

DENMARK TOWN BOARD MEETING MINUTES
August 1, 2011

SUPERVISORS PRESENT: Kathy Higgins, Steve Kramer, Joe Moore, Gary Dixon

ABSENT: Jim Keller

STAFF PRESENT: Attorney Gilchrist and Planner Sherri Buss

CALL TO ORDER: Meeting called to order @ 7:00 PM by Chair Higgins

AGENDA APPROVAL: Higgins added Warrior Dash and Resignation Letter. **Motion Moore/2nd Kramer approval of agenda as amended. All In Favor. Motion Carried 4-0.**

CONSENT AGENDA APPROVAL: Motion Kramer/2nd Moore approval of consent agenda items which include 07/05/2011 Board Meeting Minutes, Claims #9685-9703, EFT payments- PERA 181696, MN Revenue Tax 99113074481 Federal Tax 85184004, payroll ending 08/01/2011 and financial reports. All In Favor. Motion Carried 4-0.

HEARING DECISIONS/ZONING ACTIONS:

Valley Lawn & Garden, Inc. Conditional Use Permit-127th and Hwy 10

Chad Grave, owner of Valley Lawn & Garden, Inc. Present.

Planner Summary- Applicant requests CUP for Lawn & Landscape business in Commercial District. Use includes landscape design, installation and maintenance. Phase 1 will be construction of a shop/storage building and driveway. Phase 2 will be construction of an office/retail building. Proposed driveway is close to the lot line and to the adjacent owner's driveway. Shared driveway was explored with neighbor, however, neighbor asked for a formal lot line adjustment at applicant's expense. Engineer recommendation to allow driveway as applicant proposed if an agreement for a shared driveway could not be reached. Planner recommends conditional approval of the CUP request.

Applicant- Business description-Applicant is a landscape architect focusing on design/building of lawns/gardens and lawn maintenance. Retail sales will include outdoor furniture and items pertaining to lawn & garden design. Plans include designing gardens on the property for display. First phase is to construct shop on existing asphalt lot and driveway access. Second phase is construction of building for future retail. The adjacent owner's existing driveway is about 40 ft from the property line. Applicant attempted to gain shared access, but the owner requested property (about half an acre) in exchange for the shared driveway. If that were to be done, there would no longer be room for shop/parking lot plan. With the exception of the 8-9 trees that will need to be removed to construct the shop/storage area, most of the existing trees will remain.

Applicant will plant design areas in open areas for display. No sales of rock products are planned.

Planning Commission recommended conditional approval of the CUP.

Attorney submitted and reviewed draft resolution with Board and Applicant. Applicant in agreement with CUP conditions.

Motion Moore/2nd Kramer to adopt Resolution 2011-07 Resolution Approving A Conditional Use Permit For The Property Located on 127th Street (Valley Lawn & Gardens, Inc.). All In Favor. Motion Carried 4-0.

Applicant questioned whether the loft area of a building is figured in when establishing square footage for a building, or is just the footprint measurements taken into consideration. Planner to review.

AT&T/New Cingular Wireless Conditional Use Permit and Variance-Afton Alps 6600 Pellar Ave S

Steve Stultz, agent for AT&T present.

Planner Summary-Applicant requests a CUP for a new 150 ft monopole tower to be located on Afton Alps property, in the area of the existing commercial/storage building area. Proposal does not meet the setback requirement from the border of Afton State Park at 1 spot. Given the area where the tower location would be needed to accomplish AT&T's coverage area, meeting all of the required setbacks presented difficulties. Township and County Planners reviewed proposed location on site. Overall, in terms of protecting the resource and having the least visible from the St. Croix River, the State Park and the neighbors, the best location for the tower is one that required a variance from the Park setback. The proposed location would set the tower lower on the site and amid other commercial type structures. If placed in a location that met all the setbacks, the tower would sit high on a bluff and be far more visible than it would be in the proposed location. The intent of the ordinance is to have these structures be less visible causing less impact on surrounding areas. Planner recommends approval (Staff report dated 07/08/11) of the Conditional Use Permit and Variance from the State Park Border with conditions.

Applicant-submitted additional photographs (simulations) of proposed Tower for Board review. Collocation on a number of towers was explored. There are no other towers within 1 ½ miles from site. Given the topography to the north, moving further south of the proposed site makes it more difficult for coverage to the river, Interstate 94 and Hwy. 95. Basswood Grove existing tower- regarding closest tower which is 1.87 miles to the south-Best estimate of AT&T Tower coverage is 2-4 miles. If moved 1.87 miles to the south, the result would be that much less coverage to the north, which is the area that AT&T is trying

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to cover. There is space on the Basswood Grove tower; however, the Sheriff and Sprint are already on the tower, which would cause AT&T to be at a lower elevation, which would not allow AT&T to meet coverage goals. The tower site was preferred even farther north and the search started at Afton and headed south and the proposed location is the most suitable site found. The area not meeting the setback is 1 area of the State Park that comes to a point to the north, which is at the bottom of a hill in a ravine, which is not an area typically travelled by the public. Township received comments on 8/1/11 from St. Croix Valley Interstate Group and Willow River/Kinnickinnic State Park regarding impact of the proposed tower.

Attorney submitted and reviewed draft resolution with Board and Applicant. Changes in conditions that were not established in the Planning Commission's recommendations are as follows:

Condition #10- Requirement of applicant to allow collocation of other facilities.

Condition #11- Applicant is responsible to provide collocater information to Township [unless Town requires permitting process for collocation.]

Condition # 13- Annual inspection report is submitted to Township.

Condition # 14- Financial security provided in the amount of \$5500.00 cash within 30 days from the date of the resolution.

Condition # 15- Screening of at least 4 trees within 90 days of building permit or if not feasible, within 90 days of start of next growing season.

Applicant in agreement with Conditional Use Permit conditions.

Motion Kramer/2nd Moore to adopt Resolution 2011-08 Resolution Approving A Conditional Use Permit And Variance To AT&T/New Cingular Wireless For Construction Of A Telecommunications Tower And Shelter At 6600 Pellar Avenue South, with noted revisions. All In Favor. Motion Carried 4-0.

PUBLIC COMMENT:

80th St Resident: Request of update on residency status of Supervisor Dixon. Agenda item.

BUSINESS ITEMS:

Paul & Pat Kotnour: Kotnour's reside in St Croix Ridge. Expressed concerns regarding the location of an accessory structure on the adjacent property. Subject accessory structure location was approved by the Board. Kotnour's requested clarification between the need for a variance and not just Board approval, if accessory structure is located between the primary residence and the road. Attorney stated that in this case there was not a deviation from the language of the ordinance. The ordinance that addresses the location of an accessory structure specifically allows the Board to approve a different location. A property owner made a request, the Town Board held a special meeting to consider the request, posted notice of the meeting and approved the request. The Board complied with the ordinance. Kotnour's expressed concerns regarding how their view has been affected and the lack of notification to them. Attorney noted that within the parameters of imposition of additional provisions and setbacks, the property owner had the right to place the structure in the location that they chose. The County also preferred that the garage be placed in front of the residence, rather than the river side, as the property is in the River District. Kotnour's requested additional screening of the garage. Board recommended Kotnour's work with adjacent landowner regarding possible additional screening.

Eric Olson: Eric and Mark Olson addressed Board requesting feedback on proposed plan. Olson proposed to construct a 42 x 95 ft (3990 sq ft) pole barn/heated shop (to house equipment) and to install 4 grain bins (T. 963 + sq ft) on his 13 acre parcel which fronts Norwich Avenue S. The proposed location was chosen between house and the road because of its close proximity to utilities, minimal excavation and close access to the existing driveway. Front and side yard setbacks would be met. Maximum allowed sq footage for a 13 acre parcel is 4000 sq. ft. Board members questioned if grain bins would be considered structures and whether their sq footage should be figured in the total sq footage. A Certificate of Compliance would be required for an Ag building over 1000 sq ft. Board approval would be required to place the accessory structure between the primary residence and the road. Proposed bins are 8000 bu. and smaller. Norwich is a private road and Board encouraged Olson to speak with neighbors regarding his plans. Olson will apply for a Certificate of Compliance and come back to the Board for accessory location approval.

TKDA Engineering Services: Township Engineer Cara Geheren is no longer with TKDA. TKDA Municipal Services Division Manager Larry Bohrer, introduced and recommended Engineer Frank Ticknor for Denmark Township Engineering Services. Denmark has also received solicitation from other groups for Engineering/Planning Services. Board consensus that it would be in the best interest of Denmark residents to put out request for quotes. At this time, TKDA will continue to provide services. Requests for Proposals to be discussed at Sept Board Mtg.

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Washington County Code Red: Sheriff's Department has entered into contract with Emergency Communications Network for a Mass Notification System known as Code Red. This System will allow Public Safety and other government agencies the ability to send mass messages that can be received by a home phone, cell phone as a message or text or by an email. Sheriff's office is encouraging Cities/Township's to use and help fund the program in 2012. Denmark's fee of \$136.52 to partner with Washington County is agreeable with Board. County has sent Joint Powers Agreement for review. **Motion Kramer/2nd Dixon to partner with Washington County in the Code Red System. All In Favor. Motion Carried 4-0** Attorney authorized to review agreement, Chair to sign. Board designated Steve Kramer as Denmark Township Contact.

Chris Carey- Interested in purchasing commercial property in Denmark asked for info regarding process for business licensing. Directed to Website for Conditional Use Permit information.

Resident request re: Pointe of Denmark . States that vacant properties in area are getting rundown. Townships have limited authorities regarding vacant properties. Resident advised to contact the Mortgage Company involved or County Health Dept if health hazards are apparent.

Weeds: Shrub trees in right of way have not been mowed. Dixon will check to see if shrub trees are in the right of way but no mowing can occur on private property. Dixon also suggested that an entire mowing be done at this time, and a fall mowing on the roads that tend to drift.

Tree branches are obstructing a portion of Oakgreen south of 90th. Part of the end of Oakgreen is a private road. Dixon will check to remove if not on private property.

Moore would like to see Board more proactive regarding weed control.

Newsletter: Moore invited Board members to submit items of interest for the newsletter.

Point Douglas Trail: Washington County is requesting Federal Transportation Enhancement funds to build a 10' wide bituminous trail on the abandoned railroad corridor connecting U.S. Hwy.61 to Point Douglas Park (approx. 2.5 mi.). They are requesting a letter of support for this application. It is understood that the funding request is for 1.5 Million from the Met Council and another \$500,000.00 will be used from the State Land & Legacy Funds. Moore-a trail would be a good improvement to the area. Board expressed concerns regarding spending public monies at this time. Motion Moore to forward a letter of support for the Point Douglas Regional Trail. Motion died for lack of a second.

Specialized Acres Escrow: Ken Cordes has sent a written request for a refund of his escrow balance of \$2319.21. There are no outstanding charges on his account. **Motion Kramer/2nd Dixon to return the \$2319.21 escrow balance to Ken Cordes. Refund to be added to 08/01/11 Claims-Claim #9704. All In Favor. Motion Carried 4-0.**

Warrior Dash: A number of complaints were received regarding Warrior Dash including the lack of notification to residents on 90th and Oakgreen Streets. Warrior Dash reported that the event went smoothly, with only a few sprained ankle/bruises injuries. Warrior Dash reported that there were some parking issues. There were approved parking and evacuation plans established by Warrior Dash. Other parking places that were used resulted in people crossing St Croix Trail and walking outside of established pedestrian safety walkways.

Resignation Letter: Supervisor Dixon submitted a letter of resignation. His reasoning for submitting the resignation is that he has not been able to secure living arrangements in Denmark Township. Dixon stated that although he has not had success in finding a place in Denmark, he is still looking, as he wishes to continue to serve on the Denmark Board. Kramer- Dixon has continued to perform his Supervisor duties and because he is still pursuing living arrangements in Denmark, this is a temporary situation. Moore- It would take time to find a residence in this Township. Kramer and Moore agreed that a resignation may be premature, as Dixon is still actively looking for another residence in Denmark and they were not inclined to accept the resignation. Board asked attorney to review residency information and report to Board at Sept Meeting. Board consensus for Dixon to withdraw resignation. Dixon withdrew letter of resignation.

Budget Workshop Meeting: Budget workshop has been scheduled for Tuesday, 08/16/11 @ 5:30 PM. Back up date Wednesday, 08/17/11 @ 5:30 PM. Purpose of the workshop is to prepare 2012 Budget/Levy recommendations to the electors for the 09/06/11 Reconvening of the Annual Meeting.

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LEGAL UPDATES

Winter Roads Maintenance Contract: Attorney has revised the contract to reflect 1 year term and request for quotes.
Motion Dixon/2nd Kramer to solicit written quotes for Winter Roads Maintenance. All In Favor. Motion Carried 4-0.
Board expectation to award contract in October.
Discussion re: Mailbox replacement cost of \$40.00 in policy. Board consensus to increase replacement cost to \$60.00.

Attorney provided information to Board on Minnesota Court of Appeals decision regarding decisions by government bodies.

Ordinance Amendments: Attorney provided additional information regarding a provision for lot combination. Board does have options regarding lot combination. 1) County process of combining 2 parcels into 1-unable to be separated without Town approval, yet the parcels are not combined on the same deed. Or, 2) requiring that the lots be combined on the same deed. Town does require combining of parcels resulting from Lot Line Adjustments. Board consensus to simplify process by accepting county process of combining 2 parcels into 1-unable to be separated without Town approval, yet the parcels are not combined on the same deed. Attorney will revise the ordinance to reflect the less burdensome process.
Board expectation to schedule hearing for October.

Crashed Toys: Applicant requested extension to 09/24/11. Board will address Amended Conditional Use Permit in Sept.

10:30 PM **Motion Dixon/2nd Moore to adjourn. All In Favor. Motion Carried 4-0.**

Becky Herman
Denmark Township Clerk/Treasurer

Addendums Resolutions 2011-07 and 2011-08

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DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
RESOLUTION NO. 2011-07

RESOLUTION APPROVING A CONDITIONAL USE PERMIT
FOR THE PROPERTY LOCATED ON 127th STREET
(VALLEY LAWN & GARDENS, INC.)

WHEREAS, Chad Grave ("Applicant"), owner and operator of Valley Lawn & Gardens, Inc., and desires to operate his business from the property (PID 060262042006) currently owned by Jamie Anderson, 2202 Eagle Point Road, Menomonie, WI 54751 and located adjacent to and west of 12590 - 127th Street in, Denmark Township, Washington County, Minnesota, and legally described in Exhibit A, which is attached hereto and made a part of this Resolution ("Property");

WHEREAS, the Applicant has submitted an application for a conditional use permit ("CUP") to establish an office and operate a retail business on the Property that will include landscape design services, landscape installation and maintenance services, and the retail sale of products related to the business;

WHEREAS, the Applicant is proposing to develop the Property in two phases, with Phase 1 including the establishment of access to the Property and construction of a 40' x 50' shop and storage building, and Phase 2 including the construction of a 50' x 100' office and retail building with a fenced storage area;

WHEREAS, the future office and retail building will eventually become the principal building on the site;

WHEREAS, the Denmark Township Planning Commission held a public hearing on the requested CUP application, considered the Town Planner's memorandum dated July 11, 2011 concerning the CUP application, and on July 18, 2011 took action to recommend that the Town Board approve the requested application for the CUP with certain conditions; and

WHEREAS, the Town Board hereby finds and determines the following:

- a. The Property is 4.48 acres in size and is located in the Commercial Industrial (CI) District;
- b. The Applicant intends to purchase the Property from the current owner once the required permits and approvals are obtained to operate the business the Property;
- c. Retail businesses and offices are conditionally allowed in the CI District and require a conditional use permit issued by the Town;
- d. The request is consistent with the Comprehensive Plan;
- e. The CUP application is consistent with the development code standards for business, retail and office uses pursuant to the Denmark Township Development Code ("Ordinance");
- f. The proposed structures proposed for the Property meet the lot size and setback requirements if placed as indicated on the site plan;
- g. The proposed use meets the lot coverage standards pursuant to the Ordinance;
- h. The Applicant has demonstrated that there is an area suitable for a septic system on the site;
- i. The existing parking lot on the Property provides adequate parking to meet the off-street parking requirements in Ordinance for the proposed use in the first phase of site use;
- j. The Applicant submitted a revised site plan on July 18, 2011, which included the location and extent of the exterior storage area and fencing that meets the Town's ordinance requirements;
- k. The Applicant proposes to access the Property from the existing bituminous driveway on the property located to the east if a shared driveway easement can be successfully negotiated. If a shared driveway easement is not obtained, the Applicant will construct a 20 foot wide driveway from 127th Street along the eastern edge of the Property as shown on the boundary survey submitted to the Town. The first portion of the new driveway from 127th Street will be bituminous with the remainder having a gravel surface;
- l. The proposed storage building will be constructed on the existing bituminous parking lot and will not create any additional impervious surface on the parcel;
- m. Expected traffic arising out of the use can be handled by existing local roadways;
- n. The proposed use will not create negative impacts on local utilities, school capacities, property values, scenic views, or natural resources; and
- o. No potential impacts were identified to the health, safety and general welfare of the occupants of surrounding lands.
- p. The Town Board determines the use, as proposed, satisfies the criteria for granting a conditional use permit in Chapter One, Section 10.3 of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of Denmark Township, based on the planner's report, the record, and the findings and determinations contained herein, hereby approves the CUP in order to allow the Applicant to construct and operate a landscape business, including landscape design services, as described herein on the Property provided the Applicant complies with, and remains in compliance with, all of the following conditions:

1. The Applicant shall provide evidence that he has purchased the Property within 60 days of the date of this Resolution.

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2. The proposed building shall be in substantial compliance with the Phase I plans dated June 20, 2011. Plans for future phases and buildings must meet all requirements of the Town's Ordinance, and shall be verified with the building permit application.
3. The Applicant shall submit the Percolation Report that describes site suitability for septic systems to Washington County.
4. The Applicant shall provide the Town a copy of the signed shared driveway easement agreement with the owner to the east of the Property to use the existing bituminous driveway or, if such an easement agreement is not obtained, the Applicant shall construct a driveway on the Property as indicated on the boundary survey submitted to the Town.
5. The Applicant must obtain a sign permit for any proposed signage on the parcel. Signage must meet the requirements of the Ordinance.
6. Expansion of the impervious surface beyond the areas shown for the first and second phases on the site plan dated June 20, 2011 shall require an amendment to the Conditional Use permit.
7. The Applicant shall use reasonable efforts to preserve the existing trees on the Property that do not need to be removed to construct the proposed buildings.
8. The Applicant must obtain a Certificate of Compliance from Washington County for the proposed use.
9. The Applicant shall pay all application fees and pay, from the escrow or in addition to the escrow if it is not sufficient, the costs the Town incurred related to this application.
10. A failure by the Town to take action with respect to any violation of any condition, covenant or term of this CUP shall not be deemed to be a waiver of such condition, covenant, or term or any subsequent violation of the same or any other condition, covenant or term.
11. Any alteration of the use of the Property, or of any plans submitted related to those uses, including, but not limited to, expansion of the use beyond what is allowed by this CUP, shall not be permitted unless an amended conditional use permit is issued by the Town Board.
12. This permit is subject to the requirements of the Town's ordinances and the Applicant is required to comply with all applicable federal, state and local laws, rules and ordinances, and to obtain such other permits as may be required.
13. The Town may inspect the Property at all reasonable times for purposes of ensuring compliance with the conditions of this CUP.
14. The Applicant shall correct all defects on the Property which violate any of these conditions immediately, but in no case more than 30 days of receipt of written notice from the Town.
15. The conditions of this CUP shall run with the Property and shall not in any way be affected by the subsequent sale, lease, or other change from current ownership of the Property and all references to Applicant or owner herein shall include all successors and assigns.
16. Pursuant to the Ordinance, periodic review of this CUP is imposed as a condition of its grant. Adherence to the terms of this CUP may be reviewed annually at the Annual Town Meeting.
17. Utilization of the Property for any of the uses allowed by this permit shall be deemed acceptance of, and agreement to, the terms and conditions of the permit without qualification or reservation.

Adopted this 1st day of August, 2011 **BY THE TOWN BOARD**

EXHIBIT A
Legal Description of Property

That part of the South 660.00 feet of the West 660.00 feet of the Northwest Quarter of the Southeast Quarter of Section 6, Township 26 North, Range 20 West, Washington County, Minnesota, lying northeasterly of Trunk Highway No. 10 as platted in MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PLAT NO. 82-26,

Except that part described as follows:

Beginning at the intersection of the center line of the Town Road and the west line of the Southeast Quarter of said Section 6; thence North, bearing assumed, along said west line, a distance of 180.50 feet; thence East a distance of 147.50 feet; thence South a distance of 180.50 feet to the center line of said Town Road; thence westerly, along said center line to the point of beginning,

And except the East 296.98 feet of the South 660.00 feet of the West 660.00 feet of the Northwest Quarter of the southeast Quarter of said Section 6. Containing 4.5 acres more or less.

Subject to the portion taken for 127TH Street So. and easements of record, if any.

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DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
RESOLUTION NO. 2011-08
RESOLUTION APPROVING A CONDITIONAL USE
PERMIT AND VARIANCE TO AT&T/NEW CINGULAR WIRELESS
FOR CONSTRUCTION OF A TELECOMMUNICATIONS
TOWER AND SHELTER AT 6600 PELLER AVENUE SOUTH

WHEREAS, Afton Alps is the owner of property located at 6600 Peller Avenue South, Denmark Township, Washington County, Minnesota (PID 0302720130001), and legally described in Exhibit A, which is attached hereto and made a part of this Resolution ("Property");

WHEREAS, AT&T/New Cingular Wireless ("Applicant") has submitted applications for a conditional use permit ("CUP") and a variance to allow for the construction of a 150-foot monopole telecommunications tower and a 12' x 20' prefabricated communications equipment shelter within a fenced compound on the portion of the Property described in Exhibit B, which is attached hereto and made a part of this Resolution;

WHEREAS, the Applicant's analysis of wireless services in the area indicates a need for a new tower to provide adequate coverage for communications services in the short and long term;

WHEREAS, the proposed tower will provide standard cellular services, planned service for other wireless device services, and additional capacity for WiFi services in the future;

WHEREAS, the Applicant evaluated potential sites within the area where a new tower is needed and found that the Property best met location criteria and other requirements pursuant to the Denmark Township Development Code ("Ordinance");

WHEREAS, the Denmark Township Planning Commission held a public hearing on the requested CUP and variance applications, considered the Town Planner's memorandum dated July 8, 2011 concerning the applications, and on July 18, 2011 took action to recommend that the Town Board approve the requested applications for the CUP and variance with certain conditions;

WHEREAS, the Town Board hereby finds and determines the following with respect to the proposed use the requested CUP:

- a. The location of the proposed facilities is on a parcel approximately 45 acres in size located in the Afton Alps Recreation property in a Rural Residential ("RR") Zoning District;
- b. A CUP is required for new towers in excess of 35 feet in all zoning districts of the Township;
- c. Freestanding towers up to 150 feet in height are allowed in the RR district with a CUP;
- d. The Applicant has indicated it will comply with all applicable FCC regulations pertaining to the potential health impacts of wireless communication facilities;
- e. The Applicant indicates that the construction of the proposed tower would enhance general safety and welfare in the service area by expanding and improving mobile phone coverage;
- f. Access to the tower site will be from an existing gravel roadway and no additional parking is needed or proposed on the site;
- g. The proposed tower will not negatively impact traffic or parking on the Property or adjacent properties;
- h. The proposed tower will not require additional local utilities and any utility costs will be paid by the Applicant, nor will it impact local utilities or school capacities;
- i. The proposed tower would add an additional commercial use to the area, which is consistent with the existing commercial/recreational use on Afton Alps;
- j. The proposed tower meets all but one of the applicable setback requirements in the Ordinance;
- k. The proposed tower is consistent with the Comprehensive Plan as it will be located and designed in a manner to minimize impacts on natural and environmental features of the area and will provide needed communications services;
- l. The closest tower is approximately 1.87 miles from the proposed tower location;
- m. The proposed site is not on property platted for residential development;
- n. The proposed tower design will allow for future co-location of at least three additional antennas as required by the Ordinance for structures from 125 to 200 feet;
- o. The proposed project will not adversely affect any known occurrences of rare features, as determined by the Minnesota DNR;
- p. The U.S. Fish and Wildlife Service indicated no federally listed or proposed species and/or designated or proposed critical habitat within the proposed project area;
- q. The proposed tower would have no impact on groundwater, surface water or air quality;

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- r. The application materials submitted by the Applicant generally meet the Ordinance requirements in Chapter 1, Section 10 regarding Conditional Uses and Chapter 2, Part 3, Section 2.49 regarding Wireless Communication Antennas and Towers. The Town Board determines the use, as proposed, satisfies the criteria for granting a conditional use permit in Chapter One, Section 10.3 of the Ordinance; and
- s. Conditions in addition to those recommended by the Planning Commission need to be added to the CUP in order to promote consistency with previous permits issued for communication towers, remain consistent with the Ordinance and its purposes, and to better protect the Town and its residents; and

WHEREAS, the Town Board hereby makes the following additional findings related to the Applicant's variance request:

- a. The Ordinance includes a variety of setback requirements for communications towers over 35 feet in height, including a ¼ mile setback from the Afton State Park Boundary;
- b. The proposed location is 700 feet short of meeting this setback requirement at one corner of the proposed site, but meets all other applicable setback requirements;
- c. Wireless communication antennas and tower up to 150 feet in height are allowed as a conditional use in the RR Zoning District, and is therefore a reasonable use of the Property;
- d. The topography of the Afton Alps Recreation Area property limits potential locations for the proposed tower within the required setbacks and alternate sites that meet all of the setbacks on the Property may actually cause the proposed tower to be more visible from the river, park, roads, and surrounding residences. The topographic conditions are unique to the Property and not caused by the landowner.
- e. The Property already contains a mix of commercial land uses that are currently visible from surrounding roadways, residences, and Afton State Park. The proposed use is similar in character to the existing use of the Property.
- f. A variance in this case would protect natural resources and reduce potential impacts to surrounding properties.
- g. The proposed location is in harmony with the general purposes and intent of the official controls because it minimizes the impacts of the proposed tower as much as reasonably possible on surrounding land uses and resources of concern.
- h. The Applicant has satisfactorily demonstrated that sufficient practical difficulties exist to approve the requested variance as the proposed deviation from the setback requirement will allow the Applicant to use the Property in a reasonable manner that reduces potential negative impacts if the tower were located as required by the Ordinance.
- i. The variance application meets the statutory criteria for granting a variance.

NOW, THEREFORE, BE IT RESOLVED, that, based on planner's report, the record of this matter, and the findings and determination contained herein, the Town Board of Denmark Township hereby approves and issues the requested variance from the ¼ mile setback requirement from the boundary of the Afton State Park to place the tower on the Property approximately 700 closer to the Park's boundary than would otherwise be allowed under the Ordinance as proposed;

BE IT FURTHER RESOLVED, that, based on planner's report, the record of this matter, and the findings and determination contained herein, the Town Board of Denmark Township hereby approves and issues a CUP to AT&T Cingular Wireless for the construction of a telecommunications tower and shelter on the Property as proposed provided the Applicant complies with, and remains in compliance with, all of the following conditions:

1. The final plans and specifications shall substantially comply with the preliminary plans and specifications dated 2/17/11, including the size, design, and location of the proposed tower and related facilities.
2. The Applicant shall comply with all the rules and regulations of the FCC and FAA that apply to the proposed communications facility. If new, more restrictive standards are adopted, the antenna installation shall be brought into compliance with the new standards by the owner and operator of the antenna and tower.
3. The structural design, mounting and installation of the tower and antennas shall be in compliance with manufacturer's specifications. Final plans shall be approved and certified by a registered professional engineer.
4. If this CUP is revoked, or use of the tower ceases for 12 months the tower and all accessory structures shall be removed and the site restored to its original condition within 120 days. If the Applicant fails to do so, the Town may elect to complete removal and restoration using the financial security posted with the Town for that purpose. If the financial security is not sufficient to fully cover all the costs the Town incurs, any such remaining costs shall be placed against the Property as a service charge and collected together with the property taxes on the Property pursuant to Minn. Stat. § 366.012, or collected through any another lawful means available to the Town.
5. The tower shall be painted a light grey or similar color that is as visually inconspicuous as possible. The equipment building shall be painted an earth-tone color that is inconspicuous from the roadway and surrounding properties. The proposed colors shall be reviewed and approved by the Town.
6. No lights, reflectors, flashers, daytime strobes, night time red lights or other illuminating devices shall be attached to the tower, unless required by the FAA or FCC.
7. No advertising or identification signs shall be placed on the tower or antennas, except as may be required by law.
8. The Applicant shall conduct an annual inspection of the facilities to insure continuing compliance with the Ordinance.
9. The Applicant shall install and maintain a 9' chain link fence with 1' barbed wire around the monopole and shelter structures, with a gate that is locked at all times.

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10. The tower owner shall allow collocation of other facilities on the tower by leasing space to other users if requested, so long as there is no disruption in the existing service provided by the tower's existing users and no negative structural impact on the tower. The Town Board reserves the right to act as arbiter in determining if the tower owner is acting in good faith in leasing to other tenants. The tower shall be constructed to allow for the co-location of at least three additional antennas. Unreasonably refusing to allow other users on the tower shall constitute a violation of this CUP.
11. A company proposing to collocate a new antenna on the tower must first obtain a conditional use permit from the Town.
12. The Applicant shall obtain insurance so that all antennas and towers are adequately insured to cover injury and property damage caused by collapse or other catastrophic failure.
13. The Applicant shall conduct an annual inspection of the facilities to ensure continuing compliance with the Ordinance and this permit and shall annually submit a written inspection report to the Town.
14. The Applicant shall submit financial security to the Town in the amount of \$5,500 by check within 30 days of the date of this Resolution to secure the Applicant's obligation to remove the tower and restore the site. The security deposit shall remain with the Town until the tower is removed and the site is restored. The Town will then return any unused portion of the deposit, without interest, to the last owner of the tower upon written request from the owner and proof, acceptable to the Town, of its right to claim the funds.
15. The Applicant shall provide screening on the site by planting at least 4 coniferous trees with a minimum height of 6 feet. The Applicant shall indicate where it proposes to plant the trees when it submits its application for a building permit. The trees must be planted within 90 days from the issuance of the building permit or, if that is not feasible given the time of year, within 90 days of the start of the next growing season. Preferred trees for screening are Black Hill Spruce or comparable species.
16. The Applicant shall keep the grass cut and the weeds controlled on the tower site.
17. No alterations shall be made to the drainage patterns on the tower site without prior approval from the Town and compliance with all applicable laws, rules, and regulations.
18. The Applicant shall pay all application fees and pay, from the escrow or in addition to the escrow if it is not sufficient, the costs the Town incurred related to processing this application.
19. A failure by the Town to take action with respect to any violation of any condition, covenant, or term of this CUP shall not be deemed to be a waiver of such condition, covenant, or term, or any subsequent violation of the same or any other condition, covenant, or term.
20. Any alteration of the use of the Property, or of any plans submitted related to those uses, including, but not limited to, expansion of the use beyond what is allowed by this CUP, shall not be permitted unless an amended conditional use permit is issued by the Town Board.
21. This permit is subject to the requirements of the Town's ordinances and the Applicant is required to comply with all applicable federal, state and local laws, rules and ordinances, and to obtain such other permissions and permits as may be required.
22. The Town may inspect the Property at all reasonable times for purposes of ensuring compliance with the conditions of this CUP.
23. The Applicant or owner shall correct all defects on the Property which violate any of these conditions immediately, but in no case more than 30 days of receipt of written notice from the Town.
24. The conditions of this CUP shall run with the Property and shall not in any way be affected by the subsequent sale, lease, or other change from current ownership of the Property and all references to Applicant or owner herein shall include all successors and assigns.
25. Pursuant to the Ordinance, periodic review of this CUP is imposed as a condition of its grant. Adherence to the terms of this CUP may be reviewed annually at the Annual Town Meeting.
26. Utilization of the Property for any of the uses allowed by this permit shall be deemed acceptance of, and agreement to, the terms and conditions of the permit without qualification or reservation.

BE IT FINALLY RESOLVED, that the Town Clerk-Treasurer is hereby authorized and directed to record this Resolution in the office of the County Recorder at the Applicant's expense.

Adopted this 1st day of August, 2011 **BY THE TOWN BOARD**

EXHIBIT A
Legal Description of Property

South ½ of NE ¼ of NW ¼ of SE ¼, Section 3, Township 27, Range 20 West.

EXHIBIT B
Description of Tower Lease Area

That part of the Northwest Quarter of the Southeast Quarter of Section 3, Township 27, Range 20, Washington County, Minnesota, described as follows: Commencing at the southwest corner of the Southwest Quarter of the Southeast Quarter of said Section 3; thence North 0 degrees 43 minutes 37 seconds West along the West line of said Southeast Quarter, a distance of 2116.49 feet; thence North 89 degrees 16 minutes 23 seconds East, a distance of 383.94 feet to the Point of Beginning of the lease area to be described; thence North 4 degrees 23 minutes 19 seconds East, a distance of 30.00 feet; then South 85 degrees 36 minutes 41 seconds East, a distance of 30.00 feet; thence South 4 degrees 23 minutes 19 seconds West, a distance of 30.00 feet; then North 85 degrees 36 minutes 41 seconds West, a distance of 30.00 feet to the Point of Beginning.