



PLANNING COMMISSION MEETING AGENDA
REGULAR MEETING
TUESDAY SEPTEMBER 18, 2018

7:30 PM Regular Meeting

1. Call to Order
2. Roll Call
3. Approval of Minutes:
 - a. August 21, 2018 Planning Commission Meeting
 - b. September 4, 2018 City Council Meeting Minutes (For Information Only)
4. **PUBLIC HEARING:** David Zoldahn (Applicant/Owner) requests that the City consider the following action for the property located at 440 Kuntz Drive in Independence, MN (PID No.s: 33-118-24-24-0001 and 33-118-24-21-0002):
 - a. A minor subdivision to permit a lot line rearrangement to adjust the east/west line between the two subject parcels.
5. **PUBLIC HEARING:** Doug and GERALYN McDonald (Applicants/Owners) request that the City consider the following action for the property located at 4976 South Lakeshore Drive in Independence, MN (PID No. 24-118-24-11-0013):
 - a. A variance to allow the construction of a detached accessory building that does not meet the side yard setback from the west property line.
6. **PUBLIC HEARING:** To consider a text amendment to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses pertaining to small cellular wireless technology in City right of ways.
7. Open/Misc.
8. Adjourn.

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE PLANNING COMMISSION
TUESDAY, AUGUST 21, 2018 – 7:30 P.M.

1. CALL TO ORDER

Pursuant to due call and notice thereof, a regular meeting of the Independence Planning Commission was called to order by Commissioner Gardner at 7:30 p.m.

2. ROLL CALL

PRESENT: Chair Phillips, Commissioners Thompson, Gardner and Palmquist
STAFF: City Administrator Kaltsas, Administrative Assistant Horner
ABSENT: Commissioner Dumas
VISITORS: Linda Ostberg, Gary Ostberg, Jacob Hewett, Lynda Franklin, Tom Johnson

3. APPROVAL OF MINUTES:

- a. July 17, 2018 Planning Commission Meeting
- b. July 10, 2018 City Council Meeting Minutes (For Information Only)

Motion by Gardner to approve the July 17 and July 10 minutes, second by Palmquist. Ayes: Thompson, Gardner and Palmquist. Nays: None. Absent: Dumas. Abstain. Phillips. Motion Approved.

4. **PUBLIC HEARING:** Gary and Lynda Ostberg (Applicants) request that the City consider the following action for the property identified by (PID No. 33-118-24-14-0003) and located on the south side of CSAH 6 and west of Game Farm Road N. in Independence, MN:

- a. A conditional use permit amendment to allow the construction of an automated horse walker building on the subject property.

Kaltsas said the property is located on the south side of CSAH 6 and just west of Game Farm Road N. The property has no existing structures and is comprised of open pasture, a woodland area and wetlands. The applicants recently received approval of a conditional use permit on the subject property to allow a commercial riding stable, associated bunkhouse and detached accessory structure larger than 5,000 SF.

The facility is under construction (almost completed) and the applicant would like to expand the previously approved site plan to include an automated horse walker building on the subject property. The proposed structure would be 64 feet in diameter or 3,217 square feet. The building would be located adjacent to the existing indoor riding arena/stable facility.

The City typically adds a condition to all conditional use permits that states the following:

a) No future expansion of the barn and riding arena shall be permitted on the property without the further review and approval by the City through the conditional use permit amendment process.

The proposed automated walker facility does not increase the number of horses or intensity of the previously approved commercial operation. No additional storm water treatment or storage will be required because of the additional building. The building will match the architecture and character of the existing buildings and farm.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic. Enough off-street parking and loading space will be provided to serve the proposed use.
5. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
6. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
7. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
8. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
9. The proposed use will not stimulate growth incompatible with prevailing density standards. The City has discussed the additional building with the applicant and found it to be compatible to the existing use and previously granted CUP. Given the location of the property off of CSAH 6, the orientation of the buildings and their relationship to the surrounding properties, it appears that the proposed application can be found to meet the requirements for granting a conditional use permit amendment.

Staff is seeking a recommendation from the Planning Commission pertaining to the request for a conditional use permit amendment with the following findings and conditions:

1. The proposed conditional use permit amendment request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.
2. The conditional use permit previously granted will remain in full force and the following conditions will be added to the permit:

b) The conditional use permit will allow a 3,217 SF automated walker building to be located in accordance with the approved site plan attached hereto as EXHIBIT A. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.

3. The applicant shall pay for all costs associated with the review and recording of the resolution.

Public Hearing Open

Motion by Gardner to close the Public Hearing.

Public Hearing Closed

Gardner asked about the height requirement. Kaltsas said that due to the size of the property there is not a height restriction.

Motion by Thompson to approve a conditional use permit amendment to allow the construction of an automated horse walker building on the subject property (PID No. 33-118-24-14-0003) located on the south side of CSAH 6 and west of Game Farm Road N. in Independence, MN; second by Palmquist. Ayes: Phillips, Gardner, Thompson and Palmquist. Nays: None. Absent: Dumas. Abstain. None. Motion Approved.

5. **PUBLIC HEARING:** A proposed text amendment to the City of Independence Ordinances as follows:

- a. Chapter 5, Section 530.01, Subd. 3 Accessory Uses – Considering an amendment to the maximum height of an accessory structure. The City will discuss increasing the permitted height of detached accessory structures.

Kaltsas said in 2013 the City updated the accessory structure ordinance to establish a more proportional relationship between the amount of detached accessory structure square footage allowed on a property and the size of the property. In practice, the new ordinance has worked well and there have been no variances granted relating to the size of a detached accessory structure since the amendment. One area of the ordinance that was changed at the same time was the maximum height permitted for detached accessory structures. The City has received concerns and comments from property owners relating to the maximum height permitted. The City has also granted two (2) variances relating to the maximum height of detached accessory structures. The general concern is that the maximum height permitted varies based on the height of the principal structure. If a resident has a single-level home, the maximum height of a detached accessory structure is limited to the single-level home height. This causes some issues for residents with larger properties that would like to have a larger detached accessory structure, but have a single level home.

Staff has looked at the permitted heights of accessory structures from surrounding communities. It should be noted that not all communities allow as large of a detached accessory structure as the City of Independence. Staff would like to further discuss the maximum permitted height of detached accessory structures with the Planning Commission.

The City's current ordinance states the following:

3 The height of an accessory structure shall not exceed the height of the principle structure. The height of the principle and accessory structure shall be measured in accordance with the definition provided in this ordinance, Section 510.05, Subdivision 10.

In application of the ordinance over the past 5 years, the City has consistently had requests for detached accessory structures that have heights (measured to the midpoint of the roof) in the 20-25-foot range. Many of the single-level homes measure closer to 17-20 feet in height measured to the midpoint of the roof. This typically leaves single-level property owners with an issue when considering building a detached accessory structure.

When the City considered the height in 2013, there was a consensus that detached accessory structures should be proportional and subordinate to the principle structure on the property. To help achieve the subordinate relationship, the maximum height of the detached accessory structure was limited. Due to the wide array of property size, building architecture and other factors, many of the proposed detached accessory structures do not have a significant relationship with the principle structure.

Staff is seeking Planning Commission feedback and discussion on this issue and offers the following for further consideration:

1. The City could consider establishing a maximum height in lieu of the relationship with the principle structure. This could be a two part maximum height that establishes a minimum permitted or the height of principle structure, whichever is greater (i.e. the maximum height permitted is 25 feet or the height of the principle structure, whichever is greater).
2. The City could consider establishing a single, maximum height for all detached accessory structures (i.e. the maximum height for all detached accessory structures is ____ feet).
3. The City could consider establishing a variable scale that is proportionate to the size of the property (i.e. the maximum height permitted for detached accessory structures on properties less than 2.5 acres is ____ feet, the maximum height permitted for detached accessory structures on properties greater than 2.5 acres, but less than 10 acres is ____ feet, the maximum height permitted for detached accessory structures on properties greater than 10 acres is ____ feet).

Phillips stated this was noticed as a Public Hearing. Kaltsas said if there were comments it could be continued at the next meeting. Palmquist asked if it was unique to zoning and Kaltsas said it was not particularly unique to zoning as there are people that come in and with lakeshore lots or some with many acres and neither will meet height requirements. It crosses multiple scenarios. Gardner said part of the charm of Independence are the barns but they all exceed the height requirements of small homes.

Public Hearing Open

Hewett asked if the Commission could elaborate as he feels these restrictions take away from the very nice horse barns.

Palmquist motioned to continue the Public Hearing at the next meeting.

Phillips asked if it should make a difference if there were living quarters within the structure. Palmquist stated there were not many of those around as it is. Kaltsas noted Medina's height restriction requirement is 30 feet. He said they allow some increased height on the principal structure. Phillips said there could be a requirement that measures to the peak instead of the mid-point or the principal structure is not to exceed a certain percentage. Thompson noted there have been visibility issues where variances were needed or sometimes denied. He said it is good to review and there is room for improvement on the requirements. Palmquist said the City could allow creative pitches. Kaltsas said he would bring back more information on the ones that were approved in the past. He said it needs to be clean and simple as well as a reasonable number. He thought Ag could possibly be different and allow any height. Kaltsas said applicants are really trying to make something fit but money and time are huge factors.

9. Open/ Misc.

10. Adjourn

Motion by Phillips to adjourn at 8:05 p.m.

Respectfully Submitted,

Trish Gronstal/ Recording Secretary

MINUTES OF A REGULAR MEETING OF THE
INDEPENDENCE CITY COUNCIL
TUESDAY, SEPTEMBER 4, 2018 –6:30 P.M.

1. CALL TO ORDER.

Pursuant to due call and notice thereof, a regular meeting of the Independence City Council was called to order by Mayor Johnson at 6:30 p.m.

2. PLEDGE OF ALLEGIANCE.

Mayor Johnson led the group in the Pledge of Allegiance.

3. ROLL CALL

PRESENT: Mayor Johnson, Councilors Spencer, Grotting, Betts and McCoy

ABSENT: None

STAFF: City Administrator Kaltsas, City Administrative Assistant Horner, City Attorney Vose

VISITORS: Linda and Gary Ostberg, ABDO Liz Lindrud

4. ****Consent Agenda****

All items listed under Consent Agenda are considered to be routine by Council and will be acted on by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Approval of City Council minutes From the August 21, 2018 Regular City Council Meeting.
- b. Approval of City Council minutes From the August 15, 2018 City Council Special Meeting.
- c. Approval of Accounts Payable; Checks Numbered 18224-18258.
- d. Approval of Training and Structure Burning for the Loretto Fire Department on the Property Located at 5865 Kochs Crossing.
- e. Approval of Mayor to Attend the National League of Cities Conference in Los Angeles November 7-10.

Motion by Spencer, second by McCoy to approve the Consent Agenda items. Ayes: Johnson, Betts, McCoy, Grotting and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

5. SET AGENDA – ANYONE NOT ON THE AGENDA CAN BE PLACED UNDER OPEN/MISC.

6. REPORTS OF BOARDS AND COMMITTEES BY COUNCIL AND STAFF

Spencer attended the following meetings:

- Planning Commission Meeting
- City Council Workshop

Grotting attended the following meetings:

- Planning Commission Meeting

- Met with resident regarding cable concerns

McCoy attended the following meetings:

- Haven Homes Annual Dinner and Presentation

Betts attended the following meetings:

- Police Commission Meeting

Johnson attended the following meetings:

- Orono Healthy Youth Great Expectations Breakfast
- Met with Congressman Paulsen and Congressman Emmer
- Mound School Reunion
- ISD 287 Special Education Building Ribbon Cutting Ceremony
- Community Action Partnership Hennepin County Board Meeting
- Delano School Board Meeting
- Police Commission Meeting
- Haven Homes Annual Dinner and Presentation

Horner attended the following meetings:

- Planning Commission Meeting

Kaltsas attended the following meetings:

7. Director Gary Kroells, West Hennepin Public Safety - Activity Report for the Months of June and July 2018.

- For a complete list of incidents please see the City Council packet

Johnson thanked WHPS for their participation in Small Cities Conference. Kroells noted all WHPS Officers now have weapon mounted cameras as of August 10, 2018. Kroells highlighted several cases noting that as of the year to date there have been a total of 2,356 incident complaints in Independence.

8. Gary and Lynda Ostberg (Applicants/Owners) request that the City consider the following action for the property identified by (PID No. 33-118-24-14-0003) and located on the south side of CSAH 6 and west of Game Farm Road N. in Independence, MN:

- a. **RESOLUTION 18-0904-01** – Considering approval of a conditional use permit amendment to allow the construction of an automated horse walker building on the subject property.

The applicants recently received approval of a conditional use permit on the subject property to allow a commercial riding stable, associated bunkhouse and detached accessory structure larger than 5,000 SF. The facility is under construction (almost completed) and the applicant would like to expand the previously approved site plan to include an automated horse walker building on the subject property. The proposed structure would be 64 feet in diameter or 3,217 square feet. The building would be located adjacent to the existing indoor riding arena/stable facility.

The City typically adds a condition to all conditional use permits that states the following:

a) No future expansion of the barn and riding arena shall be permitted on the property without the

further review and approval by the City through the conditional use permit amendment process.

As a result, the applicant is required to seek an amendment to the conditional use permit for this expansion. The proposed automated walker facility does not increase the number of horses or intensity of the previously approved commercial operation. No additional storm water treatment or storage will be required because of the additional building. The building will match the architecture and character of the existing buildings and farm.

The criteria for granting a conditional use permit are clearly delineated in the City's Zoning Ordinance (Section 520.11 subd. 1, a-i) as follows:

1. The conditional use will not adversely affect the health, safety, morals and general welfare of occupants of surrounding lands.
2. The proposed use will not have a detrimental effect on the use and enjoyment of other property in the immediate vicinity for the proposes already permitted or on the normal and orderly development and improvement of surrounding vacant property for uses predominant in the area.
3. Existing roads and proposed access roads will be adequate to accommodate anticipated traffic. Off-street parking and loading space will be provided to serve the proposed use.
4. The proposed conditional use can be adequately serviced by public utilities or on-site sewage treatment, and sufficient area of suitable soils for on-site sewage treatment is available to protect the city form pollution hazards.
5. The proposal includes adequate provision for protection of natural drainage systems, natural topography, tree growth, water courses, wetlands, historic sites and similar ecological and environmental features.
6. The proposal includes adequate measures to prevent or control offensive odor, fumes, dust, noise, or vibration so that none of these will constitute a nuisance.
7. The proposed condition use is consistent with the comprehensive plan of the City of Independence.
8. The proposed use will not stimulate growth incompatible with prevailing density standards. The City has discussed the additional building with the applicant and found it to be compatible to the existing use and previously granted CUP. Given the location of the property off CSAH 6, the orientation of the buildings and their relationship to the surrounding properties, it appears that the proposed application can be found to meet the requirements for granting a conditional use permit amendment. Commissioners discussed the request and asked questions of staff and the petitioner. Commissioners found the request to be straight forward and in keeping with the use of the property as a commercial riding stable. Commissioners recommended approval of the CUP amendment to the City Council.

The Planning Commission recommended approval to the City Council for the request for a conditional use permit amendment with the following findings and conditions:

1. The proposed conditional use permit amendment request meets all applicable conditions and restrictions stated in Chapter V, Section 510, Zoning, in the City of Independence Zoning Ordinance.

2. The conditional use permit previously granted (**RESOLUTION NO. 17-0711-02**) will remain in full force and the following conditions will be added to the permit.
3. The conditional use permit will allow a 3,217 SF automated walker building to be located in accordance with the approve site plan attached hereto as EXHIBIT B. The conditional use permit will be reviewed annually by the City to ensure conformance with the conditions set forth in the resolution.
4. The resolution shall be recorded with Hennepin County.
5. The applicant shall pay for all costs associated with the review and recording of the resolution.

Motion by McCoy, second by Betts to approve RESOLUTION 18-0904-01 a conditional use permit amendment to allow the construction of an automated horse walker building on the subject property identified by (PID No. 33-118-24-14-0003) and located on the south side of CSAH 6 and west of Game Farm Road N. in Independence, MN: Ayes: Johnson, Betts, Grotting, McCoy and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

8. Discussion of the 2019 Draft Budget and Preliminary Tax Levy.
 - a. Draft 2019 Budget Memorandum
 - b. Draft 2019 Tax Levy
 - c. Draft 2019 Pioneer Sarah Creek Watershed Management Commission Levy

Lindrud noted the revised budget came in a little lower. Johnson asked about the Maple Plain decrease in the fire budget. Kaltsas noted it was a proposed fire budget not an adopted one yet. He said Larry Ende may be retiring in the next year and the funding for Public Works capital equipment is on track. Kaltsas said they will need new radios in Public Works. He said overall the proposed budget increase would be less than two percent. Kaltsas said the tax rate would be kept flat at 40%.

9. Open/Misc.
10. Adjourn.

Motion by Spencer, second by McCoy to adjourn at 7:25 p.m. Ayes: Johnson, McCoy, Betts, Grotting and Spencer. Nays: None. Absent: None. MOTION DECLARED CARRIED.

Respectfully Submitted,
Trish Gronstal/ Recording Secretary

City of Independence

Request for a Minor Subdivision to Allow a Lot Line Rearrangement on the Property located at 440 Kuntz Drive

To: Planning Commission
From: Mark Kaltsas, City Planner
Meeting Date: September 18, 2018
Applicant: David Zoldahn
Owner: David Zoldahn
Location: 440 Kuntz Drive

Request:

David Zoldahn (Applicant/Owner) requests that the City consider the following action for the property located at 440 Kuntz Drive in Independence, MN (PID No.s: 33-118-24-24-0001 and 33-118-24-21-0002):

- a. A minor subdivision to permit a lot line rearrangement to adjust the east/west line between the two subject parcels.

Property/Site Information:

The property is located south of CSAH 6 at the southeast corner of CSAH 6 and Kuntz Drive. There is an existing home and several detached accessory structures located on the southern property. The northern property does not have any existing structures. The majority of the property is currently tillable land with some wetlands located on the far east side of the property. The property has the following characteristics:

Property Information: 440 Kuntz Drive (South Property)

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: Before – 22.64 acres
 After – 10.00 acres

Property Information: Unaddressed PID No.33-118-24-21-0002 (North Property)

Zoning: *Agriculture*

Comprehensive Plan: *Agriculture*

Acreage: Before – 2.55 acres
 After – 15.19 acres



Discussion:

The applicant is seeking a minor subdivision to allow a lot line rearrangement which would allow the north property to be expanded and the south property to be reduced. Both properties are considered buildable lots of record. Currently, the south property is approximately 22.5 acres and the north property is 2.5 acres. The applicant would like to essentially balance the properties so that the north property has more "buildable" area. The south property has the existing home and detached accessory buildings and would be 10 acres in the after condition. This would allow no restriction in the square footage allowed for detached accessory structures.

Staff has reviewed the request and offers the following information for consideration by the Planning Commission:

1. The applicant meets applicable criteria relating to the existing accessory structures located on the south parcel. In the after condition, all structures will meet requisite setbacks.
2. In the after condition, the properties will have the following frontage on a public right of way and lot width to frontage ratios:

North Property:

Required Frontage: 300 LF
Required Lot Frontage to Depth Ratio: 1:4

Proposed Frontage: 501 LF (Kuntz Drive)
1215 LF (CSAH 6)
Proposed Lot Frontage to Depth Ratio: 1:2.5

South Property:

Required: 300 LF
Required Lot Frontage to Depth Ratio: 1:4

Proposed: 322 LF (Kuntz Drive)
Proposed Lot Frontage to Depth Ratio: 1:4

3. The applicant has requested the requisite percolation test to confirm that there is a primary and secondary on-site septic site for each property. The City should have confirmation prior to final approval. The size and general make up of the property typically support the development of a primary and secondary site.
4. Access to the north property could be from either CSAH 6 or Kuntz Drive. Access to CSAH 6 would be subject to Hennepin County approval.
5. There is adequate space on the north property to construct a residence and associated accessory buildings.
6. Both properties are lots of record and no park dedication fees are required for either existing lot.

Neighbor Comments:

The City has not received any written comments pertaining to the request for a lot line rearrangement.

Recommendation:

Staff is seeking a recommendation from the Planning Commission for the requested minor subdivision to allow a lot line rearrangement with the following findings and conditions:

1. The proposed minor subdivision to allow a lot line rearrangement request meets all applicable conditions and restrictions stated Chapter V, Sections 500 and 510, Planning and Land Use Regulations and Zoning, in the City of Independence Zoning Ordinance.

2. The Applicant shall pay for all costs associated with the City's review of the requested minor subdivision.
3. Access to CSAH 6 will require the review and approval of Hennepin County.
4. The Applicant shall provide the legal descriptions, execute and record the requisite perimeter drainage and utility easements with the county within six (6) months of approval.
5. The Applicant shall record the subdivision and City Council Resolution with the county within six (6) months of approval.

Attachments:

1. Application
2. Proposed Subdivision Exhibit

City of Independence

The Independence City Code was established to protect both current and future residents from the negative impacts of improper development and to ensure a positive future for the city. The land use application review is the mechanism that allows the city to examine proposed uses to ensure compatibility with the surrounding environment, natural or otherwise. It is important to understand that a proposed use may be acceptable in some circumstances, but unacceptable in others—all applications are viewed on a case-by-case basis.

Request: Move Lot Line Between

the two Parcel to Form
2 - 12 Acre Parcels

Site Address or Property Identification Number(s):

PP 3311824240001 / 3311824210002

NOTE: Minnesota State Statute 15.99 requires local governments to review an application within 15 days of its submission to determine if an application is complete and/or if additional information is needed to adequately review the subject request. **To ensure an expedited review, applicants shall schedule a pre-application meeting with the City Planner/Administrator at least one week prior to submittal.** Most applications have a review period of 60 days, with the City's ability to extend an additional 60 days if necessary due to insufficient information or schedule.

- ☐ Appeal
 - ☐ Comprehensive Plan Amendment
 - ☐ Concept Plan
 - ☐ Conditional Use Permit
 - ☐ Residential
 - ☐ Commercial/Light Industrial
 - ☐ Telecommunications
 - ☐ Agriculture
 - ☐ Home Occupation
 - ☐ Non-Conforming Use
 - ☐ Guest/Bunk House
 - ☐ Institutional
 - ☐ CUP Amendment
 - ☐ Extension Request
 - ☐ Final Plat
 - ☐ Interim Use Permit
 - ☐ Lot Consolidation
 - ☒ Minor Subdivision (Survey)
 - ☐ Lot Subdivision
 - ☐ Lot Combination
 - ☒ Lot Line Rearrangement
 - ☐ Moving Buildings
 - ☐ Preliminary Plat
 - ☐ Rezoning
 - ☐ Site Plan Review (Commercial)
 - ☐ Vacation
 - ☐ Variance
 - ☐ Subdivision Regulations
 - ☐ Zoning
 - ☐ Road Frontage
 - ☐ Zoning Text Amendment
- ** Please check all that apply**

Office Use Only

Received By (Staff Initials) BAA

8/8/18
Date

1,250
Application Amount

750
Deposit Paid

7694
Application Check #

same
Deposit Check #

Date Accepted by Planner

City Planner

*****Note:** All parties with a fee interest in the real estate must sign this application before the City will review for consideration!

Applicant Information:

Name: David Zaldala

Address: 440 Kuntz Dr.

City, State, Zip: Maple Plain, MN 55359

Phone: 612-423-5335

Email: d.zaldala@frontiernet.net

Signature: 

Owner Information (if different than applicant)

Name: Same

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

Signature: _____

Review Deadline and Timeline: All applications must be received by the deadline according to the schedule provided. Failure to submit by the date shown will result in a delay in the scheduling of the application review by the Planning Commission and City Council.

Application for Planning Consideration Fee Statement

The City of Independence has set forth a fee schedule by City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are included in the fee schedule. By signing this form, the applicant recognizes that he/she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

Applicant Signature: 
Date: 2-2-18

Owner Signature (if different): _____
Date: _____



Hennepin County Property Map

Date: 8/7/2018



PARCEL ID: 3311824240001

OWNER NAME: David E Zoldahn

PARCEL ADDRESS: 498 Kuntz Dr, Independence MN 55359

PARCEL AREA: 21.72 acres, 946,242 sq ft

A-T-B: Abstract

SALE PRICE:

SALE DATA:

SALE CODE:

ASSESSED 2017, PAYABLE 2018

PROPERTY TYPE: Farm

HOMESTEAD: Homestead

MARKET VALUE: \$222,600

TAX TOTAL: \$1,728.94

ASSESSED 2018, PAYABLE 2019

PROPERTY TYPE: Farm

HOMESTEAD: Homestead

MARKET VALUE: \$236,600

Comments:

farm 2 parcelll

This data (i) is furnished 'AS IS' with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this data.

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COUNTY 2018



Hennepin County Property Map

Date: 8/7/2018



PARCEL ID: 3311824240001

OWNER NAME: David E Zoldahn

PARCEL ADDRESS: 498 Kuntz Dr, Independence MN 55359

PARCEL AREA: 21.72 acres, 946,242 sq ft

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ASSESSED 2018, PAYABLE 2019

PROPERTY TYPE: Farm

HOMESTEAD: Homestead

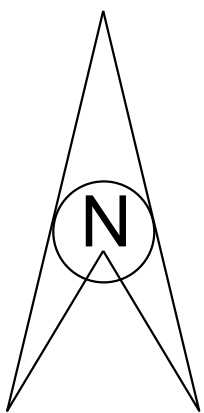
MARKET VALUE: \$236,600

Comments:

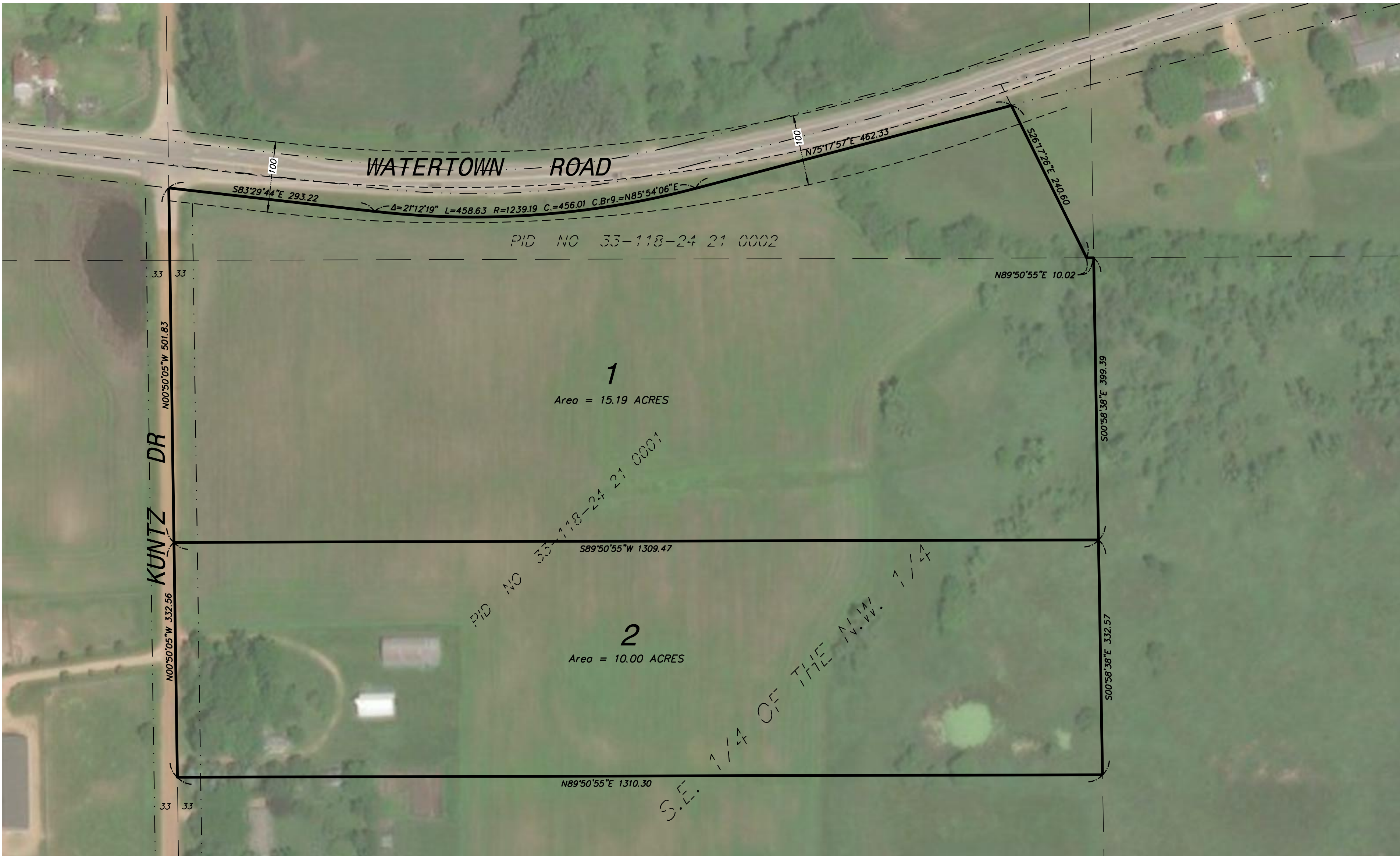
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Concept Plan



0 100 200 Feet
Total Area = 25.2± ACRES
LOT 1 PID NO 33-118-24 21 0002
PID 2 PID NO 33-118-24 24 0001



Concept Plan on part of , and the S.E. 1/4 of the N.W. 1/4 of Section 33, Township 118, Range 24, Hennepin County, Minnesota

Revised:

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Paul E. Otto
Paul E. Otto
License #40062 Date: 9-7-18

Requested By:

David Zoldahn

Date:

9-6-18

Drawn By:

M.J.H.

Scale:

1"=100'

Checked By:

P.E.O.



www.ottoassociates.com

9 West Division Street
Buffalo, MN 55313
(763)682-4727
Fax: (763)682-3522

- denotes iron monument found
- denotes 1/2 inch by 14 inch iron pipe set and marked by License #40062

Project No. 18-0425

City of Independence

Request for a Variance from the Front and Corner Yard Setbacks for the Property Located at 4976 Lake Shore Drive South

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	September 18, 2018
<i>Applicant:</i>	Doug and GERALYN McDonald
<i>Owner:</i>	Doug and GERALYN McDonald
<i>Location:</i>	4976 South Lake Shore Drive

Request:

Doug and GERALYN McDonald (Applicants/Owners) request that the City consider the following action for the property located at 4976 South Lake Shore Drive in Independence, MN (PID No. 24-118-24-11-0013):

- a. A variance to allow the construction of a detached accessory building that does not meet the side yard setback from the west property line.

Property/Site Information:

The subject property is located at 4976 South Lake Shore Drive. The property is located on Lake Independence off of South Lake Shore Drive. There is an existing home and detached garage on the subject property.

Property Information: 4976 South Lake Shore Drive
Zoning: *Rural Residential (Shoreland Overlay)*
Comprehensive Plan: *Rural Residential*
Acreage: 1.01 acres (43,995 square feet)
Impervious Surface Maximum: 25% (10,999 square feet)



Discussion:

The applicant is seeking approval to remove and replace an existing legal non-conforming detached accessory structure located on the subject property. There is an existing detached accessory structure located on the property that does not currently meet the required side yard setback from the west property line. The existing garage is located 1.5 feet from the west side property line. The required setback for detached accessory structures is nine (9) feet. The applicant would like to raise the height of the building foundation to allow proper drainage of the site to go around the building and towards the lake without inundating the structure. In addition to raising the elevation of the existing structure, the applicant would like to change the roof line of the building so that they can access the building from a door on the south elevation. The existing garage has an off-centered roof line that can be seen from the photographs attached to this report. The applicant would like to construct a standard centered gabled roof on the new garage.

Staff has had correspondence with the applicant to discuss the existing and proposed detached garages on the property. The applicant did look at rebuilding the existing shed in its current location which would be permitted by the City. Ultimately the applicant determined that they would like the City to consider granting a variance to allow a new detached accessory garage to be constructed in the same location as the existing garage with three changes:

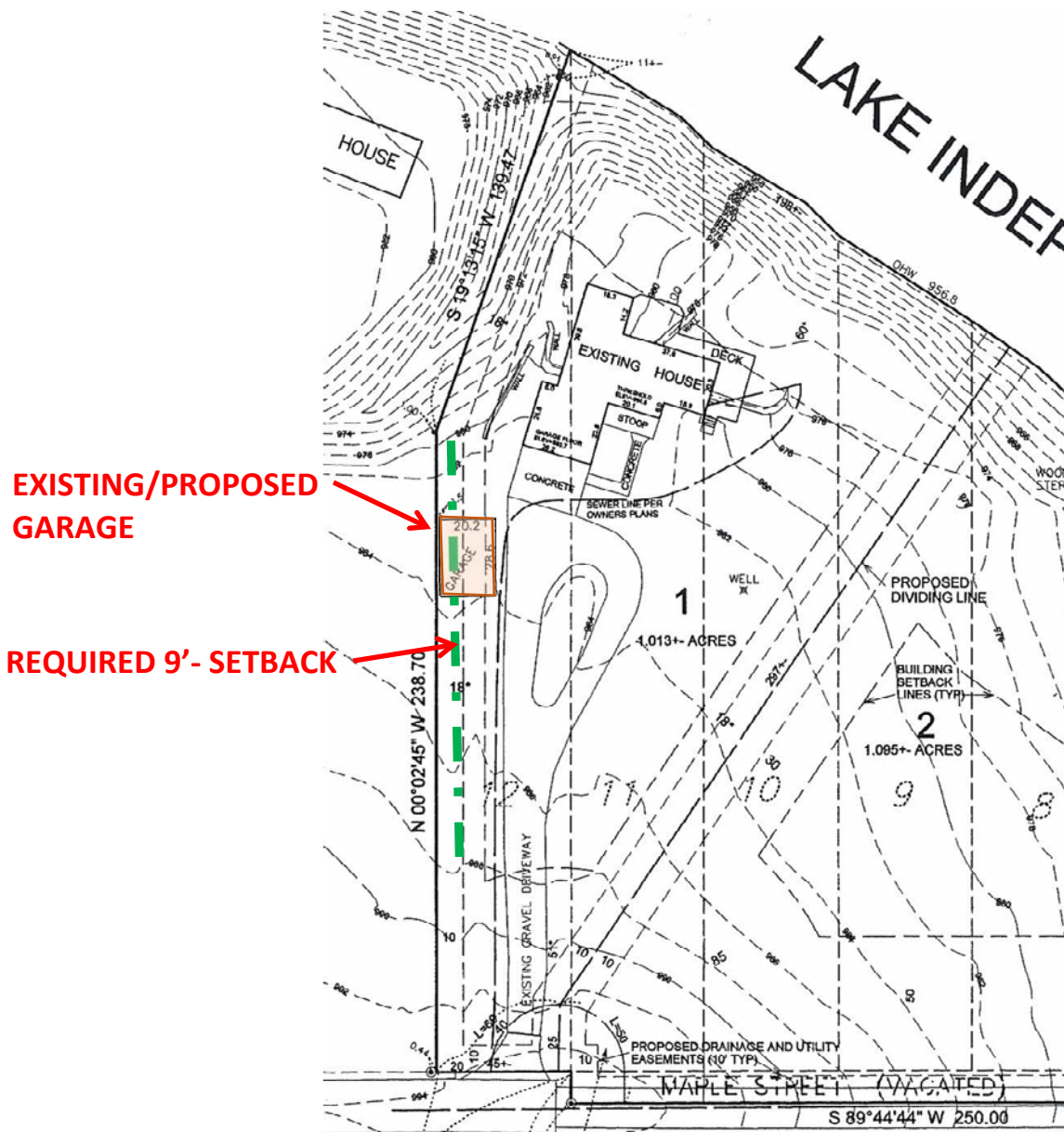
1. Raise the finished floor elevation of the new structure so that it sits 1.5 feet above the proposed new drainage swale.
2. Change the roofline of the new structure from an offset gable roof to a center gable roof.
3. Extend the structure 3 feet to the south while maintaining the 1.5-foot side yard setback.

The proposed garage would have the following setbacks:

Side Yard Setback:

Required: 9 feet from the side yard property line

Proposed: 1.5 feet from the side yard property line (variance of 7.5 feet)



There are several factors to consider relating to granting a variance. The City's ordinance has established criteria for consideration in granting a variance.

520.21. Standards for granting variances. Subdivision 1. The City Council may grant a variance from the terms of this zoning code, including restrictions placed on nonconformities, in cases where: 1) the variance is in harmony with the general purposes and intent of this zoning code; 2) the variance is consistent with the comprehensive plan; and 3) the applicant establishes that there are practical difficulties in complying with the zoning code (Amended, Ord. 2011-08)

Subd. 2. An applicant for a variance must demonstrate that there are practical difficulties in complying with the zoning code. For such purposes, "practical difficulties" means:

- (a) The property owner proposes to use the property in a reasonable manner not permitted by the zoning code;*
- (b) the plight of the property owner is due to circumstances unique to the property not created by the landowner;*
- (c) the variance, if granted, will not alter the essential character of the locality.*

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. (Amended, Ord. 2011-08)

Subd. 3. The City Council shall not grant a variance to permit a use that is not allowed under the zoning code based on the zoning classification of the affected property. (Amended, Ord. 2011-08)

520.23. Conditions and restrictions. The board of adjustments may recommend and the City Council may impose conditions on a variance. Conditions must be directly related to and must bear a rough proportionality to the impact created by the variance. (Amended, Ord. 2011-08)

Consideration of the criteria for granting a variance:

- a. Residential use of the property is consistent with the Rural Residential District. The applicants are seeking a variance that is generally consistent with similar variances granted for properties in this area.
- b. Many of the properties in this area have setbacks from the right of way or side property lines that do not meet the required setbacks.
- c. The character of the surrounding area is residential. The proposed garage expansion for a single-family home is in keeping with the City's comprehensive plan.

There are several additional items that could be considered by the City:

1. Many of the surrounding properties have been granted relief from the requisite setback requirements due to the small size of the properties, unique lot layouts resulting from the historic nature of the structures on the properties and the change in nature of the homes from seasonal to permanent.
2. The neighboring property owner directly west that would have the most visibility of the garage has submitted a letter to the City stating that they support the requested variance.
3. The proposed garage would be very similar to the existing garage on the property.
4. The maximum impervious surface coverage for this property is .25% or 10,999 SF. The existing coverage is as follows:

House, walks, patio and deck:	4,953 SF
Driveway:	3,803 SF
Existing Garage:	575 SF
Total: 8,781 SF	

The total coverage with the existing and proposed garage (plus 60 SF) would be within the allowable impervious coverage for this property.

5. The applicant has submitted a proposed drainage plan which indicates how the drainage will be addressed on the subject property.
6. The City allows up to 1,850 square feet of detached accessory structure for this property. The existing and proposed garage is approximately 600 SF and well within the allowable structure size.

Ultimately the City will need to find that the aforementioned criteria for granting a variance have been met by the applicant.

Public Comments:

The City received a letter from the neighboring property owner located at 4986 South Lake Shore Dr. offering support for the request.

Recommendation:

Staff is seeking a recommendation or direction from the Planning Commission pertaining to the request for a variance. Should the Planning Commission consider granting a variance, the following findings and conditions should be considered.

1. The proposed Variance request meets all applicable conditions and restrictions stated in Chapter V, Section 520.19, Procedures on variances, in the City of Independence Zoning Ordinance.
2. The Applicant shall pay for all costs associated with the City's review of the requested variance.
3. Any future improvements made to this property will need to be in compliance with all applicable standards relating to the Rural Residential and Shoreland Overlay zoning districts. No expansion of the garage will be permitted without an additional variance request.

Attachments:

1. Application
2. Site Plan/Survey
3. Drainage Plan from Hennepin County
4. Letter from Adjacent Property Owner
5. Pictures



PLANNING APPLICATION

Case No.

Type of application

- ☒ Standard ☐ Staff Approval ☐ Plan Revision ☐ Amended ☐ Reapplication
- ☐ Rezoning ☐ Conditional Use Permit ☒ Variance ☐ Ordinance Amendment ☐ Subdivision
- ☐ Preliminary Development Plan ☐ Interim Use Permit ☐ Comprehensive Plan Amendment
- ☐ Final Development Plan ☐ Final Site & Building Plan ☐ Other _____

Site Location— Additional addresses on back and legal description attached

Property address 4976 S. Lakeshore Drive PID 24-118-24-11-0013

Proposal -Full documentation must accompany application

Requesting variance to rebuild and improve
shed for water drainage and function

Applicant

Name Doug + Geralyn McDonald Email dgmjmcDonald@msn.com

Address 4976 S. Lakeshore Drive Independence MN 55359

Phone 763-568-4193 (Geraldyn) Additional phone/contact Doug 763-518-6940

Printed Name Geraldyn McDonald Signature Geraldyn McDonald

Owner Information (if different from applicant)

Name _____ Email _____

Address _____

Phone _____ Additional phone/contact _____

Printed Name _____ Signature _____

Office Use Only

Date 8/14/18 Application Amount 2000,250 Check # 8635 Accepted By [Signature]

Escrow Paid 750 Check # 8635 Date Accepted by Planner _____

City of Independence

The Independence City Code was established to protect both current and future residents from the negative impacts of improper development and to ensure a positive future for the city. The land use application review is the mechanism that allows the city to examine proposed uses to ensure compatibility with the surrounding environment, natural or otherwise. It is important to understand that a proposed use may be acceptable in some circumstances, but unacceptable in others— all applications are reviewed on a case-by-case basis.

Minnesota State Statute 15.99 requires local governments to review an application within 15 days of its submission to determine if an application is complete and/ or if additional information is needed to adequately review the subject request. ***To ensure an expedited review, applicants shall schedule a pre-application meeting with the City Planner/ Administrator at least one week prior to submittal.*** Most applications have a review period of 60 days, with the City's ability to extend an additional 60 days if necessary due to insufficient information or schedule.

Application for Planning Consideration Fee Statement

The City of Independence has set forth a fee schedule for the year 2018 by City Ordinance. However, projects of large scope that include two or more requests will be required to provide a larger deposit than the resolution sets forth as set by the City Administrator. The fees collected for land use projects are collected as deposits. All invoices associated with each land employ application will be billed to the applicant within 30 days upon receipt by the City for each project. The City of Independence often utilizes consulting firms to assist in the review of projects. The consultant and City rates are noted on the current fee schedule. By signing this form, the applicant recognizes that he/ she is solely responsible for any and all fees associated with the land use application from the plan review stage to the construction monitoring stage through to the release of any financial guarantee for an approved project. If a project is denied by the City Council or withdrawn by the applicant, the fees associated for the project until such denial or withdrawal, remain the applicant's responsibility.

I UNDERSTAND THE FEE STATEMENT AND RESPONSIBILITIES ASSOCIATED WITH THIS LAND USE APPLICATION:

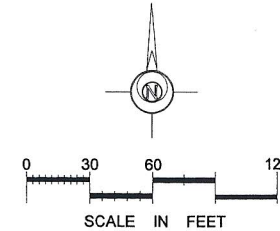
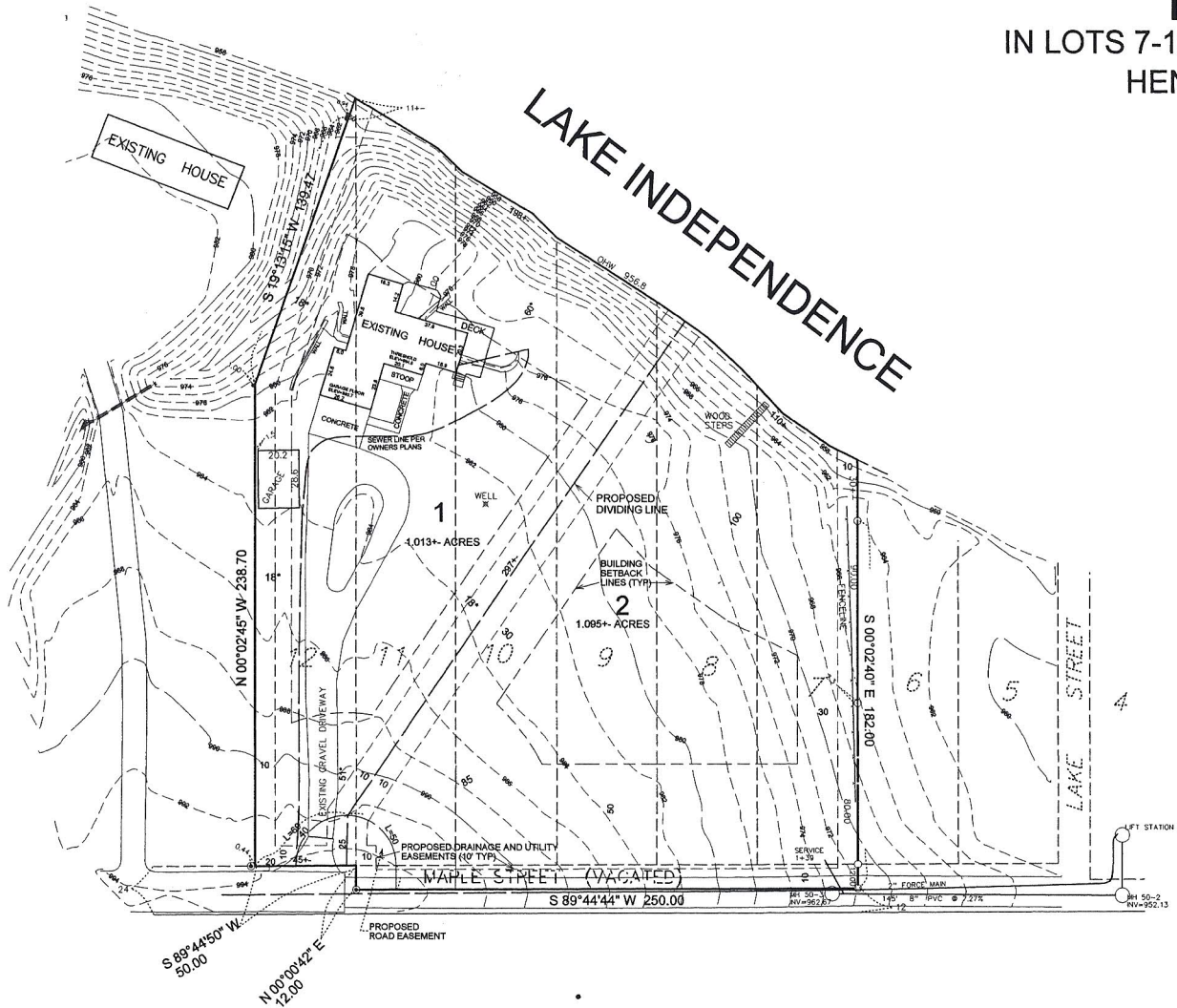
Applicant Signature: *Geraldyn McDonald*

Date: *8/14/18*

Owner Signature (if different): _____

Date: _____

CERTIFICATE OF SURVEY AND
PROPOSED MINOR SUBDIVISION FOR
MARY JANE LYNCH
IN LOTS 7-12 OF FRED W. ANDERSONS ADDITION
HENNEPIN COUNTY, MINNESOTA



LEGAL DESCRIPTION OF PREMISES
Lots 7, 8, 9, 10, 11, and 12, FRED W. ANDERSON'S ADDITION. Also that part of the adjoining north half of vacated Maple Street which lies easterly of the southerly extension of the west line of Said Lot 11, and westerly of the southerly extension of the east line of Said Lot 7.

• denotes iron marker found
o • denotes iron marker set
- - - Denotes existing contour line, mean sea level datum
Bearings shown are based on an assumed datum.

This survey shows the boundaries of the above described property, and the location of an existing house and driveway thereon. It does not purport to show any other improvements or encroachments.

*: DENOTES SETBACKS (40% LESS PER ARCHITECT'S SITE PLAN) FOR CERTAIN LOTS
SEWER INFORMATION SHOWN FROM CITY RECORDS

CURRENT ZONING - RURAL RESIDENTIAL
CURRENT AREA - 91840+- S.F.
2.11+- ACRES

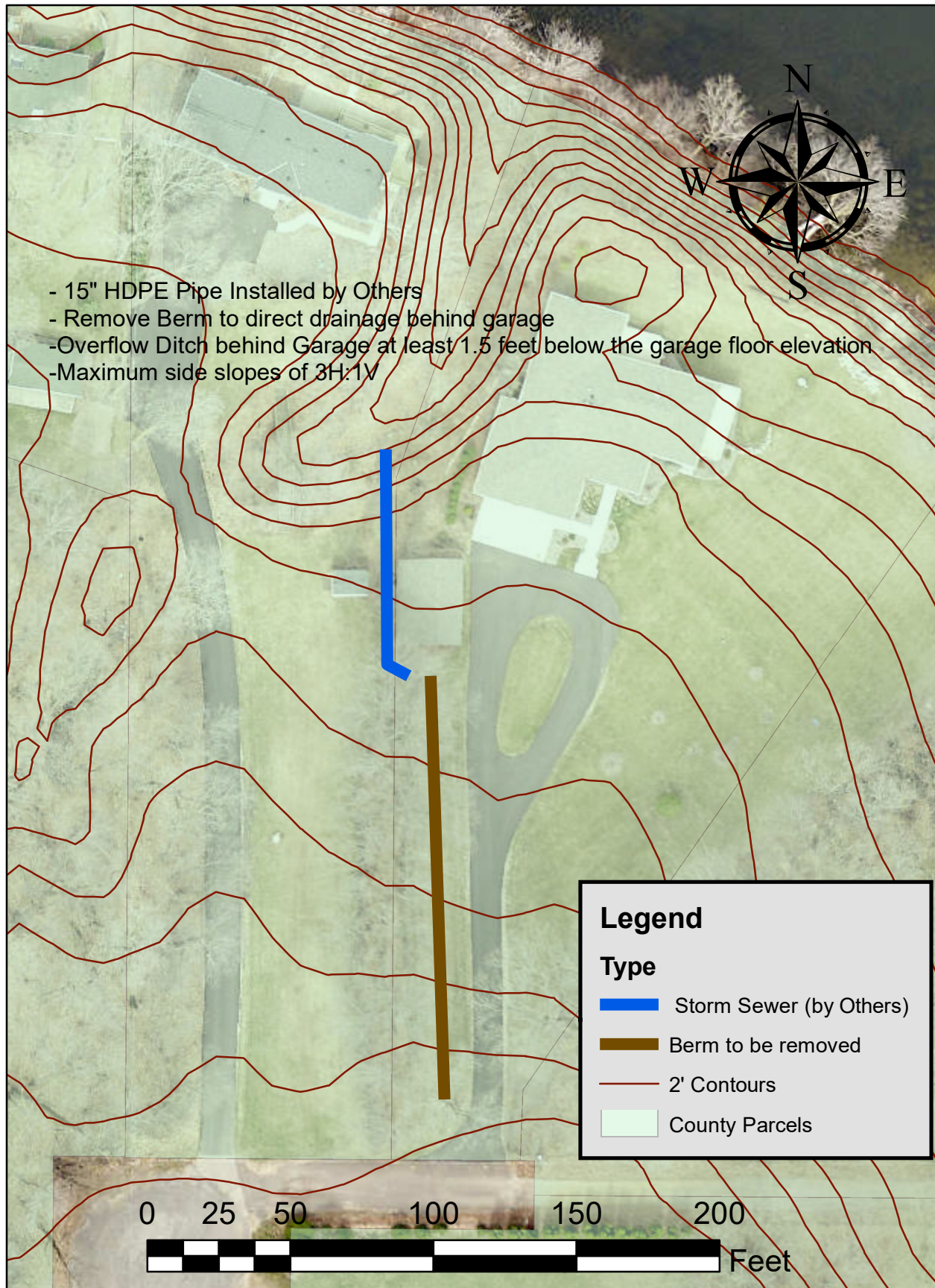
CURRENT OWNER-TAXPAYER-DEVELOPER
MARY JANE LYNCH
4976 SOUTH LAKESHORE DRIVE
MAPLE PLAIN, MN 55359
763-479-3448

SURVEYOR
MARK S. GRONBERG
GRONBERG & ASSOCIATES, INC.
445 NORTH WILLOW DRIVE
LONG LAKE, MN 55356
952-473-4141

 GRONBERG & ASSOCIATES, INC. CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS 445 N. WILLOW DRIVE LONG LAKE, MN 55356 PHONE: 952-473-4141 FAX: 952-473-4435	
DATE 7-12-12 BY M.S.G. CHECKED M.S.G. DATE 7-12-12	DESIGNED DRAWN CHECKED REVISIONS I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota. <i>Mark S. Gronberg</i> DATE: 7-12-12 MINN. LICENSE NUMBER: 12345

McDonald Residence Erosion Repairs

Date: 8/31/2018



Garage Drainage

Prepared by Hennepin County Land and Water

Mark Kaltsas

From: Patti Good <pgood161@yahoo.com>
Sent: Wednesday, August 22, 2018 9:58 AM
To: Beth Horner
Subject: 4976 S. Lakeshore Drive- Variance request

Hello,

We live at 4986 S. Lakeshore Drive, adjacent to 4976 S. Lakeshore Drive. We are aware that a variance has been applied for at 4976 in order to rebuild a shed within 9' of the adjoining lot line. We have reviewed the plans presented to us by Douglas and Geralyn McDonald and have absolutely no objections and fully grant our consent to the request for the variance. If you need a signed written statement to this effect, let us know and we will drop it in the mail to you.

Regards,

Perry and Patti Good
4986 S. Lakeshore Drive
651-269-0536





City of Independence

Proposed Amendment to the City of Independence Ordinances Chapter 5: Section 530.05, Subd. 4 Conditional Uses Pertaining to Small Cellular Wireless Technology in City Rights of Ways

<i>To:</i>	Planning Commission
<i>From:</i>	Mark Kaltsas, City Planner
<i>Meeting Date:</i>	September 18, 2018

Consideration:

To consider a text amendment to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses pertaining to small cellular wireless technology in City right of ways.

Discussion:

Small Cellular in City Right of Ways

The State of Minnesota adopted new regulations in 2017 pertaining to the regulation of placement of small cell technologies and distributed antennae systems (DAS) (See Example Images Below). Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall. Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower.



Historically, many cities' ordinances address large wireless tower sites, but not small cellular towers or DAS. Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit. While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district. The City can regulate small wireless and DAS equipment in residential zoning districts by making new structures a conditional use rather than a permitted use. Based on the new legislation, the City can only regulate new equipment located in residential zoning districts and must allow new small wireless structures in all other commercial districts as a permitted use.

Independence will also need to amend the City's Code of Ordinances pertaining to Rights of Way and the permitting of small cell and DAS technologies. The Rights of Way Ordinance will be reviewed and amended by action of the City Council at an upcoming meeting. The Planning Commission has the responsibility to review and recommend amendments to the Zoning and Subdivision Ordinances. The City has the ability to now regulate small cell and DAS equipment in residential zoning districts by making the new structures a conditional use. Based on the new legislation, the City can only regulate new equipment located in residential zoning districts and has to allow it in all other commercial districts as a permitted use.

To ensure that the City has the most control over structures being located within City rights of way in residential zoning districts, the City would need to consider adding the following provision to Chapter 5, Section 510.05, Definitions and Chapter 5, Section 530.05, Subd. 4, Conditional Uses:

Sec. 510.05. – Definitions.

Subd. 90. "Small Wireless Facility," means a wireless facility that meets both of the following qualifications:

- (a) Each antenna is located inside an enclosure of no more than six cubic feet in volume or could fit within such an enclosure; and
- (b) All other wireless equipment associated with the small wireless facility provided such equipment 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 from public view within or behind an existing structure or concealment.

Subd. 91. "Wireless Support Structure," means a new or existing structure in a right-of-way designed to support or capable of supporting small wireless facilities, as reasonably determined by the city.

Chapter 5, Section 530.05, Subd. 4, Conditional Uses:

- (l) New wireless support structures for small wireless facilities.

Summary:

Based on direction and discussion relating to the ordinance amendments proposed, staff will prepare a final ordinance amendment for City Council consideration and adoption.

Attachments: League of Minnesota Cities – Information (2 PDF's)

Small Cell, **Big** Change: Complying with the New Small Cell Wireless Law

League of Minnesota Cities
Webinar: September 12, 2017

Goals



- ✓ Briefly **review** how the bill became law
- ✓ Explore the **most important** aspects
- ✓ Understand what **actions** your city should take
- ✓ Hear **examples** from cities that have encountered small cell wireless applications
- ✓ Know where to go for additional League **resources**
- ✓ Have an opportunity to **ask questions**



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 @laurahziegler



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Research Attorney

 pwhitmore@lmc.org

 (651) 281-1224

 @PamelaWhitmore



Shelly Hanson

Engineer
City of Bloomington

 shanson@BloomingtonMN.gov

An Example of a Small Cell

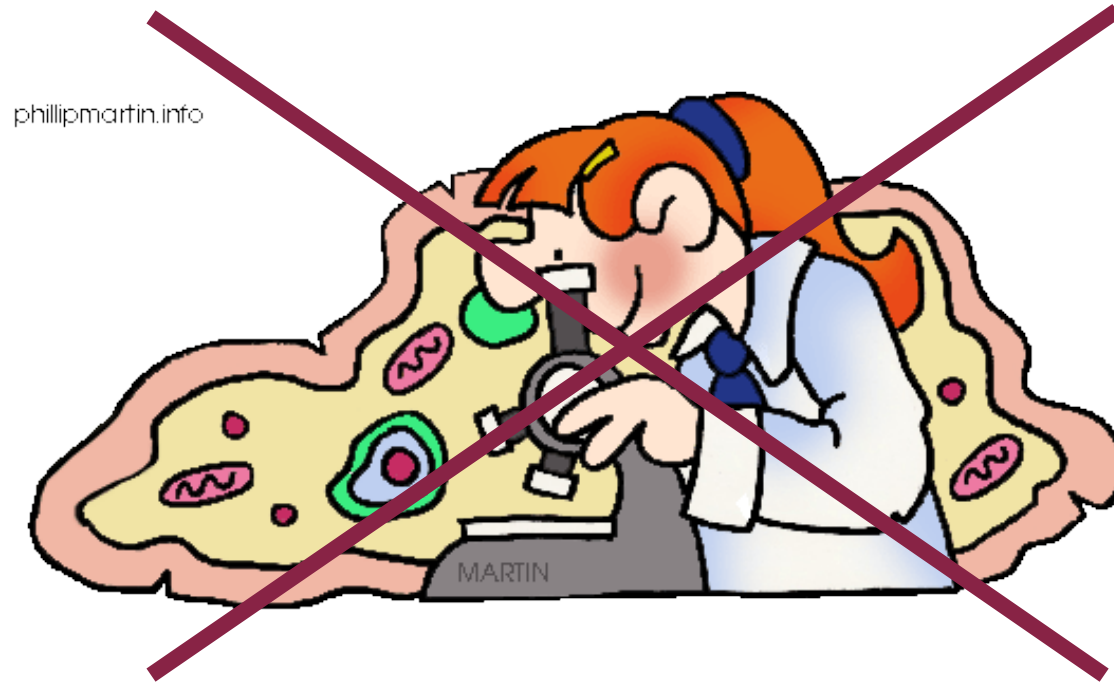
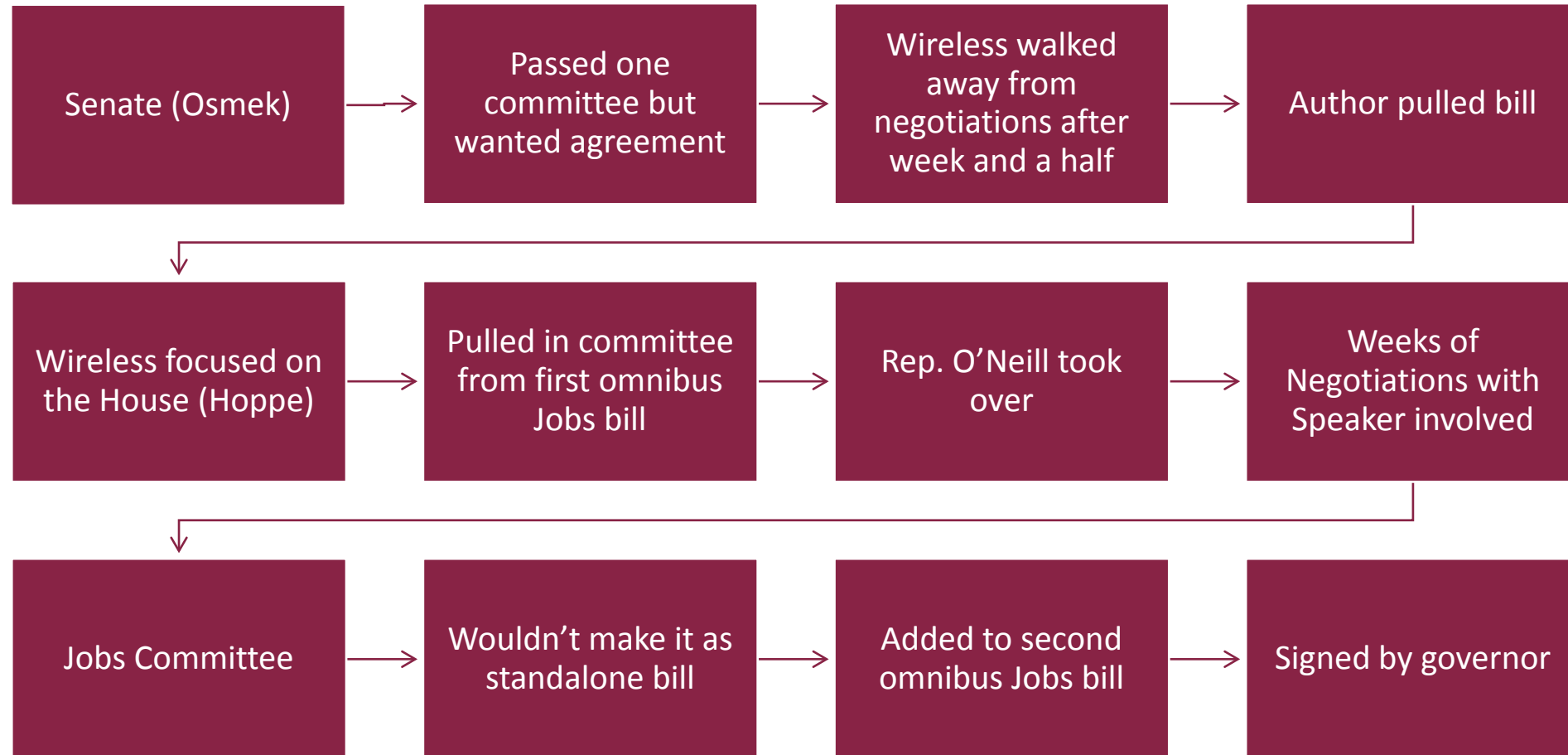


Photo courtesy of Shelly Hanson

Overview of process/roller coaster



Deployment of Small Wireless Facilities

*Broad Initiatives Nationwide
Federal Regulatory Action*



Highlights of Changes to Key Definitions

❖ *Definitional Changes: Minn. Stat. § 237.162*

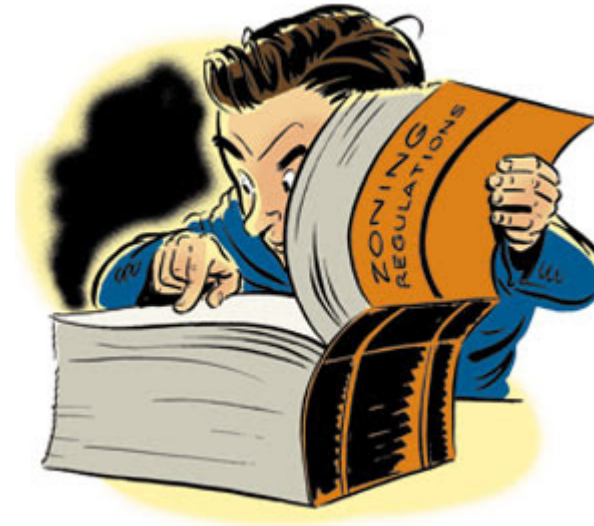
words
have
power

League resource:

[Negotiated Bill Language from 2017 Minnesota Session Laws—Chapter 94](#)

Highlights of Changes to State Law regarding Use and Regulation of Right of Way

❖ *Interplay between Enabling Ordinance and the Moratorium Prohibition*



Highlights of Changes to State Law regarding Use and Regulation of Right of Way

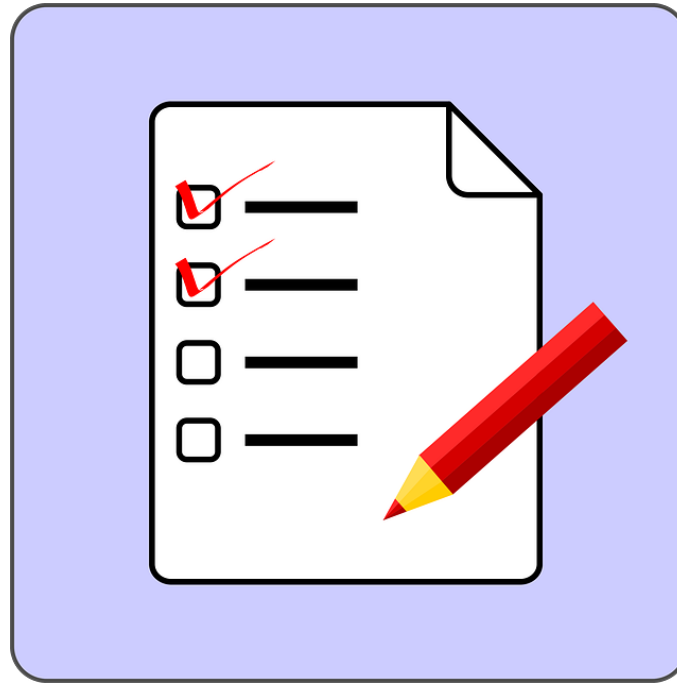
❖ *Assumption for Permitted Use*



Zelda's Permission by Kara L.C. Jones, excerpted from 1,000 Faces of Mother Henna
Copyright 2007, Published by KotaPress, www.MotherHenna.com
MotherHenna.Etsy.com

Highlights of Changes to State Law regarding Use and Regulation of Right of Way

- ❖ *Creation of Special Permitting System for Small Wireless Facility*



Highlights of Changes to State Law regarding Use and Regulation of Right of Way

- ❖ *Additional Optional Authority for Regulating Small Wireless Facilities*



Highlights of Changes to State Law regarding Use and Regulation of Right of Way

❖ *Ability to Deny Permit Preserved*



Highlights of Changes to State Law regarding Use and Regulation of Right of Way

❖ *Allowance of Fees and Rent with Rent Caps*



Highlights of Changes to State Law regarding Use and Regulation of Right of Way

❖ *Exemptions to Special Process*



Small cell wireless resources



www.lmc.org/smallcellwebinar2017

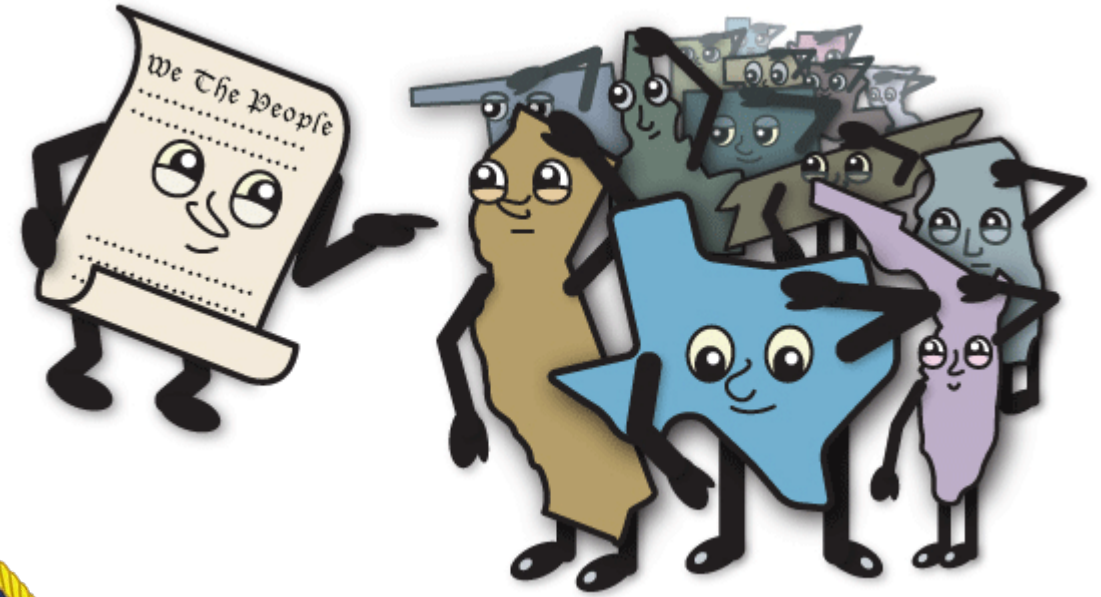
Click on More Resources documents

More Resources documents

- [Focus on New Laws: Right-of-Way Management for Small Wireless Facilities](#)
- [Cell Towers, Small Cell Technologies & Distributed Antenna Systems \(pdf\)](#)
- [2017 Telecommunications Right-of-Way User Amendments Permitting Process for Small Wireless Facilities \(pdf\)](#)
- [Negotiated Bill Language from 2017 Minnesota Session Laws—Chapter 94](#)

Small wireless facilities

*Other States & Federal
Initiatives*



Thank you!



Questions?

**For a recording of this webinar, go to:
<http://www.lmc.org/smallcellwebinar2017>**



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 @laurahziegler

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Research Attorney

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 (651) 281-1224

 @PamelaWhitmore



CONNECTING & INNOVATING SINCE 1913

INFORMATION MEMO

Cell Towers, Small Cell Technologies & Distributed Antenna Systems

Learn about large and small cell tower deployment and siting requests for small cell, small wireless and distributed antenna systems (DAS) technology. Better understand the trend of the addition of DAS, small wireless or small cell equipment on existing utility equipment. Be aware of common gaps in city zoning, impact of federal and state law, reasons for collocation agreements and some best practices for dealing with large and small cell towers, small wireless facilities and DAS.

RELEVANT LINKS:

[47 U.S.C. § 253](#) (commonly known as Section 253 of Telecommunications Act).

[47 U.S.C. § 332](#) (commonly known as Section 332 of Telecommunications Act).

[FCC Website.](#)



[47 U.S.C. § 253](#) (commonly known as Section 253 of Telecommunications Act).

[47 U.S.C. § 332](#) (commonly known as Section 332 of Telecommunications Act).

I. Deployment of large cell towers or antennas

A cell site or cell tower creates a “cell” in a cellular network and typically supports antennas plus other equipment, such as one or more sets of transceivers, digital signal processors, control electronics, GPS equipment, primary and backup electrical power and sheltering. Only a finite number of calls or data can go through these facilities at once and the working range of the cell site varies based on any number of factors, including height of the antenna. The Federal Communications Commission (FCC) has stated that cellular or personal communications services (PCS) towers typically range anywhere from 50 to 200 feet high.

The emergence of personal communications services, the increased number of cell providers, and the growing demand for better coverage have spurred requests for new cell towers, small cell equipment, and distributed antenna systems (DAS) nationwide. Thus, some cellular carriers, telecommunications wholesalers or tower companies, have attempted to quickly deploy telecommunications systems or personal wireless service facilities, and, in doing so, often claim federal law requires cities to allow construction or placement of towers, equipment, or antennas in rights of way. Such claims generally have no basis. Although not completely unfettered, cities can feel assured that, in general, federal law preserves local zoning and land use authority.

A. The Telecommunications Act and the FCC

The Telecommunications Act of 1996 (TCA) represented America’s first successful attempt to reform regulations on telecommunications in more than 60 years, and was the first piece of legislation to address internet access. Congress enacted the TCA to promote competition and higher quality in American telecommunications services and to encourage rapid deployment of new telecommunications technologies.

FCC website interpreting
Telecommunications Act of
1996.

47 U.S.C. § 253 (Section 253
of Telecommunications Act).

47 U.S.C. § 332(c)(7).

FCC 09-99, Declaratory
Ruling (Nov. 18, 2009).

47 U.S.C. § 253(c)(e)
(Section 253 of
Telecommunications Act).

47 U.S.C. § 332(c)(7).

FCC 09-99, Declaratory
Ruling (Nov. 18, 2009).

Sprint Spectrum v. Mills,
283 F.3d 404 (2nd Cir.
2002).

*USCOC of Greater Missouri
v. Vill. Of Marlborough*, 618
F.Supp.2d 1055 (E.D. Mo.
2009).

FCC 09-99, Declaratory
Ruling (Nov. 18, 2009).

The FCC is the federal agency charged with creating rules and policies under the TCA and other telecommunications laws.

The FCC also manages and licenses commercial users (like cell providers and tower companies), as well as non-commercial users (like local governments). As a result, both the TCA and FCC rulings impact interactions between the cell industry and local government.

The significant changes in the wireless industry and its related shared wireless infrastructures, along with consumer demand for fast and reliable service on mobile devices, have fueled a frenzy of requests for large and small cell/DAS site development and/or deployment. As a part of this, cities find themselves facing cell industry arguments that federal law requires cities to approve tower siting requests.

Companies making these claims most often cite Section 253 or Section 332 of the TCA as support. Section 253 states “no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Section 332 has a similar provision ensuring the entry of commercial mobile services into desired geographic markets to establish personal wireless service facilities.

These provisions should not, however, be read out of context. When reviewing the relevant sections in their entirety, it becomes clear that federal law does not pre-empt local municipal regulations and land use controls. Specifically, the law states “[n]othing in this section affects the authority of a state or local government to manage the public rights of way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights of way ...” and that “nothing in this chapter shall limit or affect the authority of ... local government ... over decisions regarding the placement, construction, and modification of personal wireless service facilities”.

Courts consistently have agreed that local governments retain their regulatory authority and, when faced with making decisions on placement of towers, antenna or new telecommunication service equipment on city facilities, they generally have the same rights that private individuals have to deny or permit placement of a cellular tower on their property. This means cities can regulate and permit placement of towers and other personal wireless service facilities, including, in most situations (though some state law restrictions exist regarding regulations of small wireless support structures), controlling height, exterior materials, accessory buildings, and even location. Cities should be careful to make sure that local regulations don’t have the effect of completely banning all cell towers or personal wireless service facilities. Such regulation could run afoul of federal law (not to mention state law as well).

Vertical Broadcasting v. Town of Southampton, 84 F. Supp.2d 379 (E.D.N.Y. 2000).

Paging v. Bd. of Zoning Appeals for Montgomery Cty., 957 F.Supp. 805 (W.D. Va. 1997).

Letter from Minnesota Department of Commerce to Mobilitie.

Minn. Stat. § 237.162
Minn. Stat. § 237.163
Chapter 94, Art. 9, 2017
Regular Session.

Minnesota Public Utilities Commission, Meeting Agenda (Nov. 3, 2016).

Minn. Stat. § 237.162.
Minn. Stat. § 237.163
Chapter 94, Art. 9, 2017
Regular Session.

Some cellular companies try to gain unfettered access to city right of way by claiming they are utilities. The basis for such a claim usually follows one of two themes—either that, as a utility, federal law entitles them to entry; or, in the alternative, under the city’s ordinances, they get the same treatment as other utilities. Courts have rejected the first argument of entitlement, citing to the specific directive that local municipalities retain traditional zoning discretion.

B. State law

In the alternative, the argument that a city’s local ordinances include towers as a utility has, on occasion and in different states, carried more weight with a court. To counter such arguments, cities may consider specifically excluding towers, antenna, small cell, and DAS equipment from their ordinance’s definition of utilities. The Minnesota Department of Commerce, in a letter to a wireless infrastructure provider, cautioned one infrastructure company that its certificate of authority to provide a local niche service did not authorize it to claim an exemption from local zoning. The Minnesota Department of Commerce additionally requested that the offending company cease from making those assertions.

In Minnesota, to clear up confusion about whether wireless providers represent telecommunications right-of-way users under state law and to address concerns about deployment of small wireless technology, the Legislature amended Minnesota’s Right-of-Way User statutes, or Minnesota ROW Law, in the 2017 legislative session to specifically address small wireless facilities and the support structures on which those facilities may attach.

Because of these amendments, effective May 31, 2017 additional specific state statutory provisions apply when cities, through an ordinance, manage their rights of way, recover their right-of-way management costs (subject to certain restrictions), and charge rent for attaching to city-owned structures in public rights of way. Rent, however, is capped for collocation of small wireless facilities. State law defines “collocate” or “collocation” as a means to install, mount, maintain, modify, operate, or replace a small wireless facility on, under, within, or adjacent to an existing wireless support structure that is owned privately or by a local government unit.

The Minnesota ROW Law allows cities to require telecommunications right-of-way users to get a permit for use of the right of way; however, it creates a separate permitting structure for the siting of small wireless facilities.

USCOC of Greater Missouri v. Vill. Of Marlborough, 618 F.Supp.2d 1055 (E.D. Mo. 2009).

Minnesota Towers Inc. v. City of Duluth, 474 F.3d 1052 (8th Cir. 2007).

NE Colorado Cellular, Inc. v. City of North Platte, 764 F.3d 929 (8th Cir. 2014) (denial of CUP for tower must be “in writing” but need not be a separate finding from the reasons in the denial).

Smith Comm. V. Washington Cty, Ark., 785 F.3d 1253 (8th Cir. 2015) (substantial evidence' analysis involves whether the local zoning authority's decision is consistent with the applicable local zoning requirements and can include aesthetic reasons).

FCC 09-99, Declaratory Ruling, Nov. 18, 2009.

Tower and Antenna Siting FAQ sheet from FCC.

T-Mobile West V. Crow, No. CV08-1337 (D. AZ. Dec. 16, 2009).

Because of the recent significant changes in the state law and the specific requirements for deployment of small wireless facilities that do not apply to other telecommunications right-of-way users, cities should work with their city attorneys to review and update their ordinances.

C. Limitations on cities' authority

1. Federal law

Although federal law expressly preserves local governmental regulatory authority, it does place several substantive and procedural limits on that authority. Specifically, a city:

- Cannot unreasonably discriminate among providers of functionally equivalent services.
- Cannot regulate those providers in a manner that prohibits or has the effect of prohibiting the provision of telecommunications services or personal wireless services.
- Must act on applications within a reasonable time.
- Must document denial of an application in writing supported by “substantial evidence.”

Proof that the local zoning authority's decision furthers the applicable local zoning requirements or ordinances satisfies the substantial evidence test. Municipalities cannot cite environmental concerns as a reason for denial, however, when the antennas comply with FCC rules on radio emissions. In the alternative, cities can request proof of compliance with the FCC rules.

Bringing an action in federal court represents the recourse available to the cellular industry if challenging the denial of a siting request under federal law. Based on the limitations set forth in the federal law on local land use and zoning authority, most often, when cities deny siting requests, the challenges to those denials claim one of the following:

- The municipal action has the effect of “prohibiting the provision of personal wireless service.”
- The municipal action unreasonably discriminates among providers of functionally equivalent services (i.e., cell providers claiming to be a type of utility so they can get the same treatment as a utility under city ordinance).

Minn. Stat. § 237.162
Minn. Stat. § 237.163
Chapter 94, Art. 9, 2017
Regular Session.

See further discussion of
state law restrictions in
Section II-A, below

*Minnesota Towers Inc. v.
City of Duluth*, 474 F.3d
1052 (8th Cir. 2007). *Smith
Comm. V. Washington Cty,
Ark.*, 785 F.3d 1253 (8th Cir.
2015).

*Voicestream PCSII Corp. v.
City of St. Louis*, No.
4:04CV732 (E.D.Mo. August
3, 2005) (city interpretation
of city ordinance treats
communication facility as a
utility).

*USCOC of Greater Missouri
v. Vill. Of Marlborough*, 618
F.Supp2d 1055, 1064 (E.D.
Mo. 2009) (TCA explicitly
contemplates some
discrimination amount
providers of functionally
equivalent services).

2. State law

In addition to mirroring some of the federal law requirements, such as the requirement of equal treatment of all like providers, state law permits cities, by ordinance, to further regulate “telecommunications right-of-way users.”

Minnesota’s Telecom ROW Law expressly includes wireless service providers as telecommunications right-of-way users, making the law applicable to the siting of both large and small, wire-lined or wireless telecommunications equipment and facilities, in the rights of way.

State law places additional restrictions on the permitting and regulating of small wireless facilities and wireless support structure placement. Accordingly, cities should work with city attorneys when drafting, adopting, or amending their ordinance. The Telecom ROW Law still expressly protects local control, allowing cities to deny permits for reasonable public health, welfare, and safety reasons, with no definitions of or limitations on what qualifies as health, welfare, and safety reasons.

D. Court decisions

The 8th U.S. Circuit Court of Appeals (controlling law for Minnesota) recognizes that cities do indeed retain local authority over decisions regarding the placement and construction of towers and personal wireless service facilities.

The 8th Circuit also has heard cases where a carrier or other telecommunications company argued they are a utility and should be treated as such under local ordinances. Absent a local ordinance that includes this type of equipment within its definition of utilities, courts do not necessarily deem cell towers or other personal communications services equipment functionally equivalent to utilities.

Additionally, courts have found that the federal law anticipates some disparate application of the law, even among those deemed functionally equivalent. For example, courts determined it reasonable to consider the location of a cell tower when deciding whether to approve tower construction (finding it okay to treat different locations differently), so long as cities do not allow one company to build a tower at a specific location at the exclusion of other providers.

For regulation of telecommunications right-of-way users, see Appendix A, Sample Ordinances and Agreements.

[Minn. Stat. 237.163, Subd. 2 \(f\), Chapter 94, Art. 9, 2017 Regular Session.](#)



E. City approaches

Regulation of placement of cell towers and personal wireless services can occur through an ordinance. The Minnesota ROW Law provides cities with comprehensive authority to manage their rights of way. With the unique application of federal law to telecommunications and the recent changes to state law, along with siting requests for locations both in and out of rights of way, many cities find having a separate telecommunications right-of-way user ordinance (in addition to a right-of-way ordinance) allows cities to better regulate towers and other telecommunications equipment, as well as collocation of small wireless facilities and support structures.

Some cities also have modified the definitions in their ordinances to exclude cell towers, telecommunications, wireless systems, DAS, small cell equipment, and more from utilities to counter the cell industry's requests for equal treatment or more lenient zoning under the city's zoning ordinances.

In addition to adopting specific regulations, many city zoning ordinances recognize structures as conditional uses requiring a permit (or many of these regulations include a provision for variances, if needed). While cities may require special permits or variances to their zoning for siting of large cell facilities, under state law, small wireless facilities and wireless support structures accommodating those small wireless facilities are deemed a permitted use. The only exception to the presumed, permitted use for small wireless is that a city may require a special or conditional land use permit to install a new wireless support structure in a residentially zoned or historic district. Cities will want to review their zoning to make sure it complies with the Minnesota ROW Law.

II. Deployment of small cell technologies and DAS

Small cell equipment and DAS both transmit wireless signals to and from a defined area to a larger cell tower. They are often installed at sites that support cell coverage either within a large cell area that has high coverage needs or at sites within large geographic areas that have poor cell coverage overall.



[Minn. Stat. § 237.162.](#)
[Minn. Stat. § 237.163.](#)
[Chapter 94, Art. 9, 2017](#)
[Regular Session.](#)
See Appendix A, Sample
Ordinances and Agreements.

See League [FAQ on](#)
[Minnesota 2017](#)
[Telecommunication Right of](#)
[Way User Amendments](#) (July
2017).

See Appendix A, Sample
Ordinances and Agreements

Situational needs dictate when cell providers use small cell towers, as opposed to DAS technology. Generally, cell providers install small cell towers when they need to target specific indoor or outdoor areas like stadiums, hospitals, or shopping malls. DAS technology, alternatively, uses a small radio unit and an antenna (that directly link to an existing large cell tower via fiber optics). Installation of a DAS often involves cell providers using the fiber within existing utility structures to link to its larger cell tower. Cities sometimes are asked to provide the power needed for the radios, which the city can negotiate into the leasing agreement with the cell provider.

A. Additional zoning and permitting needs under state law

Historically, many cities' ordinances address large cell sites, but not small cell towers or DAS. With the recent changes to state law, cities should work with their city attorney to review their ordinances in consideration of the new statutory permit process for the siting of small wireless facilities.

Cities can charge rent (up to a cap for small wireless siting) under the statute for placement of cell technology or DAS on existing or newly installed support structures, like poles or water towers; and, also, can enter into a separate agreement to address issues not covered by state law or ordinance. Cities should work with their city attorney to get assistance with drafting these agreements and any additional documents, like a bill of sale (for transfer of pole from carrier to city), if necessary.

The terms and conditions of these agreements, called collocation agreements, for siting of small wireless facilities, most likely will mirror agreements formerly referred to as master licensing agreements, often including provisions such as:

- Definitions of scope of permitted uses.
- Establishment of right-of-way rental fee (note statutory limitations).
- Protection of city resources.
- Provision of contract term (note statutory limitations).
- Statement of general provisions.
- Maintenance and repair terms.
- Indemnity provisions.
- Insurance and casualty.
- Limitation of liability provision.
- Terms for removal.

Minn. Stat. § 237.162
Minn. Stat. § 237.163
Chapter 94, Art. 9, 2017
Regular Session.

See League FAQ on
Minnesota 2017
Telecommunication Right of
Way User Amendments (July
2017).

State law does not require a separate agreement, and some cities have chosen to put these provisions in their ordinance or permit instead. For cities that choose to have a separate agreement in place, they must develop and make that agreement publicly available no later than November 31, 2017 (six months after the effective date of this act) or three months after receiving a small wireless facility permit application from a wireless service provider. The agreement must be made available in a substantially complete form; however, the parties to the small wireless facility collocation agreement can incorporate additional mutually agreed upon terms and conditions. The law classifies any small wireless facility collocation agreement between a local government unit and a wireless service provider as public data, not on individuals, making those agreements accessible to the public under Minnesota's Data Practices Law.

Additionally, the new amendments to Minnesota's Telecom ROW Law set forth other requirements that apply only to small cell wireless facility deployment. The 2017 amendments changed Minnesota's ROW Law significantly, the details, of which, can be found in the League's FAQ on *Minnesota 2017 Telecommunication Right of Way User Amendments* (July 2017). However, after the amendments, the law now generally provides:

- A presumption of permitted use in all zoning districts, except in districts zoned residential or historical districts.
- The requirement that cities issue or deny small wireless facility requests within 90 days, with a tolling period allowed upon written notice to the applicant, within 30 days of receipt of the application.
- An allowance to batch applications (simultaneously submit a group of applications), with the limitation to not exceed 15 small wireless requests for substantially similar equipment on similar types of wireless support structures within a two-mile radius.
- Rent not to exceed \$150 per year with option of an additional \$25 for maintenance and allowances for electricity, if cities do not require separate metering.
- The limitation that cities cannot ask for information already provided by the same applicant in another small cell wireless facility application, as identified by the applicant, by reference number to those other applications.
- A restriction that the height of wireless support structures cannot exceed 50 feet, unless the city agrees otherwise.
- A restriction that wireless facilities constructed in the right of way may not extend more than 10 feet above an existing wireless support structure in place.

47 U.S.C. § 332 (commonly known as Section 332 of Telecommunications Act).

FCC 09-99, Declaratory Ruling (Nov. 18, 2009).

FCC 14-153, Report & Order (October 21, 2014).

Minn. Stat. § 237.163, Subd. 3a(f).
Chapter 94, Art. 9, 2017 Regular Session.

See Appendix A, Sample Ordinances and Agreements.

- A prohibition on moratoriums with respect to filing, receiving, or processing applications for right-of-way or small wireless facility permits; or issuing or approving right-of-way or small wireless facility permits. For cities that did not have a right-of-way ordinance in place on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

NOTE: These additional state law requirements do NOT apply to collocation on structures owned, operated maintained or served by municipal utilities. Also, the small wireless statutory requirements do not invalidate agreements in place at the time of enactment of the 2017 amendments (May 31, 2017).

The siting of DAS or new small cell technologies also must comply with the same restrictions under federal law that apply to large cell sitings. Specifically, a city:

- May not unreasonably discriminate among providers of functionally equivalent services.
- May not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services.
- Must act on applications within a reasonable time.
- Must make any denial of an application in writing supported by substantial evidence in a written record.

Because of the complexities in the state law and the overlay of federal regulations, some cities have found it a best practice to adopt or amend a telecommunications right-of-way ordinance separate from their general right-of-way management ordinance. Cities that do not choose to adopt separate ordinances, at a minimum, should work with their attorney to review and amend their existing right-of-way ordinances, if necessary, to accommodate for telecommunications right-of-way users and the recent state law amendments for small wireless facilities. For example, since state law now recognizes small wireless facilities as a permitted use, zoning ordinances that require conditional use permits for these facilities likely will need amending.

Since wireless providers seek to attach their small cell and DAS equipment to city-owned structures, many cities choose to have a separate agreement in place to address terms and conditions not included in ordinances or permits. If the city chooses to do so, the law requires the city to have these agreements available in a substantial form so applicants can anticipate the terms and conditions. Again, cities should work with the city attorney to draft a template agreement governing attachment of wireless facilities to municipally owned structures in the right of way.

Section 6409(a) of the Middle Class Tax Relief and Joe Creation Act of 2012, codified at 47 U.S.C. § 1455.

FCC Public Notice AD 12-2047 (January 25, 2013).

FCC 14-153, Report & Order (October 21, 2014).

FCC Public Notice AD 12-2047 (January 25, 2013).

FCC Public Notice AD 12-2047 (January 25, 2013).

City of Arlington Texas, et. al. V. FCC, et. al., 133 S.Ct. 1863, 1867 (2013) (90 days to process collocation application and 150 days to process all other applications, relying on §332(c)(7)(B)(ii)).

This model ordinance and other information can be found at [National Association of Counties Website](#).

With the nationwide trend encouraging deployment of these new technologies, if a city denies an application, it must do so in writing and provide detailed reasonable findings that document the health, welfare, and safety reasons for the denial. With the unique circumstances of each community often raising concerns about sitings, cities may benefit from proactively working with providers.

B. Modifications of existing telecommunication structures

If a siting request proposes *modifications to and/or collocations of wireless transmission equipment on existing FCC-regulated towers or base stations*, then federal law further limits local municipal control. Specifically, federal law requires cities to grant requests for modifications or collocation to existing *FCC-regulated structures* when that modification would not “substantially change” the physical dimensions of the tower or base station.

The FCC has established guidelines on what “substantially change the physical dimensions” means and what constitutes a “wireless tower or base station.”

Once small cell equipment or antennas gets placed on that pole, then the pole becomes a telecommunication structure subject to federal law and FCC regulations. Accordingly, after allowing collocation once, the city then must comply with the more restrictive federal laws that allow modifications to these structures that do not substantially change the physical dimensions of the pole, like having equipment from the other cell carriers.

Under this law, it appears cities cannot ask an applicant who is requesting modification for documentation information other than how the modification impacts the physical dimensions of the structure. Accordingly, documentation illustrating the need for such wireless facilities or justifying the business decision likely cannot be requested. Of course, as with the other siting requests, state and local zoning authorities must take prompt action on these siting applications for wireless facilities (60-day shot clock rule).

Two wireless industry associations, the WIA (formerly known as the PCIA) and CTIA, collaborated with the National League of Cities, the National Association of Counties, and the National Association of Telecommunications Officers and Advisors to: (1) develop a model ordinance and application for reviewing eligible small cell/DAS facilities requests under federal law; (2) discuss and distribute wireless siting best practices; (3) create a checklist that local government officials can use to help streamline the review process; and (4) hold webinars regarding the application process.

III. Moratoriums

The cellular industry often challenges moratoriums used to stall placement of cell towers, as well as small cell/DAS technology, until cities can address regulation of these structures. Generally, these providers argue that these moratoriums do one of the following:

- Prohibit or have the effect of prohibiting the provision of personal wireless services.
- Violate federal law by failing to act on an application within a reasonable time.

State law now prohibits moratoriums with respect to: (1) filing, receiving, or processing applications for right-of-way or small wireless facility permits; or (2) issuing or approving right-of-way or small wireless facility permits. For cities that did not have an ordinance enabling it to manage its right-of-way on or before May 18, 2017, the prohibition on moratoria does not take effect until January 1, 2018, giving those cities an opportunity to enact an ordinance regulating its public rights-of-way.

IV. Conclusion

With the greater use of calls and data associated with mobile technology, cities likely will see more new cell towers, as well as small cell technology/DAS requests. Consequently, it would make sense to proactively review city regulations to ensure consistency with federal and state law, while still retaining control over the deployment of structures and the use of rights of way.

Appendix A: Sample Ordinances and Sample Agreements

<p>Many cities address cell towers in their ordinances already. For informational purposes only, the links below reference some telecommunications facilities ordinances in Minnesota. PLEASE NOTE, these ordinances reflect each city's unique circumstances and may pre-date the 2017 Legislative Session which, then, would not have considered the amendments to Minn. Stat. §§ 237.162, 237.163 when drafted.</p>
<h3>Sample Telecommunications Ordinances</h3>
<p>Revised Model Right-of-Way Ordinance</p>
<p>City of Edina (predates 2017 amendments) Ordinance: (Chapter 34: Telecommunications)</p>
<p>City of Brainerd Memo to Planning Commission from City Planner, July 13, 2017 Re: Draft Ordinance: Section 35: Antennas and Towers</p>
<p>City of Minneapolis Ordinance: (Amendment to Ordinance to accommodate Small Cell/DAS equipment) CPED Staff Report, City of Minneapolis regarding Amendment</p>
<p>City of Bloomington Ordinance: (Part II City Code, Chapter 17: Streets and Rights-of-Way) Ordinance: (No. 2017-16, Amending Section 14.03 of the City Code Concerning the Permit Fee) Permit: Small Cell Permit</p>

<h3>Sample Collocation Agreement for DAS/Small Cell</h3>
<p>Texas City Attorney Association Addendum to Local Gov. Code, Chapter 283</p>
<p>San Antonio, Texas</p>
<p>Boston, Massachusetts</p>
<p>San Francisco, California</p>
<p>League of Minnesota Cities Model Small Wireless Facility Collocation Agreement</p>