

**COUNCIL ACTION FORM**

**SUBJECT: REQUESTS TO PLAN AND DESIGN CELLULAR INSTALLATION ON CITY PROPERTY ADJACENT TO DOG PARK**

**BACKGROUND:**

Several cellular providers have contracts to place private cellular network equipment on City property. Earlier this year, City staff was approached by SSD, the development subsidiary of Selective Site Consultants, Inc. (SSC), with a proposal to place a cellular antenna on City property located just west of the Ames Dog Park in southeast Ames.

SSC is representing Verizon Wireless as a site acquisition consultant. It has proposed developing a monopole antenna approximately 120-130 feet in height west of the Dog Park. SSC would own the pole and its first tenant would be Verizon. Additional tenants could be accommodated in the future.

The following steps must occur prior to construction of an antenna. First, SSC must complete a site evaluation to develop its design proposal. Second, SSC must enter into a lease agreement with the City to use the property. Third, SSC must obtain a Special Use Permit from the City's Zoning Board of Adjustment.

The lease document between the City and SSC will describe the specific site area that SSC has rights to use. However, if SSC is unable to obtain a Special Use Permit or finds that the precise site is unsuitable for construction, the lease would need to be amended, which would take additional time. In order to avoid that scenario, SSC is requesting authorization to make a joint application with the City for a Special Use Permit and to conduct its site analysis prior to entering into a long-term lease with the City.

Last year, AT&T Wireless expressed interest in placing a cellular antenna on this same property. The City entered into a limited agreement with AT&T in June 2014 to allow its contractors to measure and sample the conditions at the site. AT&T also received permission from the City to make a joint application for a Special Use Permit for a cellular installation. In September 2014, City staff was notified that AT&T's project at this site was on hold. Staff was later contacted by another site acquisition company representing AT&T to restart the site acquisition process, but that company has indicated that AT&T cannot finance a new antenna until next year at the earliest and is primarily interested in another site. Therefore, City staff believes it is in the City's best interest to work with SSC on its proposal.

## **SPECIAL USE PERMIT**

According to the City's Zoning Code, SSC must obtain a Special Use Permit from the Zoning Board of Adjustment (ZBA) prior to constructing its antenna. In granting this permit, the ZBA may place certain conditions on the orientation, location, dimensions, and other aspects of the antenna installation.

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

**Obtaining a Special Use Permit at this time does not grant SSC the right to construct its antenna. SSC will still be required to receive property rights through a lease agreement with the City.**

## **RIGHT OF ENTRY:**

Until a lease is agreed to between the City and SSC, SSC 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 evaluation to proceed, the City and SSC may enter into a separate agreement that allows SSC access to the property to complete its evaluation.

This type of agreement was approved by the City Council twice since 2013 for other cellular projects in advance of a long-term lease being signed. Under the terms of this temporary agreement, SSC 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 SSC deems necessary. These activities would be conducted at SSC's cost and the City would not be responsible for the actions of SSC's employees or contractors. SSC has already obtained a certificate of liability insurance naming the City as an additional insured.

This agreement would be in effect for a period of one year. However, upon execution of the lease which would allow SSC 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, SSC would be responsible to return the area to its original condition.

## **ALTERNATIVES:**

1. a. Authorize SSC to make a joint application for a Special Use Permit to install a cellular antenna on City property northwest of the Dog Park. SSC

would not be permitted to proceed with installation until a lease is agreed to by the City Council.

- b. Approve the attached agreement granting SSC a limited right of entry to City property for the purposes of inspection and testing.

- 2. Do not approve an agreement with SSC.

**MANAGER'S RECOMMENDED ACTION:**

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

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby authorizing SSC to make a joint application for a Special Use Permit and approving an agreement granting SSC a limited right of entry to City property, as described above.



April 15, 2015

**VIA ELECTRONIC MAIL**

Brian Phillips  
Management Analyst  
Office of the City Manager  
City of Ames Iowa  
515 Clark Avenue  
Ames Iowa 50010  
(515)239-5227  
[BPhillips@city.ames.ia.us](mailto:BPhillips@city.ames.ia.us)

**Re: Selective Site Development, Inc. ("SSD") – Lease proposal for wireless communication facility at 2110 South Duff Avenue, Ames, Iowa; permission to file joint land use application with the City of Ames, Iowa**

Dear Mr. Phillips:

Thank you for speaking with me yesterday regarding the above project. Pursuant to our conversation, on behalf of SSD we are asking the Ames City Council to authorize SSD to jointly file regulatory permits with the City of Ames, Iowa, for the development of a wireless communication facility.

Specifically, we are seeking authorization to jointly file all land use and federal regulatory applications necessary to construct a minimum one hundred thirty foot (130') low-profile monopole tower and associated equipment compound on the property referenced above, as described in my letter to you dated March 13, 2015.

We are seeking this authorization from the City Council at its next upcoming meeting on April 28, 2015. We intend to file land use applications for this project at the earliest time following the Council's authorization to do so. If a representative needs to be in attendance at the Council's meeting, please let me know and we will be happy to send a spokesperson to the meeting.

Please contact me at (913) 438-7700 with questions or concerns at your convenience.

Sincerely,

J. Trevor Wood

Cc: Christopher Coughlin, Verizon Wireless  
Larry Louk, SSD, Inc.  
Justin Anderson, SSC, Inc.  
Jerrod Foutes, SSC, Inc.



Area of Evaluation

ACCESS TO SPORTS COMPLEX

BILLY SUNDAY RD

605

## 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 Selective Site Consultants, Inc. and its agents, employees, consultants and representatives (herein individually and collectively referred to as “SSC”) 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 SSC may deem necessary, at the sole cost of SSC (collectively, the “Work”). In addition, SSC may remove samples of the soil from the Property.

**Indemnity.** To the fullest extent permitted by law, SSC 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, 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 SSC, any subcontractor, anyone directly or indirectly employed by any of them or any one for whose acts, any of them may be liable.

**Insurance.** SSC 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 not less than \$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 SSC indicating that Owner has been named as Additional Insured on the policy(ies) and further stating that Owner will be notified of changes or cancellation per the Terms of said policy(ies). In no case will SSC coverage be construed to provide coverage for acts of negligence alleged to be caused by the sole negligence of employees of the Owner.

**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, SSC shall notify Owner in writing or by telephone; (2) notification shall include the identities of the agents, employees, consultants, and representatives of SSC who will be entering onto the Property, the time and date of the planned entry, the locations on the Property where SSC 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](mailto: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 SSC 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 SSC 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 of approval by the Owner. Recognizing that the Owner and SSC are currently in negotiations for a lease agreement concerning this Property, this consent shall be voided 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 SSC for this Property, SSC shall return the Property to the condition that existed prior to the commencement of the Work by SSC, reasonable wear and tear excepted.

**OWNER:  
CITY OF AMES**

**ATTEST:**

By: \_\_\_\_\_  
Ann Campbell, Mayor

\_\_\_\_\_  
Diane Voss, City Clerk

Date: \_\_\_\_\_

**SSC:**

By: \_\_\_\_\_  
Authorized Representative