

DENMARK TOWN BOARD MEETING MINUTES
August 5, 2013

SUPERVISORS PRESENT: Kathy Higgins, Jim Keller, Joe Moore

ABSENT: Karen Herman and John Kummer

STAFF PRESENT: Attorney Troy Gilchrist (Kennedy-Graven)

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

AGENDA APPROVAL: Higgins added Land/Water Legacy, Road Update and MAT District Meeting. Keller added Boat Trip. **Motion Moore/2nd Keller approval of agenda as amended. All In Favor. Motion Carried 3-0.**

CONSENT AGENDA APPROVAL: **Motion Moore/2nd Keller approval of consent agenda items which include 07/01/2013 Board Meeting minutes, Claims #10131-10147, EFT payments- PERA 257279, MN Tax Deposit 1222493952, Federal Tax Deposit 72610105, payroll ending 08/01/2013 and financial reports.**
All In Favor. Motion Carried 3-0.

HEARING DECISIONS/ZONING ACTIONS: **Tower 13711 122nd Street S-Conditional Use Permit Amendment**

[Excerpt from 07/01/13 Board Meeting] Steven Mangold, Buell Consulting, (agent for T-Mobile), on behalf of owner Crown Castle is requesting a Conditional Use Permit Amendment for the attachment of one new microwave dish to the existing tower located at 13711 122nd Street South.

Planning Commission conducted Public Hearing on 06/17/13, and recommended conditional approval of the request.

At the Public Hearing the Applicant expressed concerns regarding a condition of the permit requiring financial security. At this time, the Applicant has made a request to extend the 60 day rule to 08/06/2013, stating that they could not support the proposed conditional use permit. Specifically, the conditions related to financial security, removal of the Tower, copy of leases, annual inspections and reimbursement costs. At the Public Hearing the Applicant did not address any concern related to the conditions for removal of the Tower, copy of leases, annual inspections and reimbursement costs.

*Steve Mangold has asked that the Building permit be issued prior to the Conditional Use Permit Amendment. Most of the conditions listed are directly from the Ordinance and should not be varied from. **Motion Moore/2nd Keller to accept the Applicant's requested extension of the Board's consideration of the Application for a Conditional Use Permit Amendment for 13711 122nd Street South, to August 6, 2013. All In Favor. Motion Carried 5-0.***

Discussion Re: Financial Security requirement. Historically, the Township has required Financial Security for new Towers. This is an existing Tower, not a newly installed Tower. Any financial security requested at this time to cover the cost of removal of the Tower would be a significant amount. The conditional Use Permit does include language to allow the Township to remove and certify costs to be collected with the property taxes if the Applicant fails to remove the Tower if abandoned.

Conditional Use Permit also requires that the road leading to the property be kept in good repair so as not to negatively impact the public road or public road ditches. The Board noted that the road has washed into the ditch and has made the ditch higher than the shoulder, causing the water to run along the edge of the blacktop instead of running into the ditch. Attorney will work with the applicant and owner regarding conditions of the permit.]

Applicant Steven Mangold (Buell Consulting, agent for T-Mobile) Present. Attorney has been in communication with Crown Castle and Buell Consulting, and provided the Board a revised draft dated 07/26/13 of an amended conditional use permit for the installation of a microwave dish to the existing tower. Revisions were made to distinguish the obligations of the tower owner (Crown Castle) and the applicant (T-Mobile). Required financial security will be in the amount of \$6000, cash or bond in a form acceptable to the Town. Rather than a copy of the full tower leases as required in condition #10, the following alternate language is acceptable to both the owner and the Board.

~~10. Copy of Lease(s). The Owner shall provide the Town a copy of the lease(s) between all tenants, which may be redacted to exclude any financial obligations contained therein.~~

10. Notice of Lessees. The Owner shall, within 60 days of the adoption of this permit, notify the Town of all lessees currently on the tower. Thereafter, the Owner shall notify the Town of any changes to the lessees on the tower. The notice shall be in writing and, at a minimum, include the name, address, and telephone number for each lessee and a brief description of the lessee's equipment on the tower.

In addition to the information requested in condition #10, Board added that the notice shall also include the duration of leases. Regarding the access drive to the property, the Town has received contact information to work with the owner.

Motion Moore/2nd Keller approval of Resolution 2013-11 Approving An Amended Conditional Use Permit To Expand The Telecommunications Tower At 13711 122nd Street S, as amended to include alternate language on condition #10, with the inclusion of duration of the leases information. All In Favor. Motion Carried 3-0.

Motion Keller/2nd Moore approval of Resolution 2013-12 Revoking All Conditional Use Permits For 13711 122nd Street South, dated 08/05/2013. All In Favor. Motion Carried 3-0.

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PUBLIC COMMENT:

Resident request to have gravel placed on Oakgreen (90th St. north). Turnaround at the end is rutted and muddy when it rains. Requested info regarding shape/pave for Neal this year. Would like to see Neal completed, as it will be used heavily when Hwy. 95 is redone.

Requested that a survey be sent to the residents for their input regarding fire services, roads, etc. Board welcomed resident to submit ideas for survey questions.

BUSINESS ITEMS:

Township Joint Collaborative Discussion Invite: Stillwater Township is setting up a series of roundtable discussions with fellow regional Township Supervisors to discuss issues and challenges to Townships. Initial meeting will be Tuesday, September 10th at 7:00 PM. Meeting will be posted should a quorum attend.

Valley View Ravine: South Washington Watershed District (SWWD) and Washington Conservation District (WCD) are proposing a project to stabilize the ravine on 131st Street properties. WCD is proposing a grade control structure to stabilize the final headcut and rate control of the storm outflow to the valley to minimize erosion. Permission from the involved landowners would need to be obtained and the SWWD is asking for Township support of the project. SWWD will 100% financially support the project. **Motion Moore/2nd Keller in support of South Washington Watershed District in the undertaking of its Valley View Ravine Project.** All In Favor. Motion Carried 3-0.

Mississippi River Corridor Critical Area (MRCCA): DNR is in the process of drafting new rules related to the MRCCA. The rules have been redrafted. Higgins attended the first meeting and concerns were expressed regarding the rule writing. Plan is to schedule meetings with local governments individually, and to have municipalities respond to their draft rules. Higgins is recommending that bases on the last session to create rules, that we enlist the Attorney to be involved on behalf of Denmark. Attorney noted that this does have significant impact on the township and that once the process goes into the formal rulemaking process, our input would most likely not be effective. Early in the process is the Town's best opportunity for input. Once the rules are established, we would have to incorporate them into our ordinance. Board consensus to authorize Attorney to review draft rules and materials, attend the meeting between Denmark and the DNR and to follow through with any involvement necessary for the benefit of the Township. Higgins will attend as representative for Denmark Township.

Town Hall: Leak into the basement. Repair work to correct the leaking into the basement will be to raise the blacktop on the north edge of the building and slope away so the rain will be directed away from the building. Where the pipe exits the building in the northeast corner, the area will be excavated and block will be installed below and above grade. The contractor is quoting a price of around \$5375.

Motion Keller/2nd Higgins to authorize expenditure of up to \$6000 for the proposed repair project. All In Favor. Motion Carried 3-0.

Weeds: MN Ag Department has now listed Wild Parsnip as a noxious weed that need to be controlled. Too late to mow this year as mowing would only spread the seed. Moore is meeting with the Ag Department next spring to assess the Township weed inspection needs.

ROW Tree: Resident on 80th Street reported that there is a dead tree in the right of way. He indicated that he would remove the tree, but has concerns that it will fall on the road and/or right of way. Trees in the ROW are owned by the underlying fee owner. If a tree in the ROW is a hazard to the traveling public or an interference with ditch maintenance, it is a Township issue. Board consensus to notify landowner that removal of the tree is his responsibility.

Discussion re: Tree Control. Board authorized Attorney to draft language addressing Tree Control Policy for Board review.

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Valley Sales-Escrow Balance Refund: Valley Sales has a remaining escrow balance of \$158. Certificate of Compliance for signage has been issued and all charges have been forwarded to the Township. **Motion Moore/2nd Keller to refund to Valley Sales their escrow balance in the amount of \$158.00, Claim #10148. All In Favor. Motion Carried 3-0.**

Local Board Of Appeal Training: At least 1 voting member of each LBAE must have attended an equalization training course within the last 4 years. Washington County will be hosting a training session on 09/18/2013. All Supervisors are encouraged to register and attend to assure that Denmark is allowed to keep the LBAE in the Township.

Land & Water Legacy: County is proposing to purchase a conservation easement and trail access through Carpenter Nature Center. The land is already permanently protected and concerns were raised to spend public funds to purchase an easement on protected property.

Roads Update: Road project begins 08/19/13 on Maycrest. Anticipated finish date 08/24/13.

MAT District Meeting: MN Association of Townships District Meeting is Wednesday, September 4, 2013.

St Croix River Boat Trip: Keller attended the 2013 Workshop on the St. Croix River.

Schedule Budget Meeting: Tentative scheduling for Budget Meeting is 08/12/13 or 08/21/13@6PM. Clerk will contact all Board Members for availability via email.

LEGAL UPDATES:

Solid Waste- Attorney is reviewing Township mandates regarding solid waste/recycling.

08:51 PM **Motion Moore/2nd Keller to adjourn. All In Favor. Motion Carried 3-0.**

Becky Herman
Denmark Township Clerk/Treasurer

Addendum Resolutions 2013-11, 2013-12

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DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
RESOLUTION NO. 2013-11

RESOLUTION APPROVING AN AMENDED CONDITIONAL USE PERMIT TO EXPAND THE TELECOMMUNICATIONS TOWER AT
13711 122ND STREET SOUTH

WHEREAS, Global Signal Acquisitions, LLC, doing business as Crown Castle, (“Owner”) owns the property located at 13711 - 122nd Street South, Denmark Township, Washington County, Minnesota (PID 05.026.20.13.0002), and legally described in Exhibit A, which is attached hereto and made a part of this Resolution (“Property”);

WHEREAS, T-Mobile (“Applicant”), through its agent Buell Consulting, Inc., submitted an application for an amended conditional use permit (“CUP”) to allow it to place a microwave dish on the existing 300-foot monopole telecommunications tower located on the Property;

WHEREAS, the proposed dish will increase the speed of the telecommunication services of that provider in the area;

WHEREAS, Chapter Two, Part 3, Section 2.49(1) of the Denmark Township Development Code (“Ordinance”) allows the placement of a new antenna to an existing tower with the issuance of a conditional use permit;

WHEREAS, the Denmark Township Planning Commission held a public hearing on the requested CUP, considered the Town Planner’s memorandum regarding the application, and on June 17, 2013 took action to recommend that the Town Board approve the requested CUP with certain conditions; and

WHEREAS, the Town Board hereby finds and determines as follows with respect to the requested amended CUP:

- a. The Planner’s memorandum dated June 6, 2013, which is attached hereto as Exhibit B, is incorporated herein by reference including, but not limited to, the findings contained therein. The proposed permit conditions contained in the memorandum are superseded by the conditions contained in this Resolution;
- b. The Property contains approximately 5 acres and is located within the Town’s Agricultural, A-2 District;
- c. Communication towers in excess of 35 feet in height are allowed in the A-2 District with the issuance of a conditional use permit;
- d. A conditional use permit was issued for a tower on the Property in 1980 and a new conditional use permit was issued in 1996 to allow the demolishing of the existing tower and the construction of a new tower (collectively the “Prior CUPs”);
- e. The Ordinance requires an amended conditional use permit in order to place a new antenna on, or otherwise expand, an existing tower;
- f. The Applicant leases space on the tower, and is responsible for its equipment, and the Owner is responsible for the Property, the tower, and for complying with the Ordinance with respect to the continued operation of the tower on the Property;
- g. In order to avoid the confusion that can result from multiple permits issued for the same property at different times, the Town Board will usually issue a single conditional use permit for a property seeking a new or amended permit and repeals all previous conditional use permits issued to a property. The Town Board determines it is in the best interests of the public to take the same approach in this case and the Town Board will act by separate resolution to revoke all Prior CUPs issued to the Property so that this permit will serve as the CUP for the existing tower, with the current antennas, and the dish being added pursuant to the current application;
- h. The proposed addition of a dish is consistent with the Comprehensive Plan; and
- i. The Town Board determines the application materials are sufficient and the proposed expansion of the tower through the addition of a dish satisfies the criteria in the Development Code for granting an amended conditional use permit.

NOW, THEREFORE, BE IT RESOLVED, that, based on the record of this matter and the findings and determinations contained herein, the Town Board of Denmark Township hereby approves and issues a conditional use permit to continue to operate a telecommunications tower on the Property with current antennas and the addition of the proposed microwave dish. The permit is issued on the condition that the Owner and Applicant comply with their respective obligations under the following conditions and limitations, which are hereby imposed on this permit. All obligations, limitations, and requirements not expressly imposed on the Applicant are the obligation of the Owner.

1. Scope of Permit. This permit amendment serves to reaffirm and document the original conditional use permit issued for the tower, reaffirms the approvals for the antennas and equipment currently located on the tower, and allows for the addition of one (1) two-foot microwave dish onto an existing 300-foot cross bar design tower with antenna equipment located 210 feet from the road right away along 122nd Street, 140 feet from the west side lot line, 220 feet from the east side lot line and 220 feet from the rear lot line. The tower has anchored guy wires which are setback approximately 20 feet from the side lot lines and 50 feet from the rear lot line. An unmanned transmitter equipment building just north of the tower and a fence enclosing the equipment building and tower are also permitted.
2. Placement of Equipment. Applicant shall place the microwave dish on the tower in accordance with the submitted plans.

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3. Financial Security. The Owner shall submit financial security to the Town in the amount of \$6,000 by check or bond (in a form acceptable to the Town) within 30 days of the date of this Resolution to secure the Owner'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. If the financial security is provided in the form of a check, the Town will return any unused portion of the security, 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.
4. FCC and FAA Regulations. The Owner must ensure that the tower, antenna and associated ground equipment remains in compliance with the regulations of the Federal Communications Commission (FCC) and Federal Aviation Authority (FAA) including obtaining all approvals from both agencies as may be necessary on an ongoing basis. Lighting and painting of the tower and associated equipment shall meet the requirements of the Federal Aviation Authority (FAA).
5. Removal of Tower. 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 Owner fails to do so, the Town may elect (but is not obligated) 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 other lawful means available to the Town.
6. Fence. The tower facility and equipment building shall continue to be enclosed with a fence to deter access by trespass.
7. Maintenance. All structures, landscaping, fences, ground equipment and building shall be maintained as not to be unsightly or present harmful health or safety concerns. The drive leading to the Property shall be kept in good repair so as not interfere with or negatively impact the public road or public road ditches including, but not limited to, maintaining the surface of the drive in a condition necessary to avoid erosion and the running of soils and other materials into the public road ditch or onto the surface of the road. The Owner shall be responsible for removing any materials that have eroded into the road right-of-way from drive or the Property as directed by the Town.
8. Inspections. The Town, its officers, and consultants may enter the Property, after providing reasonable notice to the Owner, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this permit. Prior notice to inspect the Property is not required in the event of an emergency.
9. Change in Ownership. The Owner shall provide written notice of any change in ownership of the tower, antenna, or associated equipment.
10. Notice of Lessees. The Owner shall, within 60 days of the adoption of this permit, notify the Town of all lessees currently on the tower. Thereafter, the Owner shall notify the Town of any changes to the lessees on the tower. The notice shall be in writing and, at a minimum, include the name, address, and telephone number for each lessee, the duration of the lease, and a brief description of the lessee's equipment on the tower.
11. Annual Inspection. The Owner, or its designee, shall conduct an annual inspection of the Tower to insure continued compliance with this permit, the Ordinance, and all applicable County, State and Federal regulations, and provide an inspection report to the Town at least once a year.
12. Alterations. Any change to the length of the tower shall not be permitted unless an amended conditional use permit is obtained from the Town Board. An amended conditional use permit must be obtained for the addition of antenna or dishes to the tower if required by the Ordinance in effect at the time of the proposed addition.
13. Collocation. The Owner shall not limit or otherwise restrict its interest in the Property by deed, easement, lease, contract, or otherwise so as to prohibit or unreasonably limit the ability of other companies to collocate their facilities and equipment on the Tower or on the Property. 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 collocation of at least three additional antennas. Unreasonably refusing to allow other users on the tower shall constitute a violation of this CUP.
14. Only Permit. This permit shall constitute the conditional use permit issued to the Property for the tower and this permit supersedes and replaces any other permits previously issued by the Town for the tower.
15. No Lights. No lights, reflectors, flashers, daytime strobes, nighttime red lights or other illuminating devices shall be attached to the tower, unless required by the FAA or FCC.
16. No Signs. No advertising or identification signs shall be placed on the tower or antennas, except as may be required by law.
17. Reimburse Costs. 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 its application.
18. No Waiver. 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.
19. Compliance. This permit is subject to the requirements of the Town's ordinances and the Owner and Applicant are 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.

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20. Revocation. The violation of any terms or conditions of this permit including, but not limited to, any applicable federal, state, or local laws, rules, regulations, and ordinances, may result in revocation of the permit. The Owner shall be given written notice of any violation and reasonable time, as determined by the Town, to cure the violation before a revocation of the permit may occur. Adherence to the terms of this permit shall be monitored on a complaint basis.
21. Binding Effect. The permit and its conditions are binding on the parties, their successors and assigns, and shall run with the Property, and shall not in any way be affected by the subsequent sale, lease, or other change from current ownership, until the permit is terminated or revoked as provided herein. The obligations of the Owner under this permit shall also be the obligations of any subsequent owners of the Property.
22. Review. 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.
23. Acceptance of Conditions. 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 5th day of August, 2013. **BY THE TOWN BOARD**

**DENMARK TOWNSHIP
WASHINGTON COUNTY, MINNESOTA
RESOLUTION NO. 2013-12
RESOLUTION REVOKING ALL CONDITIONAL
USE PERMITS FOR 13711 - 122ND STREET SOUTH**

WHEREAS, the Town Board of Denmark Township ("Town") has previously issued conditional use permits for a telecommunications tower on the property located at 13711 - 122nd Street South, Denmark Township, Washington County, Minnesota (PID 05.026.20.13.0002), and legally described in Exhibit A, which is attached hereto and made a part of this Resolution ("Property");

WHEREAS, a conditional use permit was originally issued for a tower on the Property in 1980 and a new conditional use permit was issued in 1996 to allow the demolition of the existing tower and the construction of a new tower;

WHEREAS, Buell Consulting, Inc. ("Applicant") submitted an application for an amended conditional use permit ("CUP") to allow for the placement of a microwave dish for T-Mobile to an existing 300-foot monopole telecommunications tower located on the Property build pursuant to the 1996 permit;

WHEREAS, the Town Board approved the requested amended CUP at its August 5, 2013 meeting;

WHEREAS, in order to avoid the confusion that can result from multiple permits for the same business activities on the same property, the Town Board has adopted a practice of revoking all past conditional use permits issued to a property when it is asked to issue a new or amended permit for a property in favor of a single permit;

WHEREAS, the owner of the Property is amenable to the revocation of the prior conditional use permits on the Property and such revocation was made a condition of the CUP approved for the Property; and

WHEREAS, this Resolution is intended to put future purchasers of the Property on notice that the conditional use permits the Town previously issued for the Property have no effect and that the continued operation of the existing tower and related equipment and structures on the Property are pursuant to the most current CUP issued by the Town for the Property as well as any applicable County permits.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Denmark Township as follows:

1. All conditional use permits issued by the Town Board of Denmark Township for the Property located at 13711 - 122nd Street South, Denmark Township, Washington County, Minnesota, and legally described in Exhibit A to this Resolution prior to August 5, 2013 are hereby revoked. All such prior conditional use permits are no longer valid and may not be relied on.
2. The Town Clerk is hereby authorized and directed to record this Resolution against the Property in the office of the County Recorder.
3. The Town Board Chair, Town Board Members, and Town staff and consultants are hereby authorized and directed to take any and all additional steps and actions necessary or convenient in order to accomplish the intent of this Resolution.

Adopted this 5th day of August, 2013. **BY THE TOWN BOARD**

EXHIBIT A

Legal Description of Property

The North 644.60 feet of the East 400 feet of the Southwest 1/4 of the Northeast 1/4 of Section 6, Township 26, Range 20, Washington County, Minnesota.