7800 Golden Valley Road | Golden Valley, MN 55427
763-593-3992 | TTY 763-593-3968 | 763-593-8109 (fax) | www.goldenvalleymn.gov

Planning Commission

May 27, 2020 – 7 pm

REGULAR MEETING AGENDA

This meeting will be held via Webex in accordance with the local emergency declaration made by the City under Minn. Stat. § 12.37. The public may monitor this meeting by watching on Comcast cable channel 16, by streaming on **CCXmedia.org**, or by calling 1-415-655-0001 and entering the meeting code 284 626 230. The public may participate in this meeting during public comment sections by calling 763-230-7454 and following the prompts.
Additional information about monitoring electronic meetings is available on the **City website**. For technical assistance, please contact the City at 763-593-8007 or webexsupport@goldenvalleymn.gov. If you incur costs to call into the meeting, you may submit the costs to the City for reimbursement consideration.

1. **Call to Order**

2. **Approval of Agenda**

3. **Approval of Minutes**
   May 11, 2020, Regular Planning Commission Meeting

4. **Informal Public Hearing – Zoning Code Text Amendment**
   Applicant: City of Golden Valley
   Purpose: Amending zoning districts to regulate tobacco sales

– End of Televised Portion of Meeting –
To listen to this portion, please call 1-415-655-0001 and enter meeting access code 284 626 230

5. **Council Liaison Report**

6. **Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings**

7. **Other Business**

8. **Adjournment**

This document is available in alternate formats upon a 72-hour request. Please call 763-593-8006 (TTY: 763-593-3968) to make a request. Examples of alternate formats may include large print, electronic, Braille, audiocassette, etc.

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Planning Commission

May 11, 2020 – 7 pm

REGULAR MEETING MINUTES

This meeting was held via Webex in accordance with the local emergency declaration made by the City under Minn. Stat. § 12.37. In accordance with that declaration, beginning on March 16, 2020, all Planning Commission meetings held during the emergency were conducted electronically. The City used Webex to conduct this meeting and members of the public were able to monitor the meetings by watching it on Comcast cable channel 16, by streaming it on CCXmedia.org, or by dialing in to the public call-in line. The public was able to participate in this meeting during public comment sections, by dialing the public call-in line.

1. Call to Order

The meeting was called to order at 7:05 by **Chair Blum.**

Roll Call

Commissioners present: Rich Baker, Ron Blum, Adam Brookins, Andy Johnson, Lauren Pockl, Ryan Sadeghi, Chuck Segelbaum,
Commissioners absent: Ari Prohofsky
Staff present: Jason Zimmerman – Planning Manager
Council Liaison present: Gillian Rosenquist

2. Approval of Agenda

Chair Blum, asked for a motion to approve the agenda.
MOTION made by **Commissioner Brookins**, seconded by **Commissioner Segelbaum** to approve the agenda of May 11, 2020, as submitted. Staff called a roll call vote and the motion carried unanimously.

3. Approval of Minutes

Chair Blum made a correction to the minutes from the April 27, 2020 meeting and assuming those corrections were made, asked for a motion to approve the minutes from April 27, 2020.
MOTION made by **Commissioner Brookins**, seconded by **Commissioner Johnson** to approve the meeting minutes, after the correction was made, from April 27, 2020. Staff called a roll call vote and the motion carried unanimously.

4. Informal Public Hearing – Amendment to Future Land Use Map

Applicant: Paul Jacob
Address: 7345 Country Club Drive
Purpose: To modify the guided land use from Low Density Residential to Retail/Service

[ITEM 4 & 5 ARE PRESENTED TOGETHER]

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5. Informal Public Hearing – Amendment to Zoning Map

Applicant: Paul Jacob
Address: 7345 Country Club Drive
Purpose: To modify the zoning designation from Single-Family Residential (R-1) to Commercial

Jason Zimmerman, Planning Manager, started by explaining the proposal by the applicant to amend the Future Land Use Map which would be a modification of the 2040 Comprehensive Plan. This amendment changes the land-use designation from Low Density Residential to Retail/Service. The applicant's second proposal was to amend the Zoning Map in order to rezone Schuller's. This amendment would change the zoning from Single-Family Residential to Commercial. The elements of the proposal have an end goal of creating an outdoor patio for customers. Adding the patio qualifies as an expansion and in order to do so, zoning and land use designations must be changed as the current non-conforming statute allows use to continue but not expansion.

By way of background, **Zimmerman** explained Schuller's is a bar/restaurant, operating at its current location for decades and is considered non-conforming. The guided land use has been designated as a Single-Family or Low Density Residential since at least 1977. A zoning map from the first part of 1956 shows the property zoned as commercial, but later that year it was rezoned to a Single-Family Residential (R-1).
Zimmerman reminded the Commissioners that Schuller's made a similar request in 2012, the Planning Commission recommended denial and City Council tabled the item and did not vote. In 2013 the City Council discussed the change and did not support it. In 2014 the Council supported moving forward but there was not an application submitted.

Moving on to the steps in the process, **Zimmerman** stated that if the land use change was approved by the City, it must follow these next steps:

1. Be approved by the Metropolitan Council as a Comprehensive Plan amendment.
2. Once Met. Council grants approval, the zoning change may occur.
3. Then a CUP is needed which may then set additional regulations on setbacks, hours, noise, etc
4. Variances would be needed for existing setbacks as well as for the new patio.

Zimmerman informed the group on the neighbor notification process for this proposal and typically that includes a neighborhood meeting. Current Covid-19 restrictions discouraged this and a neighborhood mailing was sent instead with an extended comment period. Planning staff received three emails and two phone calls.

Zimmerman expanded on the zoning and land use definitions as well as the idea of "spot-zoning". Regarding Land Use changes, there aren't specific standards outlined in the City Code but the City

Attorney urges the Planning Commission to consider land-use descriptions that are contained in the comprehensive plan. When looking at the zoning changes, the City Attorney urges the Commissioners to consider the purpose of the Zoning Chapter *to regulate land use … for the purpose of promoting the health, safety, order, convenience, and general welfare of all citizens of the City.*

Staff has two primary concerns regarding this proposal:

1. The construction of an outdoor patio in a primarily single-family neighborhood increases the likelihood of complaints related to noise, lights, traffic, etc.
2. Potential changes would not be limited to Schuller's, but would include any other future Permitted or Conditional Use in the Commercial Zoning District

Aside from that, changing the land use does not appear to be consistent with the following Comp. Plan goals and objectives:

- Minimizing Conflicts and Impacts of Change (Land Use Chapter, Goal 2)
- Protecting Existing Residential Neighborhoods (Objective 1)
- Supporting Non-residential Growth Opportunities while Respecting Adjacent Properties (Objective 2)

Being that the request to change the land use designation of the property from Low Density Residential to Retail/Service would be inconsistent with the goals and objectives of the 2040 Comprehensive Plan, staff **recommends denial**.
Being that the request to rezone the property from Single-Family Residential (R-1) to Commercial would likely introduce significant impacts to surrounding properties, staff **recommends denial**.

Commissioner Baker asked staff how often Land Use and Zoning Changes were approved and what the conditions were. **Zimmerman** responded that there have been about six or so approved and it was generally to accommodate a use for the area that wasn't considered before. Those that were denied, were generally because an applicant wanted to create something new and change a use all together. Commissioner Johnson asked what the maximum height is for a structure in the rezoning proposal. **Zimmerman** responded that it's about 2-3 stories, not much taller than the single-family zoning allows.

Paul Jacob, Applicant, is the son of the previous owner of 30 years. **Jacob** stated that Schuller's loses about 30% of their business in the summer and it seems to be due to lack of outside patio seating. Recently renovations have taken place to help upgrade the building and the owners would like to continue business at the current location. **Jacob** said they're willing to make accommodations to reduce noise in order to obtain a patio. Given the current social distancing requirements, the owners feel that once customers are allowed to go to restaurants again, folks will feel the most comfortable with outdoor seating. Being that they can't offer that at all, the owners are concerned for the future of Schuller's.
Commissioner Segelbaum asked the applicants if they had comments regarding staff concern over re-zoning and opening the door for another restaurant to open in the future. The applicants responded

that their goal was not to rezone but it was part of the process they needed to follow in order to expand and build a patio. They also restated their desire to keep Schuller's.

Chair Blum opened the informal public hearing at 7:32pm.

Caller 1: Peter Pluvak, 510 Kelley Drive
Would like the Commission to recommend denial of the proposal and is concerned about the increased traffic to the restaurant and the danger that will lead to residents.

Caller 2: John Ebber 7421 Glenwood Ave
Stated that the neighborhood is low density residential and is in the 2040 Comprehensive Plan as such. Caller is concerned this is spot zoning and is inconsistent with the land use and zoning maps. Economic considerations are enough to constitute a rezoning, as he said was stated by the BZA. Resident encouraged the Commission to recommend denial to the City Council.

Caller 3: Ben Harkins 7028 Schuller Circle
Caller doesn't feel the plan serves the neighborhood and appears to have negative impact. He also stated that he doesn't understand how a blocked off or sheltered patio will be desirable to patrons. Caller is also concerned with the increased traffic, noise and is very concerned about the business being sold and another, larger establishment takes root.

Chair Blum closed the public hearing at 7:42pm.

Chair Blum asked staff about the applicants offer to create conditions tied to their patio proposal. **Zimmerman** responded that conditions can't be tied to a land use or a rezoning request but rather to a CUP once the former is approved.
Commissioner Pockl asked the applicants if there have been changes since the 2012 denial that promotes the request a second time. The applicant responded that it's part of their improvement process. By doing other work and investing in to the building, they were hoping to show the City that they're committed to staying in the building and to keep Schuller's running. **Pockl** asked if there were more upgrades planned. Applicant responded that they already made a few upgrades: new ceiling, new booths, new windows, made the entrance handicap accessible. **Pockl** asked if they've experienced people parking outside of the parking lot when busy. The applicant responded that it has happened but it's really rare and the few added seats that the patio will provide, wouldn't make a noticeable traffic impact. **Commissioner Brookins** asked if there was another zoning type that would be a better fit. **Zimmerman** stated Commercial was the best for a bar restaurant, mixed-use is possible but it opens the door to even more possible future uses.
Chair Blum stated that after reviewing the items and regulations, he's in favor of recommending denial as the location is in a clearly defined residential area. **Commissioner Segelbaum** stated that while he's sensitive to the applicant as a business owner, the area is clearly residential and not an appropriate location for a commercial/retail district. **Commissioner Johnson** sited staff's presentation and stated that he feels rezoning this location is inconsistent with the surrounding area. **Commissioner Baker** echoed these comments. **Pockl** stated that this will be spot zoning and doing so is not reasonably

related to public health, safety, morals, and welfare, therefore she is in support of recommending denial.

MOTION made by **Commissioner Segelbaum** to recommend denial to both items:

1. Amendment to Future Land Use Map - To modify the guided land use from Low Density Residential to Retail/Service
2. Amendment to Zoning Map - To modify the zoning designation from Single-Family Residential (R-1) to Commercial

Commissioner Baker made a second on the motion
Staff called a roll call vote for each motion and the both passed unanimously.

6. Narrow Lots – Discussion

Jason Zimmerman, Planning Manager, reviewed the narrow lot discussion thus far and informed the Commissioners on the City's strategic plan moving forward. Considering the possibility of the formal public hearing being via Webex, the Communications team will be creating online resources for residents to gather information, pose questions to staff, and make public comment. This added resource will help alleviate public comment congestion on the call in line when the meeting takes place. **Zimmerman** started his presentation by giving a review of past meetings, recommendations, and the nine proposed changes made at the March 9th meeting.

"Menu" of Proposed Changes

1. Minimum side yard setback of 5 feet
2. Allow one-car garages for lots 50 feet in width or less; limit garage width to 65% of façade
3. Set vertical:horizontal slope of "tent" portion of building envelope to 2:1
4. Lower wall height at side setback line to 13 feet
5. Allow second story dormers to extend outside building envelope
6. Prohibit side wall articulation from extending into side yard setback; no principal structures within 5 feet of property line
7. Reduce secondary front yard setback to 15 feet for lots 65 feet in width or less; maintain 22 feet of building envelope width
8. Reduce lot coverage allowance to 30% for lots under 6,000 square feet
9. Impervious Surfaces – No Changes

Commissioners and staff had a discussion on each item listed. After each item held its conversation, the Chair confirmed consensus on each one until the list concluded. **Zimmerman** reiterated that a webpage with this information will soon be up for public review and comment.

Televised portion of the meeting concluded at 9:32 pm

7. Council Liaison Report

Council Member Rosenquist updated the Commission on the bonding bill at the Legislature, which include money for the DeCola Ponds E & F project as well as the Douglas Drive and Hwy 55 intersection improvement. She shared the emergency allocations that were approved by the Human Services Commission and indicated that many non-profits received funds. **Rosenquist** reported that the Rhode Island Ave subdivision was approved by the Council and that the Council also ratified a number of Emergency Actions that the City had been taking in response to the COVID-19 pandemic.

8. Reports on Meetings of the Housing and Redevelopment Authority, City Council, Board of Zoning Appeals, and other meetings

Planning Manager Zimmerman stated that a May Board of Zoning Appeals meeting would be held. He said he would investigate which Planning Commissioner was scheduled to attend the meeting.

9. Other Business

Planning Manager Zimmerman open nominations for Chair, Vice Chair, and Secretary for 2020. **Commissioner Johnson** nominated Chair Blum for a second term. **Commissioner Baker** seconded and the motion was approved unanimously. **Commissioner Segelbaum** nominated Commissioner Brookins for Vice Chair. **Commissioner Brookins** declined the nomination. **Segelbaum** nominated Commission Pockl for Vice Chair. **Chair Blum** seconded and the motion was approved unanimously. **Brookins** nominated himself for a second term as Secretary. **Baker** seconded and the motion was approved unanimously.

10. Adjournment

MOTION made by **Commissioner Segelbaum**, seconded by **Commissioner Sadeghi** and the motion carried unanimously to adjourn the meeting at 9:55 PM.

_____
Adam Brookins, Secretary

_____
Amie Kolesar, Planning Assistant

MEMORANDUM

Physical Development Department
763-593-8095 / 763-593-8109 (fax)

Date: May 27, 2020

To: Golden Valley Planning Commission

From: Myles Campbell, Planner

Subject: Informal Public Hearing – Zoning Code Text Amendment –Amending Zoning Districts to Regulate Tobacco Sales

Summary
As part of its 2019 work plan and recognizing the increasing role of the Cities' regulations as a promoter of public health, the Golden Valley City Council amended its licensing requirements for tobacco retailers and asked the Planning Commission to further consider amendments to the City's zoning code regarding tobacco sales. The instigating concern was the rising level of tobacco consumption amongst young adults and especially in regard to emerging tobacco products such as e-cigarettes. The Minnesota Department of Health, in a random survey of Minnesota public school students between sixth and twelfth grade, found that 19.2% of participants had used an e-cigarette product in the past month.[1]

After initial discussion on the topic at its January 13th meeting, the Planning Commission made some initial decisions on how they thought a zoning text amendment could best be handled.

- Commissioners preferred to limit tobacco retailers to the City's Commercial Zoning District.
- Commissioners had a preference to handle tobacco retailers as a restricted use rather than a conditional use, making its enforcement an administrative rather than Council action.
- Commissioners agreed with proximity restrictions between tobacco retailers and uses such as schools that had large youth populations, but did not see a need to make a similar restriction between different tobacco retailers.
- Commissioners wanted the ordinance to be cognizant of existing retailers and to limit the economic impacts on those retailers as much as possible while still having meaningful impact in reducing youth exposure and access to tobacco products.

[1] Evered SR. Teens and Tobacco in Minnesota: Highlights from the 2017 Minnesota Youth Tobacco Survey: Minnesota Center for Health Statistics, Minnesota Department of Health, February 2018.

A point of discussion that continued from that initial meeting into the Planning Commission's next deliberation on the topic at its February 10th meeting, was how to decide upon and define those land uses that saw high levels of youth activity. Staff initially provided two broader options: to use existing zoning categories as the basis for proximity restrictions, or to use a set of defined land uses that could then be classified as "youth-oriented facilities" in the City's Zoning Code.

With both options, the basic idea of the restricted use would be the same – to create a minimum distance that would need to exist between a proposed tobacco retailer and existing locations of uses such as schools and parks. If that minimum distance could be established, the tobacco retailer would be treated functionally as a permitted use in the Commercial District. If a location fell short of that distance, it would be prohibited. A proximity restriction based on zoning, such as from the City's Institutional Zoning District, had the benefit of being relatively easy to enforce and maintain over time, zoning districts being relatively static in nature. However, the major drawback compared to a set of defined uses was the inability to make some key distinctions. A school is definitely a youth-oriented facility, but a church might not be even though both fall under the Institutional zoning category.

After further discussion with Commissioners, staff feels this distinction makes the decision more clear – that any proximity restriction placed on tobacco retailers should be based upon a defined set of "Youth-Oriented Facilities." Done correctly, this will not only create a more effective ordinance at limiting youth exposure, but also maintain additional commercial areas for use as tobacco retailers where they present no harm to youth populations. This is also important given the nature of restricted uses.

A restricted use is much like a conditional use in that it carries additional requirements to be permitted in a particular zoning district. These requirements should be narrowly defined, and have a clear nexus to the use itself and the stated goals of placing restrictions on that use. Similar to why Commissioners can't create extraneous conditions for a business coming in for a CUP unless there is a connection to the business' impact, a proximity restriction must be related to the purpose of limiting youth tobacco exposure. This was another reason why staff moved away from the use of broader zoning districts as the basis of restrictions. Defining those land uses with the greatest threat of exposure means a more narrowly defined restricted use.

Proposed Ordinance

At its most recent meeting discussing the topic, which happened almost 3 months ago on February 24th due to the escalation of the COVID19 pandemic, staff presented two sets of draft ordinance language to commissioners. One still utilized existing zoning districts to establish proximity restrictions from tobacco retailers. However, staff preferred the other option, which defined "Youth-Oriented Facilities" as follows:

Youth-Oriented Facility: A school, athletic field, or playground.

For the reasons stated already, staff still feels that an approach using a defined set of facilities makes more sense as the basis for any proximity restrictions on tobacco retailers. A clearer connection to the ordinance's purpose and the avoidance of unnecessary impacts on commercial areas. In that ordinance, buffer distances were set at 750 feet and an additional allowance for multi-use properties was included, which allowed the measurement to occur between the boundary of the youth-oriented facility and only the portion of the structure/site occupied by the retailer.

Commissioners still had two key concerns with the ordinance as presented, which staff have worked to address as best as possible.

- Commissioners had concern about the lack of a restriction around Theodore Wirth Park.
- Commissioners were concerned about affecting existing business owners with proposed changes, especially regarding the impact on resale potential.

Staff found a relatively simple solution to the first item. By amending the definition of youth oriented facilities to include "parks" it would incorporate three additional park areas that were not already captured by the definition:

- Theodore Wirth Park
- Paisley Park, a pocket park located in a residential neighborhood South of Olson Memorial Highway
- Sochacki Park, previously a nature area but now a park managed by Three Rivers

Adding these additional park areas did not impact the amount of available commercial area for tobacco retailers, something only possible because they were defined separately from uses like golf courses with which they share a broader zoning category. Staff is comfortable with their inclusion in the ordinance.

In regards to business impacts and commissioners concerns, staff looked at the restriction distances and the impacted commercial areas. Unfortunately, by nature of this action and the previous licensing actions by the City Council, there is likely no way to avoid impacting both existing businesses and potential future tobacco retailers. That said, staff examined the possibility of reducing the distance restriction from 750 feet to 500. This reduction would still in most cases mean at least a block's worth of separation between uses. It would also allow additional commercial areas to be viable tobacco retailer locations. This would be especially true in the area of downtown where many more locations would be viable given the existing allowance for spaces in multi-use properties. By reducing the buffer distance to 500 feet from all schools, playgrounds, athletic fields, and parks we would end up with the resulting areas of viable retailer locations.

Commercial Property	**Total Area (sq. ft.)**	**Area/Total**
Sales Allowed - Full	4,783,119	78%
Sales Allowed - Partial	996,285	16%
Sales Disallowed -Full	255,170	4%
Sales Disallowed - Partial	121,861	2%

Total	**6,156,435**	**100%**

500 foot buffers around schools, parks, athletic fields, and playgrounds would result in less than 10% of commercial land in the City being unable to allow tobacco sales. Depending on adjustments to the land use plan in the future, this proportion may change, but it should help to alleviate concerns commissioners may have about impacting existing businesses. The vast majority of commercial land will still be eligible to host a tobacco retailer once the amount of retailers in the City dips back under the license limit imposed by the Council.

Additionally, Commissioners had wondered if it would be possible to base the restriction around a maximum distance from highways in order to determine eligible locations for tobacco retailers. Staff would recommend against this route for two principal reasons. One, the restrictions placed on tobacco retailers should have a clear relation to the City's purpose for taking action, namely reducing youth exposure to tobacco products. A restriction based on distance from a highway does not have a very clear connection to this purpose and would likely be easier to be challenged by an incoming business. Secondly, given the pattern of land use, almost all commercial land is already located closely to major roadways through or adjoining Golden Valley. Highways 55, 100, 169 and Interstate 394 all abut commercially zoned property, and a restriction based on proximity to these roadways would likely not be much different than limiting the use to commercial districts in the first place.

Given these changes to the ordinance language, staff feels confident that this iteration of the tobacco ordinance is able to strike the balance that Commissioners have sought between limiting youth exposure and impacts on local businesses. The ordinance language can be found attached to this memo in an underlined and overstruck format showing changes from the existing code. To briefly summarize the zoning actions being taken:

- Tobacco Retailers would become a restricted use in the City's Commercial Zoning District.
- Youth-Oriented Facilities would be added to the Zoning Code's Definitions and would include schools, parks, playgrounds, and athletic fields.
- A 500-foot proximity restriction between tobacco retailers and youth-oriented facilities would be required for new licensees.
- In multi-use properties, proximity would be measured from the portion of the property occupied by the retailer.

Recommendations

Staff recommends amending Sections 113-1 and 113-92 of the City Code in order to restrict the sale of tobacco in the city.

Attachments

Map of Suggested Proximity Restrictions (1 page)
Draft Ordinance Language, underlined and overstruck (1 page)

Underlined/Overstruck Language for Tobacco Sales Zoning Code Text Amendment

Proximity to Youth-Oriented Facilities

Sec. 113-1. - Definitions.

Youth-Oriented Facility: A school, park, athletic field, or playground.

…….

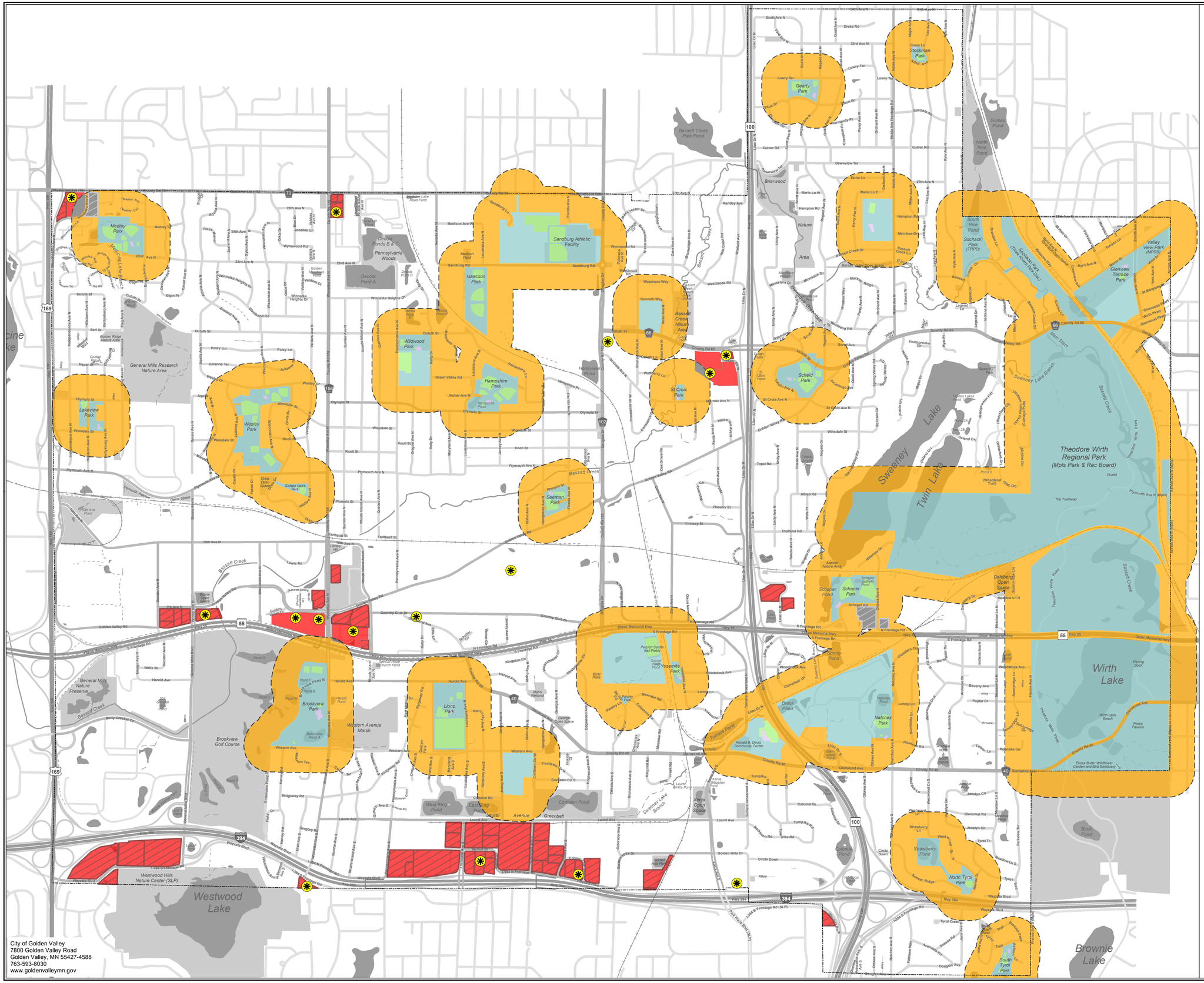
Sec. 113-92. - Commercial Zoning District.

(e) *Restricted Uses*. The following restricted uses shall be permitted within the Commercial Zoning District:

(1) Tobacco retail establishments, as defined in City Code, section 16-158, provided the following restrictions are observed:

a. The retail establishment shall be located not less than 500 feet from all youth-oriented facilities, as measured at the lot line.

b. In the case of a multi-use building, distances from the retail establishment shall be measured from the portion of the structure occupied by the retailer.



City of Golden Valley
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city of golden valley

TOBACCO SALES

Existing Tobacco License

Sale Restriction

- Athletic Field, Playground, School, or Park - 500 ft buffer
- Public Athletic Space
- Public Playground
- No Sale Property Buffer

Commercial (63)

- Sales Allowed - Full Property (53)
- Sales Allowed - Partial Property (7)
- Sales Disallowed - Partial Property (7)
- Sales Disallowed - Full Property (3)

Print Date: 5/20/2020
Sources:
-Hennepin County Surveyors Office for Property Lines (2019)
-City of Golden Valley for all other layers.

0 400 800 1,600 2,400 3,200 Feet