

WESTFIELD TOWNSHIP BOARD OF TRUSTEES
NOVEMBER 21, 2008
SPECIAL MEETING

Discussion with Pros. Office on Cell Tower Lease Agreement and General Business
As Amended 12/15/08

Chair Sims called the special meeting of the Westfield Township Trustees to order at 11:07 a.m. Trustees Sims and Likley were present as well as Mr. Tom Karris from the Medina County Pros. Office. Trustee Kratzer was absent. (See attendance sheet for a complete list of all those present).

Proposed Cell Tower Lease Agreement

Chair Sims stated her personal address was listed throughout the document and that needed to be removed and replaced with the Townhall address. There were then questions on page 2 of the document as to the length of the time which to begin construction which states 18 months but the discussion by the Board of Trustees was for a 6 month lease. Mr. Karris stated that he spoke with the attorney who drafted this lease agreement and 18 months is a standard time period Verizon has in its contracts. The reason for the time frame is that construction of the tower would not take place on day one and Verizon will have to go through due diligence in moving forward with the tower. However due to the volume of towers being erected there is a "pecking order" so to speak for the construction of the towers so therefore the 18 month time frame or longer. Mr. Karris stated that Verizon was willing to pay for 18 months even if they have not begun construction of the tower. Trustee Sims stated her concern was that the Township was setting aside property and not receiving payment for it for a year and a half. She asked if Mr. Karris thought they would be willing to change the time frame. Mr. Karris stated no, they were firm on the 18 months. Trustee Likley stated he understood Trustee Sims concern but was comfortable with the 18 months as long as they had the commitment from Verizon. He added that the 18 months was just a time frame for Verizon to prioritize their construction schedule and hopefully the tower would be built before then.

Trustee Sims asked for clarification on the last line on page 2 which states, "...LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein. Mr. Karris stated that meant that Verizon wanted proof that the Township owns the land the cell tower will be built on and that the Township has authority to enter into the agreement. What that meant is that if those two documents were not provided in 18 months, Verizon would not be obligated to pay rent. Mr. Karris stated this is standard language and all the Township had to provide was the deed to the property and that there is a Resolution to enter into this agreement.

Trustee Likley asked if under #5. Rental Payments if that meant that there would be a 3% increase annually. Mr. Karris stated that was correct there would be an increase during the initial term and during any extension term.

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Trustee Sims asked under #8, Use; Governmental Approvals it states that, "LESSEE shall screen the Land Space with trees and shrubbery at a location and design as approved by LESSOR..." However, they have changed their mind about that. Mr. Karris stated he was aware that since the actual screening would not be on the property they were leasing it would be the Township's responsibility to maintain the screening. Therefore the sentence reading, "LESSEE shall continuously maintain the screening, replacing any trees and shrubbery as needed..." would need to be changed. Mr. Karris stated their concern is if they would be responsible to maintain the screening they would need an easement. From a legal standpoint, Mr. Karris stated he did not think this was a significant change. Trustee Sims stated that it is a change that should be acknowledged. Mr. Karris suggested the wording, "LESSEE shall maintain the screening" and remove the word continuously.

Mr. Karris stated regarding the wording under #8 (v) "LESSEE determines that the Premise is no longer technically compatible for its use or (vi) LESSEE, in its sole discretion, determines that it will be unable to use the Premises for its intended purposes, LESSEE shall have the right to terminate this Agreement..." he spoke with Verizon's attorney and told him that was not acceptable. If they enter into a 5-yr. term they would have to continue to pay the lease payments for the remainder of that term. They would simple not renew it for another 5 yr. term. For instance if it was year 2 and they cease to operate the tower they will still have to pay for the whole 5-yr. term. Also that was not in the original proposal. This wording would need to be stricken from the document. This is also dealt with #12 Annual Termination, which will need to be removed.

Mr. Karris continued that under #9 Indemnification, the way the law reads for governmental entities in the State of Ohio, there can not be a blanket Indemnify Clause. This whole section will need to be eliminated because it is not consistent with the Law.

Under #10 Insurance, Mr. Karris stated the Township as the landowner should have insurance for your liabilities. This is usually referred to as a subrogation clause. Each party has to have their own insurance. What this means is that what you are doing is waiving the right for your insurance company to be reimbursed by the other's insurance company and visa versa. Trustee Sims stated in laymen's terms that means that we are agreeing that our insurance and their insurance agree will not hold each other liable for negligence. Mr. Karris stated that was correct and is very standard language in commercial leases. Trustee Sims stated the base of the tower is very close to the Township's salt shed and what if a truck hits the fence around the tower or somebody scales the tower... Mr. Karris stated the responsibility for whatever event occurs that does not change. This simply is that the insurance companies cannot go after one another for or hold one another for liable for a loss of personal injury or property damage.

Trustee Sims asked about the wording in #13 Interference which read, "...In the event after installed LESSEE's equipment causes such interference..." We were talking about a

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potential tornado siren being collocated on the Tower. There has also been discussion of future expansion of the Townhall i.e. possibly a new fire station and therefore a radio and this LESSEE's equipment might cause interference. Mr. Karris stated that portion of the contract refers to if the Township already has a radio room or fire station and they erect the Tower and it causes interference to your existing operation then they would take the steps necessary to correct that. However if you build a fire station and they change technology that causes interference, then they are responsible. Trustee Sims stated she did not have the technical knowledge of what technology is currently used. Mr. Karris stated he understood and technology changes all the time. He added on the other hand, if the Township builds a fire station and has a radio room that interferes with the Tower the Township would be responsible to make a good faith effort to remedy the interference issue.

Mr. Karris stated he did not realize the Township already had an existing tower on the property and asked if it was operational? Trustees Sims and Likley stated yes.

Under #14 Removal at end of Term Mr. Karris stated he remembered there was concern if the Township puts up a tornado siren and Verizon decides to no longer operate the tower and the lease is terminated, Verizon would be responsible to remove the tower and replace the property to its current condition. However, if the Township wants to keep the tower for the siren they would leave it up as long as the Township notified them. Trustee Sims stated the wording read, "If LESSOR does not so notify the LESSEE to remove the antenna structure, title to the antenna structure shall be automatically deemed to be transferred by LESSEE to LESSOR without any further obligations under the paragraph." She stated that there should be a discussion and decision between the LESSOR and LESSEE as to what would be done with the tower and not have it automatically transferred to the Township. Mr. Karris stated he could make that correction.

Trustee Sims asked about the last sentence under #14 Removal At End Of Term which stated "If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term until such time as the removal of the building, antenna structure (if required), fixtures and all personal property are completed." Trustee Sims stated the notes she had written next to this paragraph is LESSEE pays until the LESSOR is satisfied in writing. Mr. Karris stated what this paragraph is saying is as long as Verizon is still on the premises they will continue to pay the rental payment. What Trustee Sims is trying to say is that Verizon is deemed to be in possession of the property until the Township is satisfied in writing that the property has been reclaimed. Trustee Sims stated that she has seen such companies in a hurry to put up the tower and less enthusiastic if they are going to be removed. Mr. Karris stated that could be added to the document.

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Regarding #15, Holdover, Mr. Karris stated that was a standard clause in a commercial lease. Let's say Verizon terminates their lease and the end of the term and they are still there. The Township would have the right to evict them. If the Township does not evict them then Verizon pays 110% of the rent applicable during the month immediately preceding such expiration or earlier termination.

Trustee Sims then moved to discuss #19 Title. This would need to address the easements on the property. Mr. Karris suggested moving forward with the document and then they would come back to review this paragraph.

The next item to be discussed was #22. Assignment. LESSEE may sublet the Premises within its sole discretion, upon notice to LESSOR, provided that any sub lessee which is not affiliated with or related to LESSEE must obtain the prior written consent of LESSOR, which consent may include, at LESSOR's sole discretion, the payment of fees by the sub lessee directly to the LESSOR for the duration of the sublease..." Trustee Sims stated she spoke with Tony on this and it had to do with the fact if there are additional carriers on the tower that the Township would get additional fees. Mr. Karris stated what this means is that if another carrier wants to be on the Tower additional fees would be paid to the Township as long as that carrier is not affiliated with the LESSEE. Trustee Likley stated that the way these companies buy each other he would hate to see that if ALLTEL wants to collocate on the Tower and Verizon turns around and buys ALLTEL then does ALLTEL stop paying their fee? Right now Verizon does not have any "sister companies" so could the document reflect that any company Verizon purchases from this date should be an additional fee. Trustee Likley stated he wanted clarification of the sentence, "LESSEE may sublet the Premises within its sole discretion, upon notice to LESSOR, provided that any sub lessee which is not affiliated with or related to LESSEE must obtain the prior written consent of LESSOR, which consent may include, at LESSOR's sole discretion, the payment of fees by the sub lessee directly to the LESSOR for the duration of the sublease..." Was that to mean if there are other providers on the Tower the Township can negotiate the payment and that it be made directly to the Township? Mr. Karris stated that sentence meant that anyone not affiliated with Verizon who wanted to locate on that tower they would need to meet with the Township to negotiate the fee they would be charged to collocate. Mr. Karris stated he would so note the Township's concern and he would address this with their attorney.

Under #25 Subordination and Non-Disturbance. Mr. Karris stated what the document is saying is that if you obtain a mortgage on this property the mortgage must include this non-disturbance agreement. If the Township defaults on the loan and they foreclose that does not preclude the tenant from continuing their operation.

Under #27. Default. b. Mr. Karris stated he would have the same time-period of 30 days if either party defaults instead of 30 days for the LESSEE and only 5 days for the LESSOR as written in that paragraph.

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Under #28. Remedy. Mr. Karris stated it was not clear if Verizon had to show proof of insurance but he will make it clear that it will need to be provided. That paragraph goes on to state that if neither party has the proper insurance the non-defaulting party may terminate the lease. In the event Verizon does not have the necessary insurance the Township could terminate the lease and hold them responsible for the remaining term of the lease.

If they cannot repair or the property cannot be repaired within 45 days in the event of damage by fire or other casualty then they have the option to terminate the lease even if it was their responsibility. Mr. Karris stated he would take that clause out because if they have a fire and they deem they are not going to repair it and just take the money from the insurance company then the insurance company should also be responsible for the remainder of the lease or Verizon should be responsible for the remainder of the lease. What I would put in is if the causality is not the fault of the Township then they cannot terminate the lease at least not until the end of the term.

Trustee Likley stated that fire sirens are big and heavy and there is a lot of tork and they rotate. That is why there are put on a separate pole because of the tork on that rotation. The engineering cost and structural costs can be more than the cost of the pole and installation.

Trustee Sims stated on page 14, there needed to be space for three Trustee signatures. Also Exhibit "A" which is the sketch of the cell tower premises within the property was not drawn to scale or even remotely in the right location. Mr. Karris stated he would ask them to change all references to Exhibit "A" to the actual survey and legal description of the property. Trustee Sims stated her Exhibit "B" was blank and this also brought to light the easement concerns. August 29 2008 sheet 1 New Pr, a Delaware Partnership, doing business as Verizon Wireless would be Exhibit B.

Mr. Karris stated the Memorandum of Land Lease Agreement was the document that would be actually recorded with the County and that would be consistent with the changes made to this agreement. Trustee Sims stated her personal address needed to be changed to the Townhall address. The 18 month timeframe would remain. references to Exhibit "A" to the actual survey and legal description of the property.

The Trustees and Mr. Karris then moved on to the discussion of the Easements. Trustee Sims stated there has been discussion by the Board of Trustees of maintaining our long term development possibilities on the west side of the Townhall. It appears the 20 ft. access utility right of way could jeopardize that. She added she spoke with Tony Mercuri on that and he felt the easement was very workable but as it's drawn it appears to limit the Township's future development onto the Townhall. Mr. Karris agreed. Trustee Sims stated there appears to be a gas line that leads to the rear of the property and comes across the Township property.

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Trustee Likley stated there were also issues of existing oil and gas easements. This property was part of an existing farm and these easements are showing up when they are doing the deed/title searches. Trustee Likley stated he did not know if those existing easements were still being used. Trustee Sims stated the existing cell tower easement is not even on the survey. She asked if the Township could then get rid of the right of way to the location as that would eliminate the Township's future development concerns. Mr. Karris stated he was not concerned about the gas line easements. If Verizon is concerned they can get title insurance to protect themselves from any claim. Trustee Likley stated the utility right of way is a concern for any future Township expansion. He added that the Township could make sure that Verizon would always have access to their property. Trustee Likley stated what could be feasible to Verizon and then not restrict the Township's potential expansion is to take the utility right of way and move it as much to the east as possible so it does not limit the Township from an expansion standpoint. Trustee Sims agreed and whatever Verizon's driveway easement is; will be whatever the Township's easement is to the salt barn. Their right of way will then be modified and this will all need to be in writing. Trustee Likley stated the Township would have to maintain a 20 ft. driveway to get down to this area and a 20 ft. driveway to get into the parking area. Mr. Karris stated he would speak to the attorney and let them know the Township's position is to have the utility easement as close to the property line and the Township does not want a fixed drive access. The Township in turn would guarantee Verizon would have a 20 ft. access but where it is on the property is subject to change. Trustee Likley stated another concern with moving their utility easement to the east is no trees will be removed as the Township put up the existing pine trees as a buffer. He added he did not know if there was room for the utility easement to be located between the property line and the trees or if they would have to come to the west of those trees. Trustee Sims stated the e-mail from Tony stated, "the township property has multiple specific and general easements which we will need to address prior to the survey becoming final. There is an AT & T Wireless lease which as been assigned to American Tower... There are also 7 oil and gas leases which will require some answers please. Can you let me know if any of the oil and gas leases are active? If they are, please give me a contact name so we may obtain the required releases." Mr. Karris stated he could do a title examine to see if they are active. He will get copies of the oil and gas leases. If the oil and gas leases still have a term then Verizon would have to get a title company to insure against that and it is a nominal fee. Mr. Karris stated he would speak with Mr. Haddox and review the issues the Township had on the lease agreement.

Zuber Update-Trustee Likley stated ZI Harris gave him a call yesterday and ZI Harris spoke with Trinna Devanney. Mr. Zuber is still non-compliant according to the settlement agreement. The Township now has two options, 1. Pursuing jail time 2. A daily penalty fee. From the day of non-compliance after the date that was agreed upon, ZI Harris or Ass't ZI Evans would have to go to the Zuber property and file an affidavit and send a letter to the property owner that an inspection has been made each day (the dates would have to be noted) and verify the property owner was still not in compliance. Trustee

Likley stated he tried to contact Trinna Devanney but she was not available. Mr. Karris stated he felt that the two options would be determined by the judge. The Pros. Office could however ask for a particular remedy. Trustee Sims stated her intention in agreeing to the settlement was up to Mr. Zuber to negotiate his non-compliance with the court system and take it out of the hands of the Township Trustees with the exception of verifying compliance. Mr. Karris stated that was correct. What would happen is that we would have to go back to court and ask that Zuber be found in contempt of court. Mr. Karris stated what should be asked for is that Mr. Zuber has to come into compliance within X number of days. If Mr. Zuber is found not in compliance within a certain time period then a fine would be imposed and the possibility of a 30 day jail sentence. Trustee Sims stated she wanted the Township's involvement to be to verify non-compliance and then the Pros. Office would move forward with the legal process. Mr. Karris stated the Zoning Inspector would need to testify in court that Mr. Zuber is not in compliance. He added that the Pros. Office could ask the judge, until Mr. Zuber comes to Court and shows that he is compliant that the fine would continue. This would put the burden on Mr. Zuber that he is in compliance and not on the Township to show he is non-compliant. Trustee Sims stated this issue has been going on a long time. It is very time consuming to the Board and she wanted to see the Pros. Office move forward with the legal process. Trustee Likley stated he would follow up with Trinna Devanney later today. Mr. Karris stated he too would follow up with Ms. Devanney.

OTARMA (IRS)

Mr. Karris stated he contacted OTARMA. It is not certain at this time if they will accept the claim but if they do, the former Clerk is not going to be held responsible for the amount of the claim. The Township now wants to limit the claim to \$10,000. Trustee Sims and Likley stated that was not correct the claim would be for the full amount of \$39,000 + change. The bond was only for \$10,000. Mr. Karris stated his first conversation with OTARMA was that there is no coverage. However, one does not always take what the insurance company offers. Trustee Sims stated as she understood it this would basically be a claim against yourself because she (former Fiscal Officer) was the insured. You can't sue yourself. Mr. Karris stated the Pros. Office was going to argue this was not the case. This is exactly what the insurance is for i.e. these kinds of errors. It is worth pursuing the attempt. Trustee Sims stated the issue was the former clerk had a \$10,000 bond. The Township were at the final step of the IRS appeal and it did not look promising. The bond was for two terms each at \$5,000 for a total of \$10,000. The question then became did the Township want to pursue the entire \$39,000 knowing the bond was only for \$10,000. The Township stated they did not want to go after any personal assets. Trustee Sims stated she felt the previous board of trustees erred as during the former clerk's term the bond was increased from \$5,000 to \$10,000 but the Trustees did not up the bond to that amount. Since the errors and omissions of the Clerk took place over her term the total was \$10,000. There was discussion of asking the former Clerk to pay that amount before pursuing the bond. That would allow her to be bonded for other employment if she chose to do so. During that time the OTARMA discussion

took place that the Township could recollect the total of the \$39,000 which is all of the error and omission monies and not have to pursue her personally or have to pursue her bond at all. Mr. Karris stated OTARMA may come back with a compromise for the Township to collect on the bond and they would pay the balance. Trustee Sims stated that was the logical progression as that was what the bond was for. Still as of today, even though this issue has been resolved for some time now, the Township was managing without that money back in the coffer. Trustee Likley stated the Township Trustee's conversations with Mr. Thorne at the time were to notify the bonding company of our interest in that bond. He asked Mr. Karris if he could confirm that they have been notified. Mr. Karris stated he did not believe they had simply because we went the direction of OTARMA. Trustee Likley stated that if OTARMA comes back with a compromise for the Township to collect on the bond and they would pay the balance, he did not want the Township to be blindsided by the bonding company that the Township has exceeded the timeframe to make that claim. Mr. Karris stated he would follow up with the bonding company of a potential claim.

Trustee Sims stated the insurance wording spoke of a cap on each incident. Mr. Karris stated they would pursue that this is all part of the same incident. He added there would be a lot of haggling with OTARMA. Mr. Karris stated when he spoke with Mr. Thorne; the issue was to determine whether or not OTARMA would pursue reimbursement from Ms. Gregoire. Mr. Karris stated OTARMA would not pursue her personally because she is the insured. Trustee Sims then asked, will the Township, should OTARMA pay the claim, see an increase in premium costs? Mr. Karris stated he felt it would be difficult to get OTARMA to say yea or nay. They will take a look at the Township's overall history. Trustee Sims stated she needed to know that a claim as substantial as this is not going to increase the Township's premium costs to make this decision or the possibility of cancellation. Mr. Karris stated he felt that even if he poses the question to OTARMA about the potential of cancellation or a increase if premium costs they would say yes even if that ends up not happening simply to discourage the Township from making the claim.

MISC.

Trustee Sims stated she and Mr. Karris have had some conversations about possible impropriety. She added she needed legal counsel on some of these issues and if they continue unaddressed or unacknowledged by the Pros. Office then she was strongly considering resigning from her position in order to separate herself from what she thinks she sees going on here. Trustee Sims added that this has gotten too much for her to manage with her limited understanding of legal channels to properly pursue. Mr. Karris responded that all the Pros. Office has asked is that Trustee Sims put her concerns in writing so the Pros. Office knows what is to be considered and what the Pros. Office can and cannot do in these matters. Trustee Sims stated that was very agreeable except some of these issues were complex and layered and different avenues and responsibilities...some of the issues she has raised could be quick legal opinions as to whether there were improprieties. Trustee Sims stated she did speak with Bill Thorne

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Carolyn Sims, Chairperson



Jim Likley, Trustee