

**Addenda
Minnetonka City Council Meeting
Meeting of May 10, 2021**

ITEM 10A – Ordinance relating to animal control regulations

The attached correspondence was received after distribution of the packet.

ITEM 10B – Resolution approving preliminary and final plats for a two-lot subdivision at 12701 Lake Street Extension

The attached correspondence was received after distribution of the packet.

ITEM 14A – Conditional use permits for small cell wireless facilities

The attached correspondence was received after distribution of the packet.

ITEM 14B – A front yard setback variance for a shed at 16920 Excelsior Boulevard

In order to overturn the decision of the planning commission, the city council would need five (5) votes in favor of the motion to deny the request, not four (4). The staff report for this item and the “votes needed” section of the agenda should reflect this.



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | minnetonkamn.gov

TO: City Council
FROM: Corrine Heine, City Attorney
DATE: May 10, 2021
SUBJECT: Change memo for May 10, 2021 council meeting

Item 10A – Ordinance relating to animal control regulations

The attached email was received after publication of the council packet.

Corrine Heine

From: Geralyn Barone
Sent: Monday, May 10, 2021 2:01 PM
To: Corrine Heine
Subject: FW: Amendment to City Code Section 925.085

For the addenda.

From: Dane Kromer <[REDACTED]>
Sent: Monday, May 10, 2021 1:50 PM
To: Bradley Schaeppi <bschaeppi@minnetonkamn.gov>
Cc: Brad Wiersum <bwiersum@minnetonkamn.gov>; Geralyn Barone <gbarone@minnetonkamn.gov>
Subject: Amendment to City Code Section 925.085

Dear Mr. Schaeppi,

Thanks for reaching out and informing me of the proposed amendment to Minnetonka City Code Section 925.085 regarding dogs, introduced at the April 26, City Council Meeting.

To my understanding Section 925.085 is an umbrella "leash law" that applies city wide. There is another ordinance dealing specifically with parks; Section 1135.020.

Please notice that section 925.085 already states that dogs must be in an owner's car, on a leash not exceeding 6 feet or "at heel beside a person". If a dog is already "beside" their owner, I don't see the need for an amendment stipulating that the dog must respond to "the first command given".

I believe the issue is that the ordinance pertaining specifically to Parks has been informally applied across the city. That ordinance, Section 1135.020 allows dogs to be off-leash under certain circumstances. Unfortunately, those circumstances are subjective. What's a formal trail? What defines a maintained turf area? Of course every dog owner believes their dog is under voice command. Dog owners who believe their dogs need to be off-leash will interpret this ordinance to their benefit.

If the current umbrella ordinance is enforced as currently written there is no need for the amendment. Exceptions only exist in parks.

Minnetonka needs to adopt a modern, city wide leash law that is simple and enforceable. I believe a law that requires a 6 foot leash everywhere except where specifically signed otherwise, would be most equitable to all Minnetonka residents. It is a fact that dogs do not need to be off leash on public property. It is also true that many residents are afraid of dogs and avoid walking in their own neighborhoods and enjoying our parks because of a "dog culture" that places animals above people.

Again, thanks for keeping me in the loop. I understand this is a tough issue and one that may be difficult to address. Let me know if I can help in any way.

Regards,
Dane Kromer
Minnetonka
[REDACTED]



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | eminnetonka.com

TO: City Council
FROM: Loren Gordon, AICP, City Planner
DATE: May 10, 2021
SUBJECT: Change Memo for May 10, 2021, City Council Study Session Meeting

Item 10B – Two-Lot Subdivision, 12701 Lake Street Extension

The attached comments were received after publication of the city council packet.

Item 14A – Verizon CUP applications

The attached comments were received after publication of the city council packet.

Item 14B – 16920 Excelsior Blvd. appeal

To overturn a decision of the planning commission, the city council would need 5 affirmative votes. The “votes needed” on the city council agenda and staff report should reflect: ~~4 votes~~ 5 votes.

Susan Thomas

Subject: FW: Plateau Healthcare/Fretham 18th Addition at 12701 Lake Street Extension

From: Jen & Tom

Sent: Thursday, May 6, 2021 1:16 PM

To: Brian Kirk

Subject: Plateau Healthcare/Fretham 18th Addition at 12701 Lake Street Extension

Dear Council Member Kirk,

We received the mailer for the new proposal by Plateau Healthcare to subdivide the lot located at 12701 Lake Street Extension and we listened to the Planning Commission meeting on 4/22 when it was approved.

We had hoped that Plateau and/or Barry Stock (their representative) would reach out to neighbors after the Council and Mayor recommended to do so if/when they revised plans for their development. At the Commission meeting, Barry acknowledged that they had not reached out and did not think it was necessary to do so, as they believed neighbor requests were met (i.e. size reduction) or could not be met (i.e. traffic reduction). Neighbors have made proactive efforts to learn about their development and connect over the past year, and sadly, we have not received the same initiation from them. We hope to have your support to encourage them to increase their transparency and communication with neighbors.

Since the new proposal is a subdivision, we anticipate approval based on past approvals. We continue to be concerned about the development and have a few requests listed below that we hope you can consider recommending to Plateau if their plan to develop continues forward; you may hear similar requests from neighbors.

- Use Dark Sky Lighting to reduce light shining into nearby neighbor homes and the impact on the environment, since they are a 24/7 facility (<https://www.darksky.org/our-work/lighting/lighting-for-citizens/lighting-basics/>)
- Consider lighting placement in relation to where it may shine into people's homes
- Install shrubs, trees, or landscaping in north/east areas to help buffer light and sound (but not block view from driveway to maintain traffic safety)
- Work with City/project manager on ways to reduce removal of trees and vegetation; we have seen Eagles perched on trees in that area, though cannot see any current nests, and there is a lot of wildlife that seems to take refuge there
- Offer community meetings with neighbors to promote collaboration and communication

We care about our neighborhood and the wildlife and we are hoping that Plateau can recognize that and extend the same courtesy.

Please let us know if there is anything else we can do on our end as residents during this process or in preparation for the upcoming City Council meeting on the 10th. It is much appreciated.

Most sincerely,

Jen Chamberlain and Tom Suerth
4125 Windridge Circle

May 8, 2021

Honorable Members of Council, City Staff
Minnetonka City Council Meeting
May 10, 2021
May 8, 2021

Honorable Members of Council, City Staff
Minnetonka City Council Meeting
May 10, 2021

Re: Plateau Project - Lake Street Extension

Dear Council Members, City Staff,

Thank you once again for continuing to listen to our concerns as we review Plateau's updated Plans for their project.

After reviewing Plateau's revisions, as well as the Planning Commission comments on them in recommending approval at their April 22, 2021 meeting, I still would raise the following concerns for the Council.

1. The new Plans now propose two lots through subdividing the existing site to work around the City's R-1 maximum limit for each lot to 6 units. Plateau's comments: "the second lot could be sold for a single family home or used for future development."

Sale options to another party for this lot are most likely limited given the very close proximity and shared driveway to what would now be an existing 6 unit residential home.

Therefore, the outcome of a decision to approve Plateau's latest plans, since the City is no longer dealing with two single family homes as was the case in the previous subdivision's approval, could very well be two buildings with 6 units each, similar to last fall's original proposal for a 12 unit building on the site which was rejected by the Council.

2. Reference in Plateau's Plans is continuously made to a "Residential Facility." "Permitted by R-1 Ordinances."

Plateau's development IS NOT for "residents" in the normal sense. Plateau's *proposed clients are patients that are no longer active and need 24 hour care with the attendant increased staff, parking, lighted lots* Also note the need for meals to be brought in as a result, further increasing traffic in and out of the site throughout the day.

The needs at Plateau's home for such patients therefore is beyond what a "Residential Facility" in an R-1 area would need a normally need.

In short, Plateau's development on this site, subdivided or not, is a Commercial nursing home, not a "Residential Facility" of the type envisioned by the R-1 designation.

PAGE TWO

3. Plateau's new Plans Include proposed landscaping, fencing, bushes, trees, etc. to minimize the impact of lights, parking lot activity, neighboring sight lines, etc.,

We do not believe this dramatic changing of the landscape and the effects it will have on the surrounding homes were intended by the R-1 Ordinance.

Nor were the R-1 exceptions intended to allow Commercial Nursing Home Developers to use the Resident exception to build entirely new facilities in existing residential areas.

4. The "Character of the Neighborhood" issue is noted once again.

While it's true there are other Residential Homes in our area already, NONE OF THEM cater to the nature of the residents that Plateau is targeting. Minimal lighting and staffing are associated with the existing homes we are aware of with no dramatic changes to the existing lots or buildings such as that now proposed by Plateau.

Plateau's proposed building is something completely different from these existing homes.

The City needs to decide if our area continues to be residential or if it is going to become commercialized by allowing groups like Plateau to bend the R-1 rules with the subdivision Proposal for the lot in question. .

In Conclusion

I believe that Plateau's business is actually a Commercial Nursing Home that should not be approved as it does not appear to be a Residential Facility envisioned by the R-1 rules and the "Character of the Neighborhood" issues already raised by the Council last fall.

I'm urging a "NO" vote by the Council for the Plateau Subdivision Proposal and the initial construction of a six unit nursing home on one of the two resulting lots accordingly.

Thank you



Brad Wistrom
12618 Lake Street Extension
Minnetonka, MN 55305

Thomas W. Johnson

May 10, 2021

City of Minnetonka Council
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Verizon Wireless Application for Conditional Use Permit for Small Cell Wireless facility at
Linner Road and Tammer Lane

Dear Council Members:

Prior to your consideration of the Conditional Use Permit at tonight's meeting we would like to share with you our responses to the materials sent by Verizon and hope you will consider them in your deliberations this evening.

In Verizon's May 3rd letter to the Council, they are now asking for all the applications to be considered on its merits and the City Council vote on each site separately. We would also ask the City Council to do the same and ask you to consider the following:

WIRELESS SUPPORT STRUCTURE

The Edge Consulting Engineer's May 5th letter states that "Poles labeled "light poles" are not structurally capable of supporting a SWF." We assume that the SWF refers to small wireless facility and if so, their analysis is factually untrue and is not a correct interpretation of the definition in the State Statutes. It may well be the correct analysis for a Verizon small wireless facility, but the Verizon view of what a small wireless facility is not the lens to be used in determining what is a small wireless facility. State Statutes has a definition which is more broadly defined as:

"Small wireless facility" means:

(1) a wireless facility that meets both of the following qualifications:

(i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and

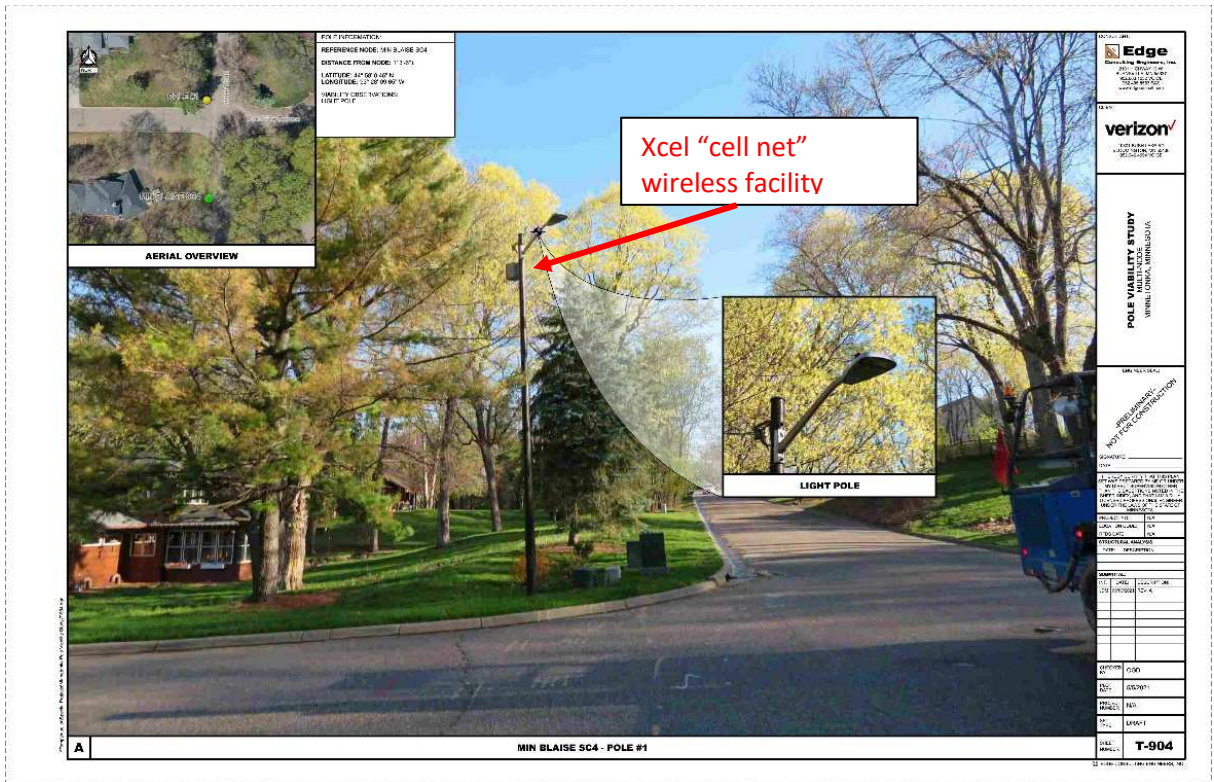
(ii) all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume; or

(2) a micro wireless facility.

The State Statute and City Code does not specify "small wireless facility" to be the equipment Verizon would like to install as the definition of small wireless facility. The State Statute in fact goes on to also include "micro wireless facility in its definition

"Micro wireless facility" means a small wireless facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose exterior antenna, if any, is no longer than 11 inches.

The best evidence of the small wireless facility located on the light pole at Linner Road and Tammer Lane is the photo provided by Edge Consulting Engineers of the location:



Therefore, the wireless equipment installed on the light pole at Linner Road and Tammer Lane is, by definition, a small wireless facility.

State Statute then defines wireless support structures in 237.162 Subd. 16.

"Wireless support structure" means a new or existing structure in a public right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by a local government unit.

Contrary to Edge Consulting Engineers May 5th letter, the light pole with the Xcel wireless facility is in fact a wireless support structure

From Staff's report to the Council for the May 10th meeting it states:

"It is staff's interpretation that a utility pole is an "existing wireless support structure" only if the utility pole is actually being used as a wireless support structure."

The City Ordinances and Code also coincides with the State definitions and therefore, there is no other interpretation that the light pole at Linner Road and Tammer Lane is not a wireless support structure under the State Statutes or City Code.

The Linner Road application must be denied as submitted as it violates the separation distance requirement in City's Right-of-Way Management Ordinance, Code Section 1120.063(4)(g). There is a wireless support structure and wireless facility on the street light 150 feet north of the proposed location.

We appreciate your consideration of our concerns and pray you will not grant the Conditional Use Permit for the Linner Road application as submitted

Sincerely,

Thomas W Johnson

Remarks to the City Council April 26, 2021

NOTE: The following is a transcript of the remarks which were read by Thomas Johnson during the April 26, 2021 City Council meeting. The full presentation was not made to the Council as the Mayor cut short the time allotted resulting in the last half of the presentation not being made.

We would like to have the full presentation added to the record at this time.

Good evening

My name is Thomas Johnson and I reside at 15001 Tammer Lane. You have no doubt read our letters and other material offered in opposition to the proposed location so you know we strongly oppose the approval of the Linner Road location for a number of reasons, but first and foremost.

WE ARE NOT ADVOCATING THE DENIAL OF THE WIRELESS FACILITY IN THE LINNER ROAD AREA We would like to see an upgrade to wireless service in this area, but not at the visual expense of what is being proposed. WE ARE STRONGLY OPPOSED TO THE PLACEMENT IN ITS PROPOSED LOCATION. THERE ARE OTHER ALTERNATIVES WHICH WOULD MINIMIZE THE VISUAL IMPACT OF THE WIRELESS FACILITY AND PROVIDE VERIZON WITH THE SERVICE AREA THEY DESIRE. We also believe approval of the proposed location would violate the City Ordinance, and current City Code and if approved under the current Staff recommendation would be the granting of a variance which is not permitted under a Conditional Use Permit.

In my discussions on the proposed location, it was suggested to me that we could only comment on the entire application as one, or to only argue why our location is different than the rest. **This advice is just plain wrong.** The State Statutes and the City Code both allow for the applicant to group permits together, and they also allow for the City to separate the applications, approving some, denying others, tabling some for additional information. While they have been grouped into one application, the approval by the Council is not “all or nothing” They are to be judged individually on their own merits.

The very reason Verizon’s application is now before the City Council is the specific provision in State Statutes that requires wireless facilities in low density residential districts obtain a Conditional Use Permit. THE CONDITIONAL USE PERMIT PROCESS IS IN PLACE TO BALANCE THE RIGHTS OF THE NEIGHBORING PROPERTIES AND AFFECTED CITIZENS WITH THOSE OF THE APPLICANT. IF THE COUNCIL WERE TO ACT AS IF THERE WERE NO CONDITIONS UNDER WHICH OUR RIGHTS ARE BEING CONSIDERED, IT WOULD BE AN ABDICATION OF THE STATE STATUTES WHICH REQUIRES THIS VERY PROCESS. **we are reaching out to you as council members, arbitrators and judges to balance our rights with those of Verizon.**

The most egregious aspect of the proposed location is the aesthetic and visual impact of the cell tower situated mid-block, on a landscaped lawn, so close to residential driveways, and without, any other screening attributes. The City would not allow any other companies to place a utility pole along Linner Road, as they were all forced to be buried at a significant cost to the City back in 2000.

Aesthetics in any context includes location. Stealth means blending into the surroundings not sticking out like a sore thumb. **If the Linner Road location is approved, it will forever serve to remind the neighborhood how little Verizon cared for them and our environment.**

Verizon could have proposed a location on the southeast corner of Linner Road and Tammer Lane tucked in along the existing tree lines. It would be kitty-corner to the Xcel street light location. That location would provide excellent stealth and blend into the environment. It would be more costly for

Verizon to install as the power and other utilities are on the other side of the road. But instead of selecting the stealth option, they choose to place their wireless facility in the most conspicuous spot on our landscaped lawn.

Along with all the neighbors that have contacted the City on this issue, we hope this is not an example of what the City holds as a stealth installation in residential neighborhoods. **OUR FEAR IS IF THE COUNCIL APPROVES THIS APPLICATION WITHOUT ANY PUSH BACK ON AESTHETICS, YOU WILL SET A PRECEDENT FOR ALL OTHER APPLICATIONS AND WILL HAVE ABDICATED ALL CONTROL YOU MAY HAVE FOR ANY AESTHETIC STANDARDS.**

In the public hearing tonight, we would like to ask questions pertaining to the application which we believe have not been adequately answered in Staff's review or in the Planning Commission meeting or provided elsewhere in the record. Realizing it is the Council's prerogative for questions and not ours, we hope the Council will follow through tonight and ask these important questions and get the answers to them in the public record.

The first question we would like to ask Verizon is if the company has a Stealth Design policy in place and whether they believe the Linner Road location is a stealth installation,

Opposition from the Neighborhood

You also received in the agenda materials; a petition signed by 51 residents representing 26 households in the Service Area. They are explicitly expressing their opposition to this location as not a stealth installation. They further expressed a desire for the wireless facility to be at alternative locations or co-located at the corner with the Xcel street light. **THE SIGNATURES REPRESENT OVER HALF OF THE HOUSEHOLDS IN THE LINNER ROAD SERVICE AREA.** I would like to ask Verizon to comment on the public relations aspect of them moving forward with this installation in light of the strong opposition to the Stealth Design? I would like to ask them if they did any community outreach prior to choosing the Linner Road Location and whether they think it is important to do so?

Under the Conditional Use Permit process, the question for Council members tonight is to weigh the visual impact and aesthetic burden of this wireless facility against the small enhancement in coverage for so few homes, especially when over half of the households have expressed their opposition and most, if not all, have internet service and private routers for home use and do not rely on Verizon for high-capacity streaming.

Not 5-G installation

In the Planning Commission discussion, Verizon plainly stated the wireless facility is not a 5-G installation and was only there to enhance existing coverage. When asked to quantify the increase, Mr. Loecher estimated only a 10% increase in coverage. Further they offered the range of the coverage for the wireless facility was 500-1000 feet which would incorporate approximately 50 homes.

In subsequent discussion we have heard was that this was a 5-G installation. I would like to ask Verizon to state for the record "Is the installation on Linner Road a 5-G wireless facility?" The minutes of the Planning Commission meeting are missing Verizon's entire statement on this and we believe it is important to have on the record.

If the installation is not 5-G, I would like to ask Verizon: When will they roll out 5-G in Minnetonka, will you commit to collocate your 5-G equipment on this wireless facility being permitted as part of the conditions of this permit, and not on a second tower?

Second, "Is the wireless facility being installed exclusive to Verizon or will you allow for collocation with other wireless companies as part of the permit? And,

Third, What is the estimate for the cost of the wireless facility at Linner Road and are there other Metro-wide improvement project? It seems to us that this Service Area, where over half of households do not approve of the aesthetics of the location, that Verizon must have other areas in the Metro that would benefit more in terms of the number of households and the resources available in those households to effect children's access to internet services for schooling? I mention this because in the letter from Mr. Dorland and the presentation by Ms. Hartman both went out of their way to cite those benefits are being provided by Verizon wireless services. I would like to ask Verizon: "Why are you prioritizing this location and not higher density areas where it could benefit more households?"

Site Selection

I still do not have an understanding of the site selection process at Verizon and why a specific location is selected. I would like to ask Mr Loecher the following questions.

Can you describe your responsibilities as RF Engineer for Verizon? Is it important to have an engineering license to perform a RF certification? Are you a licensed engineer?

Can you walk us through the criteria and explain the process for the selection of how the specific location at Linner Road was chosen?

At Verizon, does the RF Engineer have the final say on site selection or is there an approval process?

Is the location on the either the southeast or the northwest corner of Linner Road and Tammer Lane a feasible location for this Service Area, if not, what would determine its unfeasibility?

Are there different designs for the antennas for small wireless facilities which serve an expanded range Service Area?

And finally, Let's say the Council was to deny the application for the Linner Road location, do you have records to show why Verizon could not feasibly locate the wireless facility in another location in close proximity? Are the records available for review?

NOTE: The Mayor interrupted the presentation at this point and asked to summarize

Collocation and Co-Location

The current City Code §1120 provides for collocation between wireless and other utilities. If an applicant proposes to not collocate in areas where collocation options are or **appear to be available**, the applicant must document that collocation is infeasible. The affidavit provided by Verizon and comments made at the Planning Commission meeting suggested Xcel is not amenable to collocation. As pointed out in one of our correspondence, THIS WAS THE WRONG QUESTION, THE CORRECT QUESTION WOULD HAVE BEEN TO ASK XCEL TO CO-LOCATE ON THE EXISTING STREET LIGHT LOCATION.

THEREFORE, BASED ON CITY CODE §1120, AT MINIMUM, VERIZON MUST DOCUMENT WHY CO-LOCATION IS NOT FEASIBLE AND SINCE THEY HAVE NOT PROVIDED THIS DOCUMENTATION, THE LINNER ROAD APPLICATION SHOULD BE TABLED UNTIL THEY PROVIDE THE REQUIRED DOCUMENTATION.

The documentation should specifically provide if they have had any conversations with Xcel on co-locating at the street light location at Linner and Tammer Lane, not on the existing pole, but on a new pole designed for small wireless facilities?

In our material we sent to the Council was an article by a former employee of Xcel who was at the time in charge of the outreach for shared use by Xcel on their street light infrastructure. We contacted Xcel and they indicated this project is still active. In the article, Xcel is advocating cooperation agreements

with telecommunication companies as a way to facilitate and leverage existing assets and locations. We also provided an example of a street light and stealth small wireless facility currently being used in Denver by Xcel and Verizon.

The photo provided is a great example of Stealth Design and would make perfect sense to be using here in Minnetonka and specifically on the Linner Road location.

I would like to ask Verizon how many cities they are cooperating in co-locating on existing street lights? Do they have a cooperating agreement in place in those other cities? Why has Verizon not completed a cooperation agreement here in Minnesota? Are there any negotiations in progress on a cooperation agreement in Minnesota or in the Metro area?

Understanding that an agreement may not be in place today, If the Council were to approve the Linner Road location, would Verizon agree to the approval of the Conditional Use Permit being subject to obtaining a cooperation agreement with Xcel in the next, say, 24 months and would Verizon commit to remove and replace the wireless facility at the street light location once a cooperation agreement were in place? And if Verizon would not be agreeable to this condition, we would like them to explain why it would be unacceptable.

The Council has the right to ask for additional information on the application and we are requesting Verizon provide additional information on the selection of the proposed location and why they have not pursued a co-location agreement with Xcel and placed the wireless facility on the street light corner location.

Violates the 200-foot separation requirement

The application for the Linner Road location violates current City Code §1120.063 4. G. 1) a) as the location criteria for new or replacement structures, specifies a minimum of two lot lines and 200 feet separation requirement from wireless facilities.¹ In the Staff findings they write:

***Finding:** The application meets the locational requirements except for 200-foot spacing from utility poles. The city attorney has advised that state law allows the city to impose separation requirements from other wireless structures; the city cannot enforce the separation requirement from utility poles that have no wireless facilities.*

The finding here is not complete and does not specifically address the Linner Road location.

Here, there is a wireless facility on the Xcel pole located 150 feet north of the proposed location. Therefore, the finding as presented is misleading and incorrect. The Linner Road location is in violation of this City Code and the City Attorney has by default, indicated the city can enforce the 200-foot requirement for wireless facilities.

The argument becomes if Xcel's "cell net" wireless equipment is in fact a wireless facility and covered under the City Ordinance and Code. That issue seems simple to just look at the definitions in State Statutes, City Ordinances and City Codes where you will find the "cell net" equipment is in fact a wireless facility under those definitions².

By way of example, Let's say CenterPoint were to roll out a new wireless meter reading facility, or Xcel were to need a new utility pole location in an area where the power lines are buried. The companies would need to place a new utility pole to complete their network. They would have the right to do so under State Statutes and the placement of that wireless facility would be subject to the

¹ City Code §1120.063 4. G. 1) a)

² Under State Statutes and City Code the facility would be considered a wireless facility. (See definitions attached)

City Ordinance and City Code, and therefore, the Xcel equipment on the street light at Linner Road and Tammer Lane is regulated as a wireless facility.

The argument the Xcel wireless equipment is an ancillary facility for providing utilities would not exempt it from the definitions, again, by example, what happens if Xcel were to sell the “cell net” wireless facility to an independent company who expands the service to other utilities or other users? Bottom line, “cell net” IT IS A WIRELESS FACILITY.

We have asked in numerous memos to the Planning Commission staff to have the City Attorney provide the specific guidance provided to Staff upon which their findings are based. It has not been provided and should be in the record.

Since it is not, we would like to ask the City Attorney on record: “Have you determined that the Xcel “cell net” wireless equipment is not a wireless facility under the definitions in the State Statutes, City Ordinances, or City Code, and if you have, where is the exemption for this wireless facility in the Statutes, Ordinances, or Code?”

We would like to ask the City Attorney: “If the Xcel wireless equipment is in fact a wireless facility, would approval of the Conditional Use Permit as presented by the Verizon application be granting a variance to the City Code §1120.063?”

We would like to ask the City Attorney: “The location at Linner Road is not in conformance with a number of other Aesthetic Standards in City Code §1120.063 and you have indicated to staff those provisions may be unenforceable. However, since they are currently on the books as a valid City Code, under what authority can the City Council approve a variance to the City Code §1120.063 without a formal procedure to update the City Code or a formal application for a variance to the Code.”

The prospects that the Code may be changed in the future does not provide a legal basis to grant approval of a variance based on speculation of what may or may not be enforceable. Your decision here today must be based on the existing City Code or provide reasoning and a detailed explanation of exactly what provisions are not enforceable and adequate reasoning for the that opinion. The explanation needs to be part of the record and therefore subject to an appeal process.

Revised location to the north

Verizon has submitted a revised location for the wireless facility some 30 feet north of the original proposed site. **It does nothing to address the aesthetics, visibility or stealth of the location.** It does give rise to Verizon’s acknowledgement there are provisions in the City’s Small Cell Wireless Aesthetic Standards that are valid.

The new location is 15.5 feet from an existing twenty-two-year-old maple tree which was planted by the City back in 2000. Within five years, this maple tree will have a canopy extending outward past the revised location and would require shearing, which we find unacceptable. The location of the maple tree was chosen special for the long-term aesthetics of our yard with the blessing of the City.

If Verizon were serious about aesthetics, their revised proposal could have included planting three 15-foot evergreen trees in an array to the north and west of the revised location and guaranteed the survival of the trees for a period of five years to ensure they are viable. **But they chose not to address the visibility element which is so strongly opposed by the neighborhood.**

If Verizon is amenable to moving the wireless facility, I would like to ask: “Did you consider the southeast corner of Linner Road and Tammer Lane where there is a location on the corner and with Stealth attributes? Except for additional cost, why was this location not proposed?”

The point here is there are other locations in the immediate area where stealth options are available.

Summation

We have asked numerous questions tonight and we hope the Council Members follow through on eliciting answers to get them on the record. In the Planning Commission meeting, there were some answers provided to questions which were very generic in nature and not applicable to the Linner Road location. We hope the Council will follow-up with specifics to the questions for the Linner Road location. Remember, it was Verizon who choose to bundle the application, and the Council has the right to examine and separate the application for each location. If there are still outstanding questions and additional time is needed by the respondents, the application where the answer is pending, can and should be tabled until it is answered to the satisfaction of the Council.

State Statutes does indeed give broad latitude to telecommunications companies to locate their facilities, however, the STATE STATUTES ALSO LIMITS THEIR RIGHTS IN RESIDENTIAL DISTRICTS. It is true locations in other zoning districts are not subject to the further requirements of the Conditional Use Permit. IT IS THIS HIGHER HURDLE THAT STATE STATUTES HAS PROVIDED WHERE THE RIGHTS OF THE ADJACENT PROPERTY OWNERS AND AFFECTED RESIDENCES ARE TO BE HEARD, WEIGHED AND JUDGED. There are alternatives to the proposed location, and by directing Verizon to address the alternatives, you would be not denying Verizon a suitable location for their wireless facility, you would be balancing their rights with the rights of the neighborhood.

Closing

In Summary, we are strongly opposed to the proposed location in our landscaped side yard and we urge the Council not to approve the application as submitted. We ask that the Council:

1. Separate out the Linner Road approval from the application.
2. Deny the Linner Road application as submitted for not conforming to the current City Code, specifically the 200-foot separation requirement; or
3. Table the decision so the numerous questions we have asked can be answered and for Verizon to consider other feasible locations or alternatives including setting forth a condition for Verizon and Xcel work out a cooperation agreement on the use of street light locations as they have demonstrated to be feasible in other cities and to co-locate on the street light location at the northwest corner of Linner Road and Tammer Lane.

One final question to the Council itself, WITH THIS MUCH OPPOSITION FROM THE NEIGHBORHOOD, WOULD ANY OTHER CONDITIONAL USE PERMIT BE GRANTED WHEN OVER HALF OF THE HOUSEHOLDS IN THE AREA HAVE OPPOSED IT? ONE WOULD HOPE IT WOULD NOT BE GRANTED WITHOUT CONDITIONS MITIGATING THE SOURCE OF THE OPPOSITION.

The Council needs to get this one right as the decision here will set a precedent for future applications in the City when Verizon and the other telecommunication companies enter the market requiring 5-G locations. This is only the beginning of the process, not the end. We are not asking the Council to deny Verizon's right to locate their wireless facility in the area, only asking them to adhere to the aesthetic standards of the City.

Thank you for your time and consideration of our concerns and we hope your deliberations will find the correct balance to the rights of the neighborhood with the rights of Verizon. I will stay with the meeting and be available to answer any questions you may have.

Definition of Wireless Facility

Minnesota Statutes 237.162 Definitions Subd. 13. Wireless facility.

(a) "Wireless facility" means equipment at a fixed location that enables the provision of wireless services between user equipment and a wireless service network, including:

- (1) equipment associated with wireless service;
- (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration; and
- (3) a small wireless facility.

(b) "Wireless facility" does not include:

- (1) wireless support structures;
- (2) wireline backhaul facilities; or
- (3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures, or (ii) that are not otherwise immediately adjacent to or directly associated with a specific antenna.

City of Minnetonka Code Section 310.03 2 Definitions

d) "Non-Small Cell Wireless Facilities" - a telecommunication facility that is not a small cell wireless facility.

f) "Small Cell Wireless Facility"- a wireless facility that meets both of the following qualifications:

- 1) Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
- 2) All other wireless equipment associated with the small wireless facility is, in aggregate, no more than 28 cubic feet in volume, not including electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed.

i) "Telecommunication Facility" - antennas, associated equipment, and support structures. This term includes small cell wireless facilities.

Definition of Stealth Design

City of Minnetonka Code Section 310.03 2 d Definitions

g) "Stealth Design" - design intended to minimize visual impact of an object on its surroundings. Examples of stealth telecommunication design include: eliminating horizontal projections; screening with other architectural elements; nestling into surrounding landscape such that natural topography or vegetation reduces views; locating in areas that would result in the least amount of visibility to the public; minimizing size; and designing a telecommunications facility to appear as something other than a telecommunications facility.

From: City of Minnetonka, MN
Sent: Monday, May 10, 2021 5:55 PM
To: Kyle Salage
Subject: *NEW SUBMISSION* City council and EDA email comments

City council and EDA email comments

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Dave Barczak

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Phone

[REDACTED]

Email

City Council, EDA or LBAE

City Council

Meeting date

May 10 2021

Agenda item

Small cell Verizon Towers

Comment

What does the City of Minnetonka lose specifically, by requiring small cell tower installations to be disguised using commercially available artificial tree masking popular (examples - pine tree) in Colorado and Arizona? Be specific as to what we lose. PS Minnetonka is a proud tree City. Blend it in. :-).