

COUNCIL ACTION FORM

SUBJECT: REQUESTS FROM AT&T WIRELESS TO PLAN AND DESIGN A CELLULAR ANTENNA INSTALLATION ON CITY PROPERTY

BACKGROUND:

Several cellular providers have contracts to place private cellular network equipment on City property. In early 2014, City staff was approached by a firm representing AT&T Wireless to place a cellular antenna on City property located along Billy Sunday Road. The City and AT&T have been working to narrow the focus down to a particular site. AT&T has now identified its optimal site as City property northwest of the Dog Park.

The following steps must occur prior to construction of an antenna: (1) AT&T must complete a site evaluation to ensure its proposed design will be structurally sound; (2) AT&T must enter into a lease agreement with the City to use the property; and (3) AT&T must obtain a Special Use Permit from the Zoning Board of Adjustment.

If agreed to, the lease document will describe the specific site area that AT&T has rights to use. If AT&T is unable to obtain a Special Use Permit or finds that the specific site is unsuitable for construction, the lease would need to be amended, which would take additional time. Furthermore, if the site must be relocated, AT&T would have to conduct new soil testing, which would be costly for AT&T and disruptive to the City's property. In order to avoid that scenario, AT&T is requesting authorization to make a joint application with the City for a Special Use Permit and to conduct its site engineering analysis prior to entering a long term lease with the City.

SPECIAL USE PERMIT:

According to the City's zoning code, AT&T must receive a Special Use Permit from the Zoning Board of Adjustment (ZBA) prior to constructing its antenna. In granting this permit, ZBA may place certain conditions on the orientation, location, dimensions, and other aspects of the antenna installation.

AT&T has requested permission to make a joint application for a Special Use Permit prior to completion of the lease agreement. Since the City owns the property on which AT&T would like to place an antenna, the City Council must agree to be listed as the property owner on the Special Use Permit application. In the event that ZBA places conditions on the use of the site, the changes can be made on the plans and incorporated into the lease agreement prior to that agreement returning to the City Council.

Obtaining a Special Use Permit at this time does not grant AT&T the ability to use the site. AT&T would still be required to receive property rights through a lease with the

City. If the Special Use Permit is granted, AT&T would proceed with its site studies and the lease agreement would be brought to the City Council.

RIGHT OF ENTRY:

Until a lease is agreed to between the City and AT&T, AT&T does not have rights to conduct soil tests and take measurements on the property. These activities are essential to the planning process prior to construction. In order to allow that site evaluation to proceed, the City and AT&T may enter into a separate agreement that allows AT&T access to the property to complete its evaluation.

This type of agreement was approved by the City Council this past winter to allow Verizon Wireless to access a separate City property under negotiation. Under the terms of this temporary agreement, AT&T and its contractors would have rights to enter the property to conduct inspections, surveys, structural strength analysis, subsurface boring tests, an environmental site assessment, and any other types of testing AT&T deems necessary. These activities would be conducted at AT&T's cost and the City would not be responsible for the actions of AT&T's employees or contractors.

This agreement would be in effect for a period of one year. However, upon execution of the lease which would allow AT&T to construct its antenna, the temporary agreement's terms regarding site access would be superseded by the lease agreement's terms. Additionally, if no lease agreement is completed, AT&T would be responsible for returning the area to its original condition.

ALTERNATIVES:

1. a. Authorize AT&T Wireless to make a joint application for a Special Use Permit to install a cellular antenna on City property northwest of the Dog Park. AT&T would not be permitted to proceed with installation until a lease is agreed to by the City Council.
- b. Approve an agreement granting AT&T Wireless a limited right of entry to City property for the purposes of inspection and testing.
2. Do not approve an agreement with AT&T Wireless.

MANAGER'S RECOMMENDED ACTION:

This agreement and the pursuit of a Special Use Permit do not obligate the City to lease the site to AT&T. If AT&T is able to obtain the Special Use Permit and its study finds the site acceptable, AT&T must still receive the City's agreement to a long-term lease.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1 as described above.



ACCESS TO SPORTS COMPLEX

Area of Evaluation

605

BILLY SUNDAY RD

LIMITED RIGHT OF ENTRY

The undersigned is the owner (“Owner”) of the property, premises or easement (the “Property”) described as follows:

Address: 605 Billy Sunday Road and 2110 South Duff Avenue, Ames, IA 50010

Assessors Property ID: 09-14-275-000 and 09-14-250-000

Consent. Subject to the limitations and conditions below, the Owner does hereby grant permission to New Cingular Wireless PCS, LLC, a Delaware limited liability company, and its agents, employees, consultants and representatives (herein individually and collectively referred to as “AT&T Wireless”) to enter onto the Property and contiguous property owned or controlled by the Owner for the purpose of performing an inspection of the Property, including surveys, a structural strength analysis, subsurface boring tests, an environmental site assessment, and any other activities as AT&T Wireless may deem necessary, at the sole cost of AT&T Wireless (collectively, the “Work”). In addition, AT&T Wireless may remove samples of the soil from the Property.

Indemnity. To the fullest extent permitted by law, AT&T Wireless shall indemnify and hold harmless the Owner, its agents, and employees from and against all claims, damages, losses, and expenses including, but not limited to, reasonable attorney’s fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss, or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom; and (2) is caused in whole or in part by any negligent act or omission of AT&T Wireless, any subcontractor, anyone employed by any of them or any one for whose acts, any of them may be liable.

Insurance. AT&T Wireless agrees that it will, at its own expense, procure and maintain occurrence basis Commercial General Liability (CGL) insurance from a company or companies authorized to do business in the state of Iowa, in amounts of \$1,000,000 Combined Single Limit (Bodily Injury and Property Damage) per occurrence and \$2,000,000 Aggregate Limits. Certificates of Insurance will be provided by AT&T Wireless indicating that Owner has been included as Additional Insured on the policy(ies). AT&T Wireless shall provide Owner at least thirty (30) days prior written notice of any cancellation or non-renewal of any required coverage of said policy(ies) that is not replaced. Owner’s additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by AT&T Wireless, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Owner, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims

arising out of the gross negligence of Owner, its employees, agents, or independent contractors; and (iii) not exceed AT&T Wireless' indemnification obligation under this Agreement.

Limitations and Conditions. The consent granted above is subject to the following limitations and conditions: (1) at least 48 hours prior to entering the Property, AT&T Wireless shall notify Owner in writing or by telephone; (2) notification shall include the identities of the agents, employees, consultants, and representatives of AT&T Wireless who will be entering onto the Property, the time and date of the planned entry, the locations on the Property where AT&T Wireless will be conducting its activities, and the nature of the activities to be conducted; (3) notification shall be directed to the attention of Joshua Thompson, Parks and Facilities Superintendent (jthompson@city.ames.ia.us, 515-239-5364); (4) Owner reserves the right to limit or deny access or to require rescheduling of inspection activities if Owner determines that planned inspection activities by AT&T Wireless would interfere with previously scheduled activities or otherwise jeopardize the security, safety, or confidentiality of City of Ames employees.

Authority. The individual executing this consent on behalf of the Owner represents to AT&T Wireless that such individual is authorized to do so by requisite action of the Owner.

Term. This consent is granted for a period of three hundred and sixty-five (365) days from the date indicated below. Recognizing that the Owner and AT&T Wireless are currently in negotiations for a lease agreement concerning this Property, this consent shall terminate upon the commencement date of that lease agreement. Thereafter, the terms of that lease agreement shall govern the use of the Property. In the event that the Term of this consent expires and no lease agreement is adopted by the Owner and AT&T Wireless for this Property, AT&T Wireless shall return the Property to its condition that existed prior to the commencement of the Work by AT&T Wireless, reasonable wear and tear excepted.

OWNER:
CITY OF AMES

ATTEST:

By: _____
Ann Campbell, Mayor

Diane Voss, City Clerk

Date: _____

AT&T WIRELESS:
New Cingular Wireless PCS, LLC,
By: AT&T Mobility Corporation
Its: Manager

Site Name: 16th & Duff
FA: 10549334

By: _____
Print Name: _____
Its: _____
Date: _____



Creospan, Inc.
1515 E. Woodfield Rd.
Suite 860
Schaumburg, IL 60173

Date: 6/16/2014

To: City of Ames; City Council

Re: AT&T's Proposal to Build a Cellular Tower

In AT&T Mobility's (AT&T) pursuit of providing the highest quality wireless telecommunications service, it proposes to build a telecommunications facility on City property at the Dog Park. The proposal will involve building an equipment shelter and a one hundred fifty (150) foot monopole tower within leased premises and placing nine (9) antennas and adding associated equipment to the facility (the Proposed Site).

As part of AT&T's ongoing development and improvement of its wireless network, Radio Frequency (RF) engineers have identified the need for a telecommunications facility in this area of the Town. The required location of the facility was determined by computer modeling that evaluates population density, topography, and current antenna system capacity. The computer modeling defines a "Search Ring," which is the area in which a telecommunications site must be located in order to properly integrate into AT&T's telecommunications network.

The first step in AT&T's site selection process is to determine requirements from the governing municipality. Once informed, site acquisition specialists search the area designated by the RF engineers and AT&T. In order to minimize tower proliferation, the acquisition specialists look to mount antennas on existing towers, water tanks, and other structures before considering building a new tower. In this instance, however, there are no available existing structures that satisfied AT&T's RF needs within the search ring.

AT&T respectfully requests that it be allowed to submit an application for a Special Use Permit for the use of this site.

Sincerely,

Ronak Desai

CREOSPAN Inc. (Vendor for AT&T)
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Cell: 847-732-7410