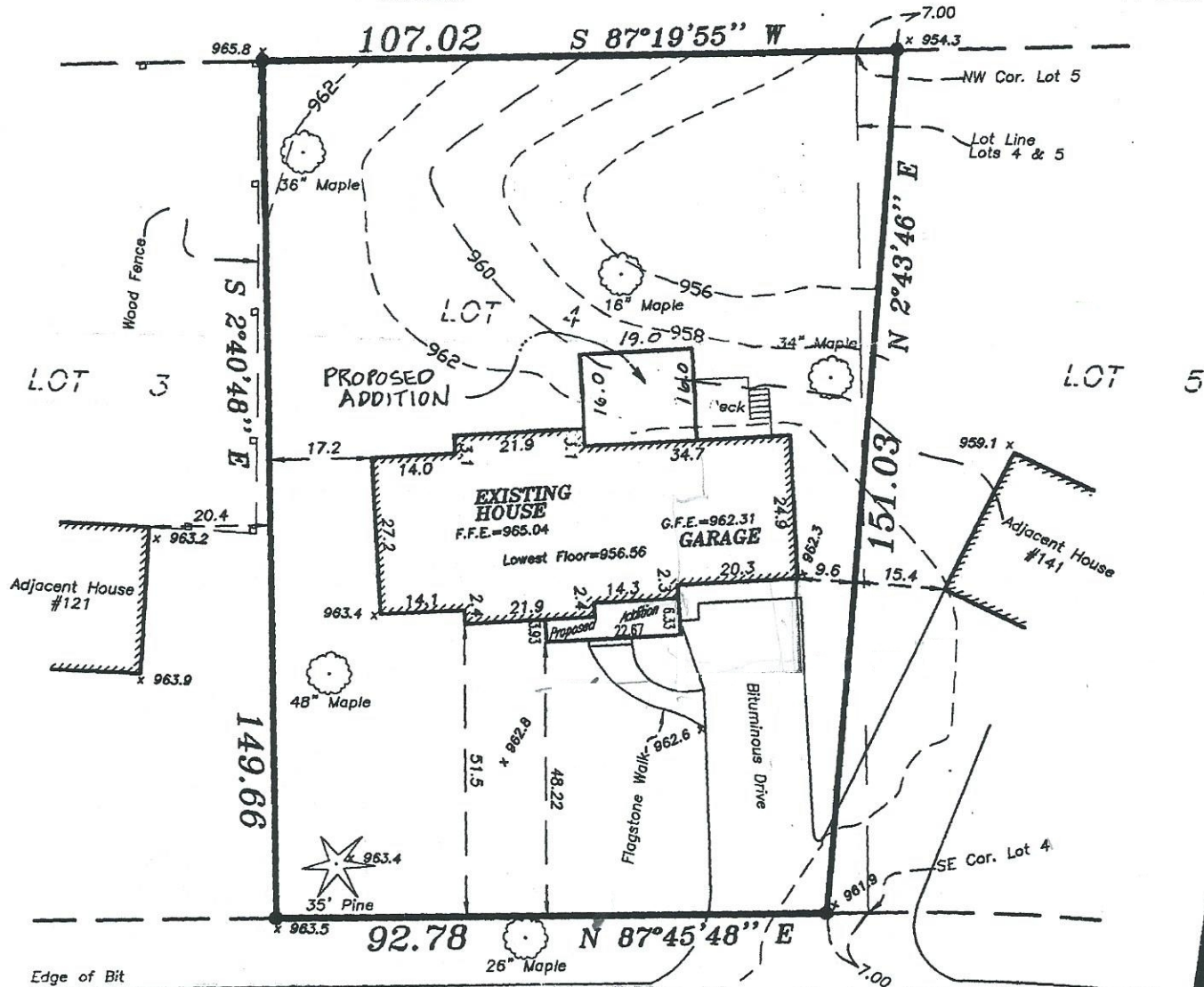
Applicant Submittals

CERTIFICATE OF SURVEY

FOR: **GRAHAM AND NANCY GNOS**

LEGAL DESCRIPTION

That part of lots 4 and 5, Block 1, Second Addition To Ridgeview Heights, lying westerly of a line drawn from a point on the south line of said Lot 4, a distance of 7.00 feet west from the southeast corner thereof, to a point in the north line of said lot 5, a distance of 7.00 feet east from the northwest corner thereof.



These are the existing
hardcover calculations

RIDGEVIEW DRIVE EAST

Site Address
133 Ridgeview Drive E.
Wayzata, MN 55391

Existing Hardcover

House/Deck
Stoop/Walks/Drive

2,115.7 Sq. Ft.
1,247.3 Sq. Ft.

Total Hardcover

3,363.0 Sq. Ft.

Lot Area

14,987.4 Sq. Ft.

Percent of Hardcover = 22.4%

Proposed Hardcover

House/Deck

2,543.11 Sq. Ft.

Stoop/Walks/Drive

1,204.3 Sq. Ft.

Total Hardcover

3,747.41 Sq. Ft.

Lot Area

14,987.4 Sq. Ft.

Percent of Proposed Hardcover = 25.0%

-Addition to match existing grades-

○ Denotes iron monument
● Denotes found monument
x 000.0 Denotes existing elev.

C:\EP\DRAW\13284.DWG

**DEMARS-GABRIEL
AND SURVEYORS, INC.**

3030 Harbor Lane No.
Plymouth, MN 55447
Phone: (763) 559-0908

I hereby certify that this is a true and correct representation of a survey of the boundaries of the above described land and of the location of all buildings, if any, thereon, and all visible encroachments, if any, from or on said land.

As surveyed by me this 20th day of November, 2006.

David E. Crook

Minn. Reg. No. 22414

File No.
13284

Book-Page
445-3

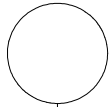
Scale
1"=30'

Custom Homes, Inc.

FOR:

LEGAL DESCRIPTION

Scale
1"=30'

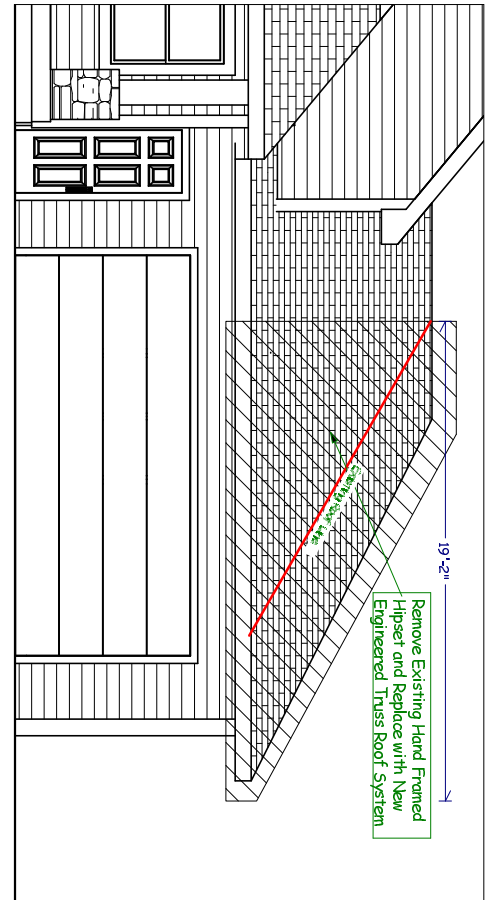
$$1/8" = 1'-0"$$


Ridgeview Drive E. Wayzata, MN

1

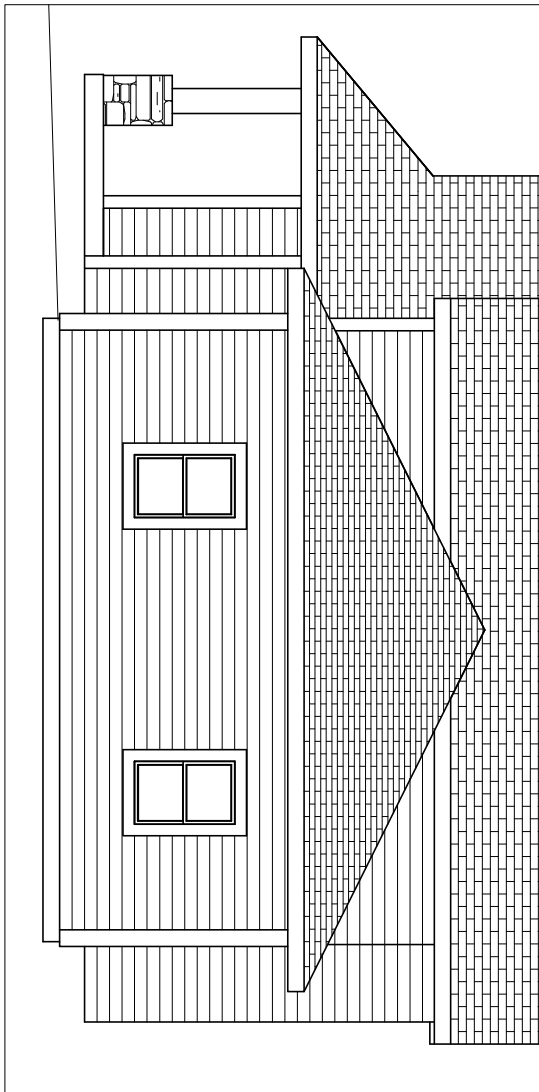
Revisions:

Custom Homes, Inc.



Front Elevation

1/8" = 1'-0"



Side Elevation

1/8" = 1'-0"

Graham and Nancy Gnos
Ridgeview Drive E. Wayzata, MN

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Denali
Custom Homes, Inc

Revisions:

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