

**City of Lake Elmo
City Council Workshop
Staff Report**

**On the Application for a Telecommunications
Tower at 9057 Lake Jane Trail North**

2 December 2008

7 PM

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City Council Workshop

Tuesday, December 2, 2008
7:00 p.m.

Telecommunications Tower
Proposed for 9057 Lake Jane Trail

- 1 Staff Report
- 2 T-Mobile (FMHC) search area
- 3 Tower search area of 1,000 feet (city ordinance)
- 4 Memorandum from Thierry Colson, Senior Radio Frequency Engineer, T-Mobile

Antenna coverage maps

- 5 Proposed/Existing coverage
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With and without tower
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November 24, 2008
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ITEM: Consider an application for a wireless 125 foot telecommunications tower Permit for 9057 Lake Jane Trail North

REQUESTED BY: FMHC Corporation, Applicant
Dan and Jean Olinger, property owners, 9057 Lake Jane Trail North

SUBMITTED BY: Kyle Klatt, Planning Director

REVIEWED BY: Planning Commission
Susan Hoyt, City Administrator
Jerry Filla, City Attorney
Jack Griffin, City Engineer
Kathy Widin, City Forester
Greg Malmquist, Fire Chief

SUMMARY AND ACTION REQUESTED: The city council is being asked to receive information on an application by FMHC Corporation (T-Mobile) for a 125 foot wireless communication tower at 9057 Lake Jane Trail North, which is owned by Dan and Jean Olinger. Following receipt of the information, the council is being asked to discuss the request and to provide direction. This is not a conditional use permit in the city's code. It is an antenna permit. Prior to the permit being approved, the applicant must demonstrate that the requirements of the permit have been met. The FMHC application states that this is the only wireless tower or antenna that T Mobil plans to build in the Lake Elmo Area in the next two years. The selected location is based on delivering service to the Lake Jane area. This wireless tower is preferable to co-locating on the water tower by public works on Ideal Avenue or the Xcel tower because it is only 1 mile from the existing Oakdale tower and it does not provide as much coverage in the Northeastern portion of the target area. The data in the FMHC application and representatives demonstrated that co-location on the public works site water tower #2 and neighboring tower sites were not feasible to meet its communications broadcast requirements. Telecommunication towers fall under FCC regulations regarding communication. These regulations are adopted to assure wireless communications are available to the public. Under state statute governing planning applications, the city must take action on this permit by **December 24, 2008** unless the application deadline is extended by the applicant. The applicant is not going to extend the December 24, 2008 deadline. This report has more extensive background information and provides options beyond what the planning commission received on November 10, 2008.

INFORMATION ON THE SEARCH, COVERAGE, SITE, TOWER, AND VISUAL IMPACTS

Although it is difficult to predict for sure, an increase in applications for personal wireless services (telecommunications) towers is anticipated because of the increased reliance on cell phones in residences and businesses. The original towers were primarily located to serve vehicles on roads, often major roads.

- **PRIMARY OBJECTIVE OF SEARCH AREA and TOWER SEARCH AREA**

The applicant searched an area around Lake Jane to determine where to locate service. This search area is broader area than required by our ordinance, which requires that a search of 1,000 foot radius around a proposed site be made to determine if an antenna could be co-located. The latter search (required by ordinance found no tower opportunities). Neither search area captured the water tower at the public works building.

According to Thierry Colson, Senior RF Engineer with T-Mobile,

The primary objective is to provide this new coverage link and compliment the existing coverage. It's also important to minimize the potential overlap in areas where the existing coverage is already an acceptable quality. Our target objective is around Lake Jane. Currently, there is very poor or no coverage.

In response to a question about why not locate on the water tower on Ideal Avenue or the Xcel tower rather than construct a stand alone antenna, Colson raised two concerns.

This location is only 1 mile from our existing site at the Oakdale water tower on Hadley Avenue North. Secondly, it does not provide as much new coverage in the northeastern portion of our target area as our proposed FS site does.

★ The search area includes other areas that appear to meet the ordinance criteria. One site, the fire station #2 site was explored by the company. Although the applicant was told that he could meet with the city council on this site to explore the desirability of the site, the staff discouraged this location due to its proximity to Sunfish Lake Park based upon the history of the city's decisions regarding the park. Following this discussion, the applicant moved to a private sector location.

- PROPOSED SITE *Why have a council if staff is going to make decision or guide applicants in a certain direction*
The proposed site for the 125 foot tower is 13.89 acres in area and is zoned residential R-1 and RR (11 acres). The property is located near the intersection of Jamaca Avenue North and Lake Jane Trail and would be approximately 600 feet from Lake Jane. The property is located on is zoned residential and is over 10 acres in size; 10 acres is required by ordinance. Other structures on the site include a single family home. The property owners could subdivide the property into two parcels with the 11 acres of RR being the site of the telecommunications tower. The proposed tower location is is behind some trees and berms on the property. A simulation photo of the tower on the site is included in the attachments.

A 40 by 40 foot (1,600 square feet) areas is proposed to be leased by FMHC from the property owners, contingent on the telecommunications tower being approved by the city for this location. There is also a proposed utility easement in the lease of 2,621 square feet for access. The height of 125 feet would accommodate two additional antennas for wireless communication at 85 feet and at 105 feet. The tower is set back 225 feet from the west and south property line. The two closest structures to the proposed location of the tower are 323 feet (house) and 328 feet (fire station #2). The city attorney found that telecommunications tower is an allowed use for this site if all code conditions are met.

- PROPOSED TOWER DESIGN AND LANDSCAPING

The proposed tower is 125 feet tall, monopole design in dark brown and with an accessory structure of 10 feet X 12 feet. The proposed monopole was brown, but the planning commission recommended a blue or a gray color to make it less visible. The accessory structure is brick faced with a dark brown metal roof. It is setback from the property lines. The city engineer reviewed the application and items noted by the engineer were submitted as part of the application. The fire chief reviewed the tower plans and found no health and safety issues with the design. The site will be landscaped. The city forester reviewed the landscaping plans and determined that it provided screening for this structure and surrounding area. The proposed chain link fence is designed at 76 inches, but would need to be 72 inches to meet the fence code.

*said
come
back
said
come
back*

▪ VISUAL IMPACTS

FMHC (T Mobile) provided a simulated photo of what the tower would appear at 125 feet monopole from the Washington County landfill area in Sunfish Lake Park. (attachments). The visual nature of the antenna from the vistas within Sunfish Lake Park are a consideration in this decision because the city has taken action to protect the experience of park users to be as natural as possible including deciding not to locate the water tower and the public works building in the park. Most recently, the city entered into an agreement with the parks Minnesota Land Trust that assures the park will remain in a natural state into perpetuity.

No design options on simulating a natural item like a tree were presented at the planning commission. An example is included in the attachments.

**SUMMARY OF REGULATIONS AND FINDINGS OF THE Federal Communications
Commissions (FCC) REGULATIONS GOVERNING WIRELESS PERSONAL SERVICES**

The city ordinance is subject to FCC regulations governing wireless communications. This is a summary of these regulations to put the city ordinance into context. Telecommunications Act of 1996, Section 704 (a) (7) B a paraphrased from attachment.

Limitations on the authority of a city to regulate personal wireless services.

- can't discriminate amongst providers of the service
- can't prohibit the provision of personal wireless services
- must act within a reasonable time on the request
- any denial of a request to replace, construct or modify a personal wireless service facilities shall be in writing and supported by substantial evidence in the written record (findings of fact)
- no regulation can be based upon the environmental effects of radio emissions
- any person adversely affected by a final action may petition for the court relief

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REASONS FOR APPROVAL AND DENIAL ON A TELECOMMUNICATIONS PERMIT

APPROVAL -

SUMMARY OF HOW THE APPLICANT MEETS THE ORDINANCE REQUIREMENTS

The city adopted an ordinance to permit personal wireless services to locate in certain areas of the city if certain permit requirements were met. After review by the planning director and the planning commission, the application was found to meet the ordinance requirements as set out in the city code Section 150.110 through section 150.126.

Basic Requirements	FMHC Application
Zoned residential on 10 acres or more	On a 13.89 acre site in a residential zone
Authorization from property owner	Letter signed by property owner has been received
Agreement on property	Proposed lease in place with property owner contingent on permit approval
Engineering plans on structure	Submitted and reviewed by engineer
Co-location opportunities	Can co-locate two more antennas on 125 feet – one at 85 feet and one at 105 feet
Licensed by FCC	Yes
2 year plan	Stated no additional towers required by T Mobile in next two years
Notify property owners within 1,000 feet	Done
Search w/n 1,000 feet of proposed site to co-locate	Done; no co-location opportunities emerged
Review of Tower Standards according	
Blend into the surrounding with color and architecture	Planning commission did not make a recommendation for a specific color. The Council can specify that a blue or gray would be a better color than brown for the monopole. Accessory building meets ordinance.
Location on site	Behind existing berm and large trees
Monopole	Meets ordinance to be a monopole design; design alternatives not explored
Height options	
▪ Height 75 ft or under	Applicant can't provide coverage at 75 feet
▪ 75 to 100 feet (85 feet lowest FMHC)	85 feet would work for service above tree line, but ordinance requires 1 co-locator
▪ 125 feet or over	Applicant requests 125 provides for 2 co-locators at 85 feet and 105 feet
Setback from property line	145 required here; 225 exists to W and S property line
Other setback requirements related to commercial districts	Not applicable
Fall zone	Not applicable due to setback; engineer identified
Maximum of 125 feet for parcels 10 to 40 acres	Height requirement met on the parcel size
Lighting	No lighting ; may require FAA lighting – out of city control
Signs and advertising	None is planned on the tower
Interference w. Public safety communication	Must meet FCC regulations; so far approved
Prohibited subdivisions	10 acre parcel cannot be subdivided to be less (13.86 parcel; 11 acres in RR) No plans to subdivide at this time; would not be permitted to subdivide below 10 acres on antenna site
Accessory buildings	Brick faced with dark metal roof; fenced; required to have fence not exceeding 72 feet (not 75 as in plan) required
Ground mounted equipment	Meets required brick and dark metal roof; landscaping plan reviewed and endorsed as providing screening by forester

▪ DENIAL –
LEGAL SUMMARY OF SUCCESSFUL AND UNSUCCESSFUL CLAIMS FOR DENIAL

List of considerations that the courts have held are legitimate in determining whether or not to issue a cell tower permit. Making the case for denying a wireless communications tower is challenging. Here are some arguments that have proven to be successful and proven to be unsuccessful. Paraphrased from memo by Jessica Schwie, Attorney.

Protection of historic buildings
- Proven where there was evidence that tower could be seen from historic building nominated to the National Register of Historic places
- Not proven where the MN State Historic Preservation Office found no adverse effect on property
Protection of protected lakes, riverways, wetlands or other preserved areas
- Proven through testimony of numerous citizens and organizations that "focused on the incompatibility of a 185 foot tower on the river bluff extending noticeably above the tree line with extraordinary scenery of the National Scenic Riverway. National Park Service supported the position by demonstrating impact with a series of maps and photos.
- Not proven where proposed site was outside of the boundary of the National Scenic Riverway
Negative impact on property values
- Proven by local figures on value; not comment or real estate expert
- Proven where tower isn't designed to blend in
- Proven where tower w/n close proximity to apartment so view is of tower
- Not proven based upon perceived fear
Inconsistent with regional plan/local ordinances
- Proven where inconsistent with county zoning ordinances
- Not provide where no regional study in place
Unsafe Structure
- Proven where documented evidence indicated danger of ice falling onto cars
- Not proven where no engineering evidence that tower might fall
Alternatives exist with less negative impact
Alternative technology available
- Proven that evidence of dropped calls was not due to lack of service but needed to correct the service by new antenna on existing facility
Alternative locations exist with less impact:
- Proven when 7 th out of 8 preferred sites; ¼ mi from historic district
- Proven where evidence provider could incorporate multiple cell towers at a lower height to minimize visual impact
Adequate service is already in existence obviating need of tower-
- Proven on anecdotal evidence from residents that they had service
- Proven with RF engineering study showing service would not complete a void and would only improve outdoor service

PLANNING COMMISSION PUBLIC HEARING AND ACTION

The planning commission held a public hearing on the application on November 109, 2008. property owners within 1,000 feet were notified of the application. One (1) person spoke in support of the proposal; four (4) persons spoke against the proposal. Two (2) letters were submitted not supporting the application. The planning commission approved the application by resolution because it met the ordinance requirements for a permit. Five commissioners were in favor, two against and one abstention.

Approval was based upon the following findings:

- 1) *That the applicant has submitted all required documentation for an application to install a new wireless telecommunications tower.*
- 2) *That the applicant has demonstrated compliance with the applicable city code provisions for wireless telecommunications towers.*
- 3) *That the proposed site meets all required setbacks and that the tower is within the maximum permitted height for a rural residential zone.*

Standard conditions were attached to this approval with the addition that the fence height be 72 inches consistent with city code.

ADDITIONAL COMMENTS

▪ PARKS COMMISSION.

The park commission submitted the following statement about the proposal at its November 17, 2008 meeting: The park commission moved to recommend to the city council that the city council:

- 1) consider the need for the tower verses the benefits and impacts to the citizens of Lake Elmo,
- 2) to encourage the Council to explore a more appropriate placement for a tower that is located away from residential and natural areas, and
- 3) to consider the spirit and intent of the recently approved conservation easement over Sunfish Lake Park, which specifically was implemented to protect and preserve the natural characteristics of the park.

▪ PUBLIC CALLS/EMAILS

Approximately a dozen calls against the antenna and emails have been received at the city regarding the antenna proposal. (attachment)

REQUIRED TIMELINE FOR APPROVAL OF THE APPLICATION

Current review deadline. **December 24, 2008.** The city may deem it desirable to have more time to work with the wireless provider to find an alternative location than the December 24, 2008 date required under the state statute for determining. In this regard, the city has requested an extension to the 120 days for the application review from the FMHC. FMHC has denied that

request. The options provided for the city to consider can be accomplished within this time frame of December 24, 2008, if the city is conscientious in following a strict timeline.

Reasonable time. Federal regulations do not specify what a reasonable timeline for review of an application for a personal wireless service is. In the absence of any definition the Minnesota courts have relied on state statute "the 60 day rule" as a basis for timeliness.

Moratorium. If the city wishes to review its ordinance to update it, the city may put a moratorium in place to do so. The updating must be done in a timely way. However, the city must not intend to use a moratorium as a vehicle to deny an application. A moratorium could be used to find an alternative location through ordinance amendments, if the 120 day review rule had been met. Specifically, the courts would be asking what has occurred in the regulations since the adoption of the Telecommunications Act of 1996 and the adoption of the city ordinance in 1998 that warrants this delay in considering the application. .

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OPTIONS FOR CONSIDERATION AND DISCUSSION			
OPTIONS	Alternatives w/n option	Description of option and alternatives	Comments Next steps
A			
		Approve 125 tower	
		As submitted	
B	A-1	With new design e.g. 'tree'	Meets the ordinance requirements Design can vary; would look a bit odd at 50' above the tree line
	A-2		Approve on Dec 9
			Approve on Dec 9 or later pending design
C	B-1	Approve 85 foot (height)	Applicant notes a co-location point is 85 feet
	B-2	With 1 co-locator	Meets ordinance – determined not able to co-locate on 85 feet as noted by applicant
	B-3	With no co-locator	Amend ordinance to eliminate co-locate
D		With tree, not monopole, design and no co-location requirement	A tree might disguise the monopole at this height above the trees
		Deny the application	Due to impairment on scenic vistas /area from within Sunfish Lake Park and history of city for protecting this park (e.g. no water tower, no public works building, Land Trust) Requires substantial supporting evidence.
	C-1	Identify alternative site w. denial (see Attach 2)	May require amending ordinance or moratorium to study – but moratorium cannot be used to deny the application
E	C-2	Hire radio frequency (RF) consultant	Reevaluate the data by FMHC and find alternative location using outside expertise at the city's expense; this may be expensive and a more difficult way to find alternatives
		Delay decision	To be determined
	D-1	Identify alternative site (see attachment 2)	Consider delaying the decision until an alternative site is located; ideally FMHC will extend the 120 day beyond Dec 24, if it is clear the city council is willing to work with the company to locate this device.
F	D-2	Do an independent RF study	Hire independent consultant to evaluate application claims and to determine alternative location
			Assign to city engineer to find consultant Charge applicant
		Declare moratorium to study ordinance to determine coverage requirements; other factors	Schedule public hearing for Dec 18

RECOMMENDATION

This meeting is for the city council to receive this information and discuss what options based upon this information presented and gathered at the workshop.

The report to the city council includes additional legal information and options that the planning commission had at its hearing and meeting on November 10, 2008 when it recommended approval of the 125 foot tower that does provide service and meets the permit requirements in the ordinance.

Based on additional information there may be opportunities to minimize the height and disguise the tower as a tree and/or if the applicant is willing to extend the timeframe beyond December 24 to work with the telecommunications providers to determine an alternative location or to approve the application as submitted.

A moratorium on the ordinance is recommended to revisit the search area required by the city of 1,000 feet for co-location purposes. This applicant expanded the search area for its use, but it was not required. In addition, other factors may be useful to consider given that there are likely to be more applications for wireless towers in the future to reach homes and businesses not currently served or with low service.

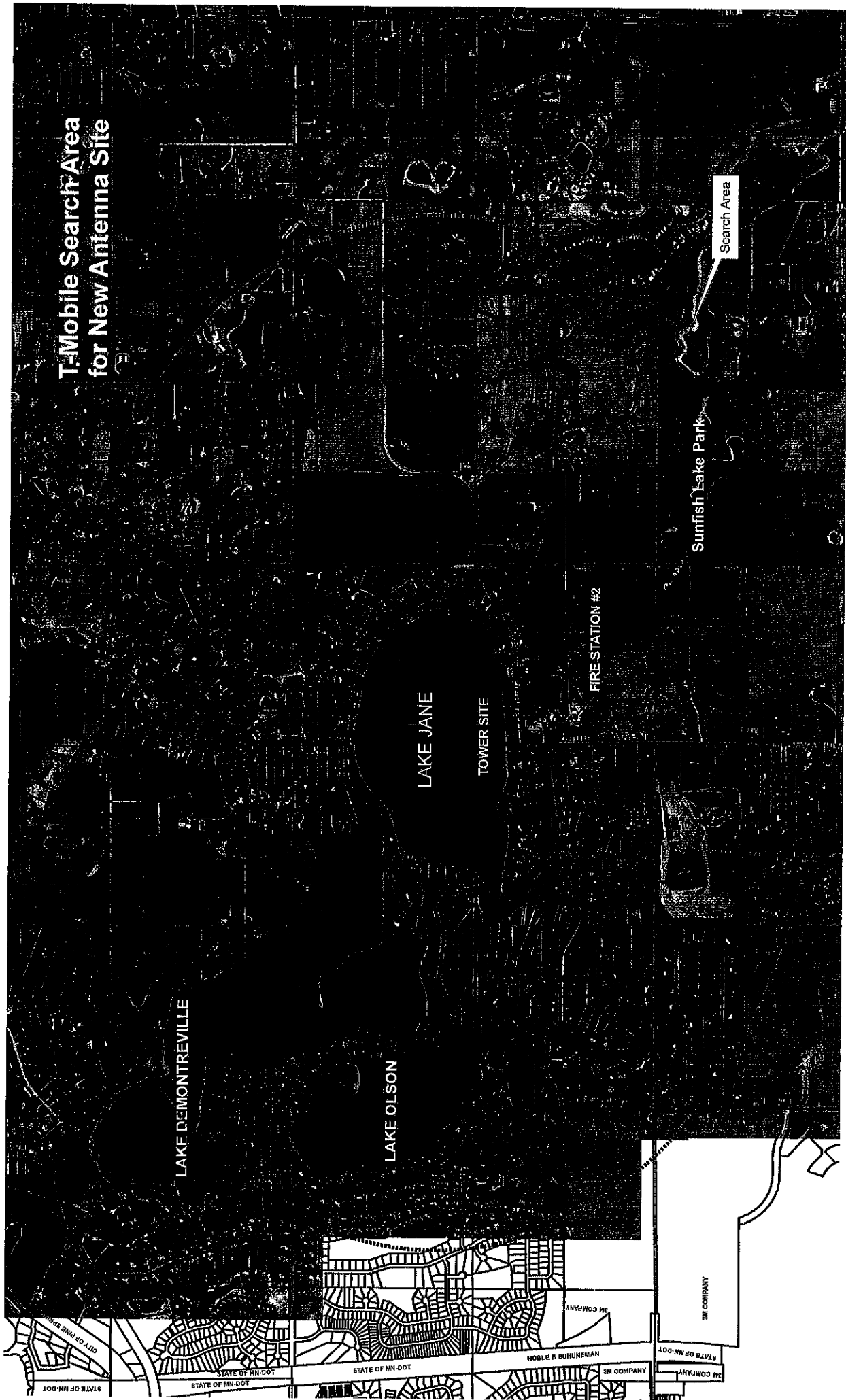
ORDER OF BUSINESS FOR WORKSHOP PRESENTATION AND DISCUSSION

Introduction and Report	Kyle Klatt, Planning Director Jerry Filla, City Attorney, legal perspective
Questions to presenters	Mayor and Councilmembers
Statement from applicant	FMHC Communications representative
Questions to presenters	Mayor and Councilmembers
Questions/comments to all presenters from the public	Mayor facilitates
Discussion	Mayor and Councilmembers
Direction	City Council

ATTACHMENTS

SEE TABLE OF CONTENTS

T-Mobile Search Area
for New Antenna Site



LAKE D'EMONTREVILLE

LAKE OLSON

LAKE JANE

TOWER SITE

FIRE STATION #2

Sunfish Lake Park

Search Area

Tower Search Radius
Olinger Site

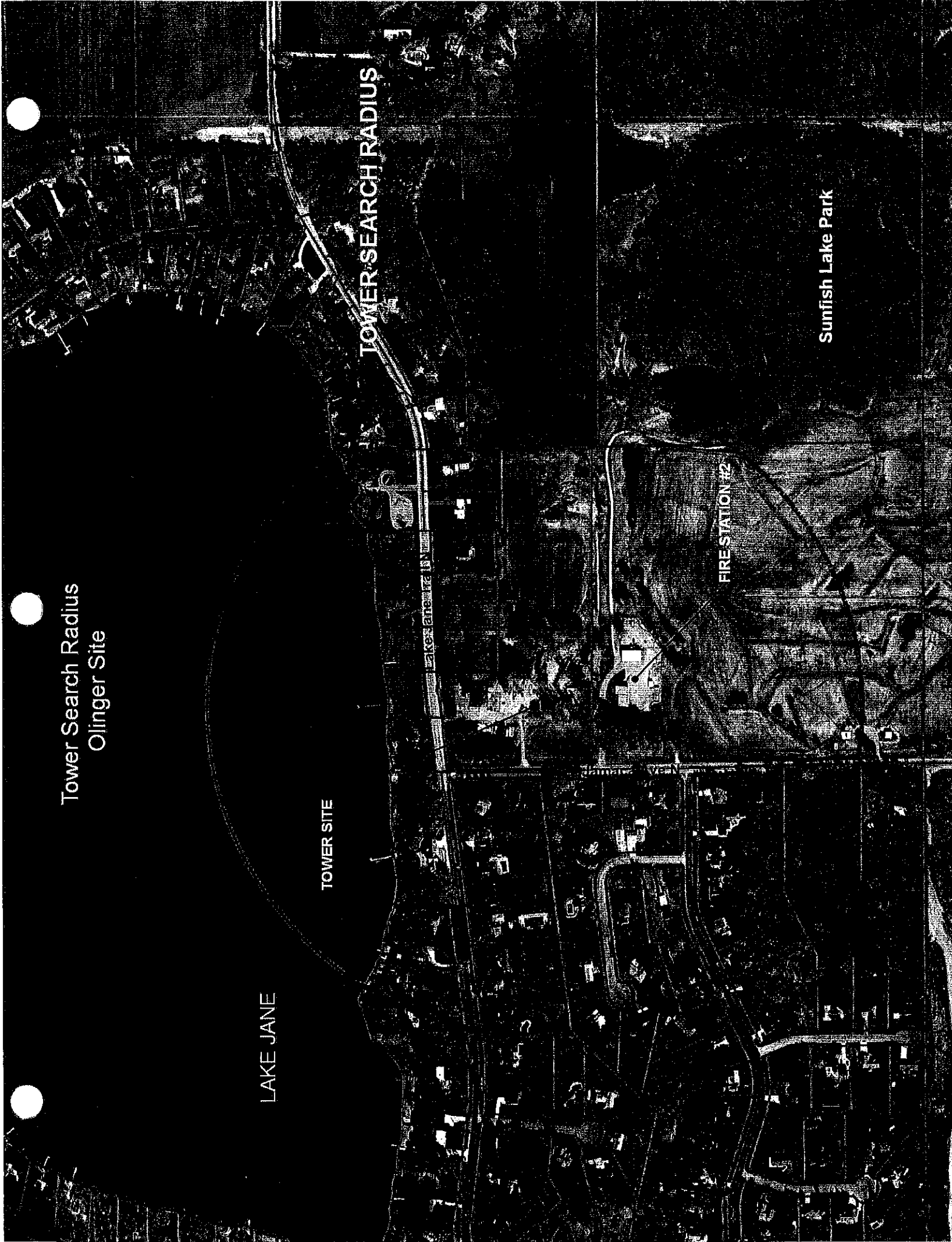
LAKE JANE

TOWER SITE

TOWER SEARCH RADIUS

FIRE STATION #2

Sunfish Lake Park



Memorandum

From: Thierry Colson, Senior RF Engineer, T-Mobile USA

Date: 3/31/2008

Re: Lake Elmo ~~Fire Station 2, Lake Elmo~~, MN (A1N0672C)

OLIMIER
(*OLIMIER*
not Fire Station)

I am the Senior Engineer responsible for the design and location of this proposed site. I have been doing wireless network design for 12 years, and have planned and built hundreds of sites. It is my intention to describe the goals and objectives of this particular location and to examine the other possible locations we've considered in this area.

I have attached a map of T-Mobiles current site locations in the Lake Elmo and surrounding area. Also indicated on this map is the proposed T-Mobile Tower at the Fire Station N2.

Our primary objective with this site is to provide new coverage in the City of Lake Elmo. It's important that this new coverage link and compliment the existing coverage. It's also important that we minimize the potential overlap in areas where the existing coverage is already of an acceptable quality. Our target objective is the area around Lake Jane. Currently in this area there is very poor or no coverage.

I have attached a map that is a computer generated depiction of our current coverage in our target area. The color scheme represents the general strength of the signals generated by our network. The green areas are the strongest, and represent a signal strong enough to penetrate most commercial and Residential buildings. The yellow is typically strong enough to provide service In-car. The last signal level displayed is the grey, and indicates areas where the signal is strong enough for outdoor coverage.

I have also attached a map using the same color scheme that depicts the coverage of our proposed site at the Fire Station. Comparing these two maps and the improvement in both the amount of our coverage and the strength of that coverage is very apparent.

For reference, I've also attached a map depicting the coverage as it would be if we were to abandon the Fire Station location site, and collocate on the Water Tower or the Xcel tower. This plan has two drawbacks. This location is only 1 mile from our existing site at the Oakdale WT on Hadley Avenue North. Secondly, it does not provide as much new coverage in the Northeastern portion of our target area as our proposed FS site does.

The frequencies used by our equipment will be restricted to the bands as follows:

Transmit : PCS B block (1950 to 1964), PCS C4 Block (1980 to 1985), AWS R3-E (2140 to 2145)
Receive : PCS B block (1870 to 1885), PCS C4 Block (1900 to 1905), AWS R3-E (1740 to 1745)

August 5, 2008

These bands apportioned to T-Mobile by the FCC are well isolated from other bands used by public safety communication systems. There have been no incidences of interference with public safety systems on our existing sites, or any interference with consumer radio, television, or similar services.

Part of the license from the FCC states that we can not transmit outside of our assigned frequency blocks. One of the penalties listed is loss of our license. We take interference very seriously, and in the rare event that any interference occurred, we would work to correct it as quickly as possible.

CONCLUSION

I hope that this information will assist the Town in its decision-making process. I look forward to meeting with you and discussing the information included in this report as well as providing any additional information that you may require.

Sincerely,

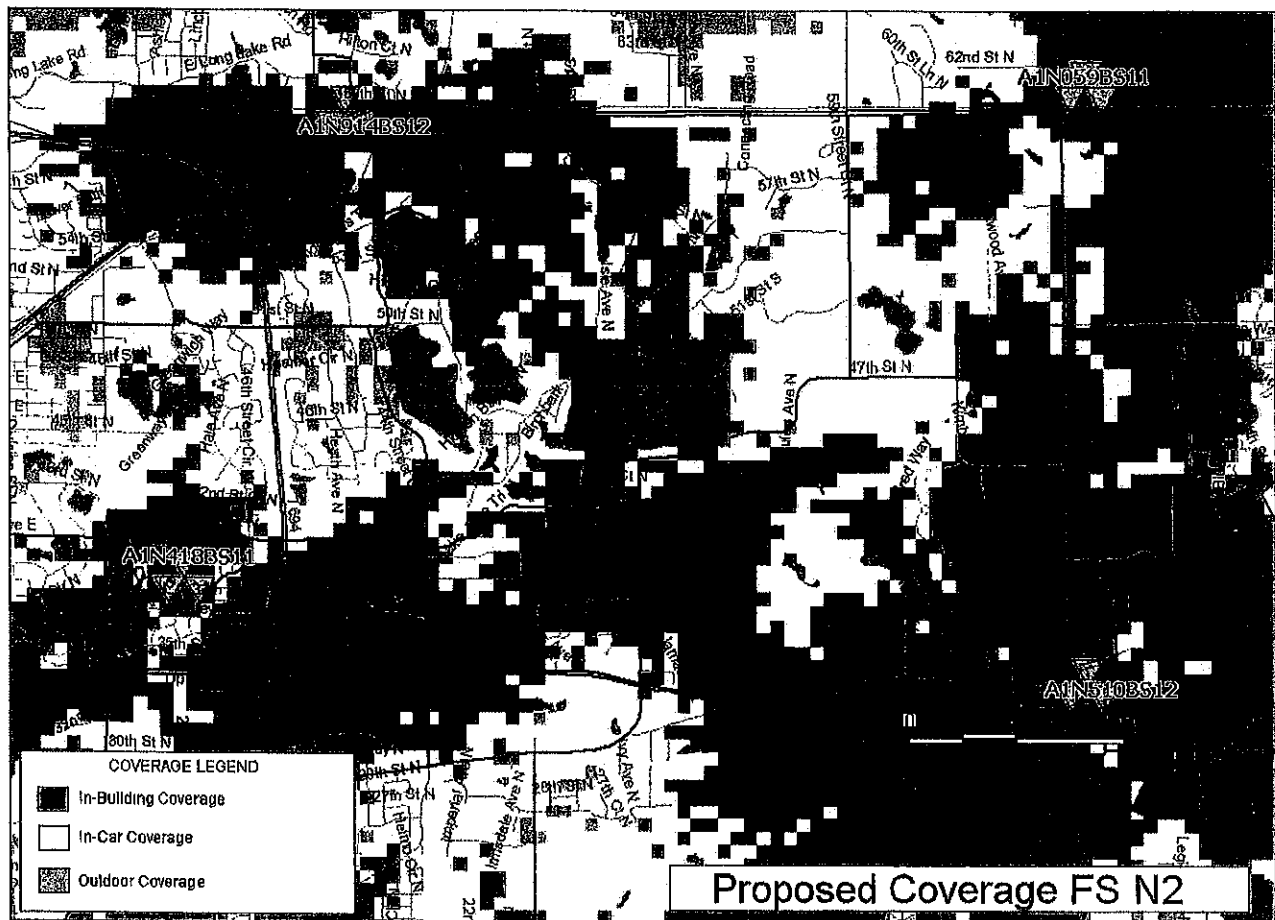
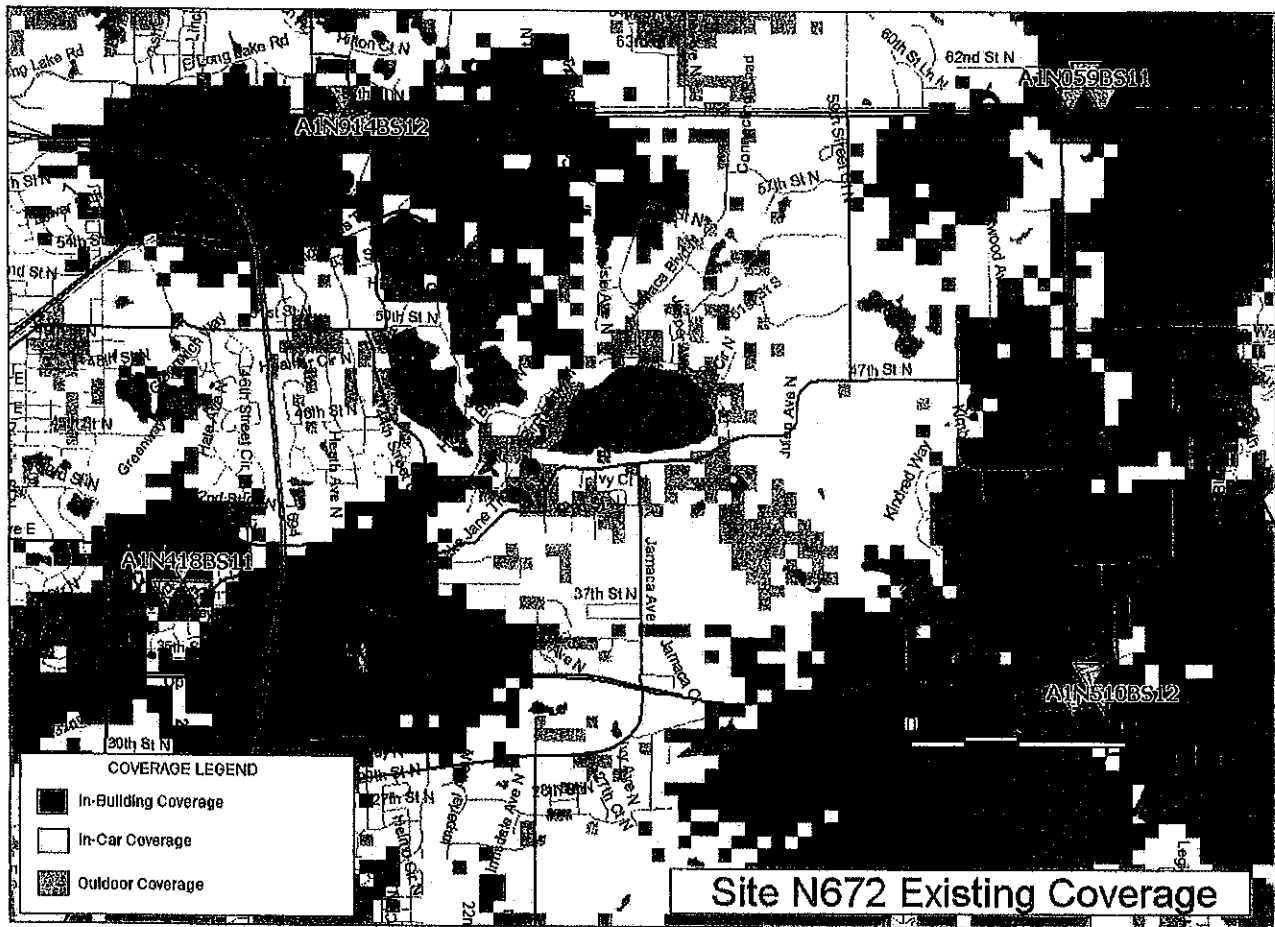
Thierry Colson
Sr RF Engineer

EXPLANATION OF COLOR KEY FOR COVERAGE AREAS

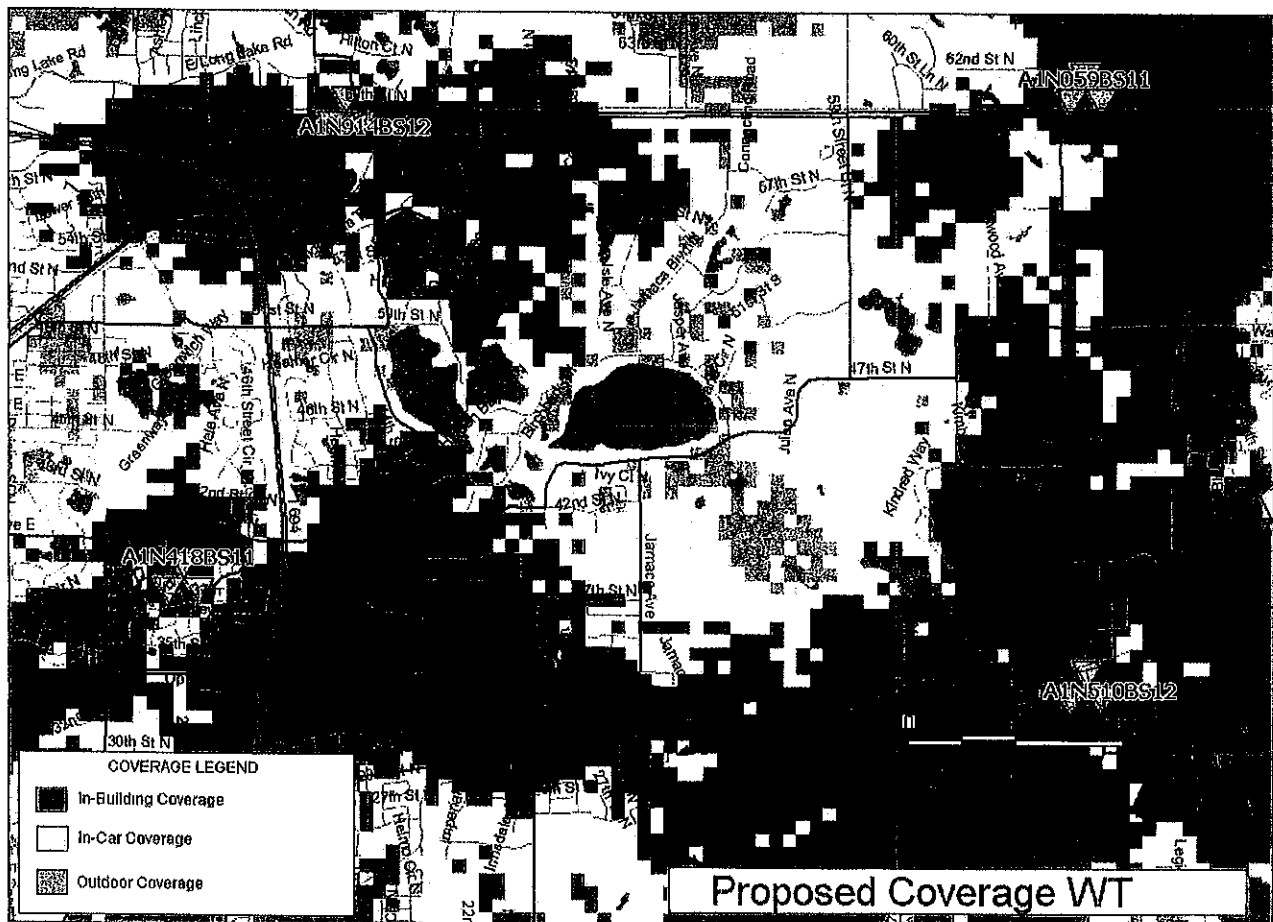
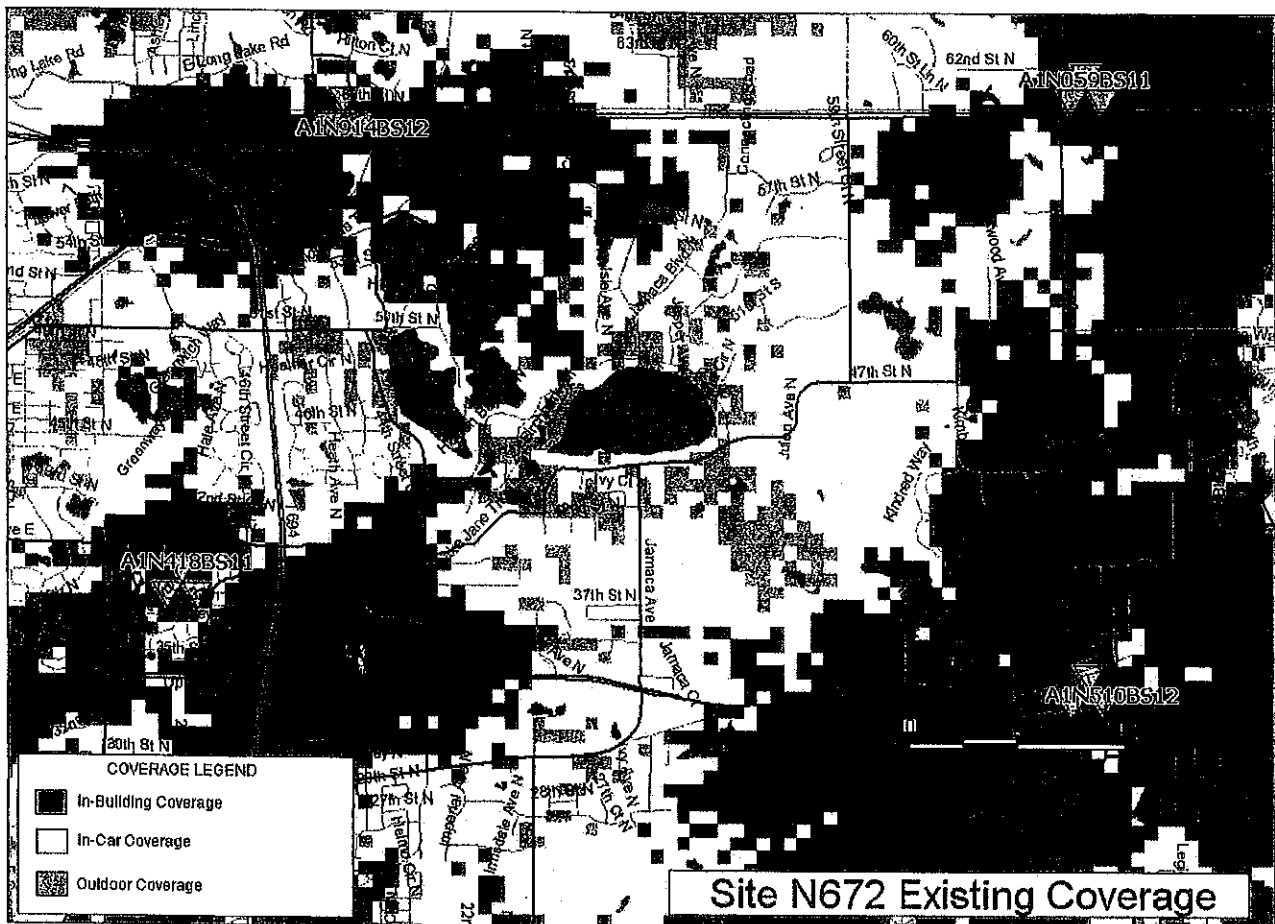
GREEN AREAS The green areas are the strongest signal and are strong enough to penetrate most commercial and residential buildings.

YELLOW AREAS: The yellow areas typically provide a signal that provides in – car coverage.

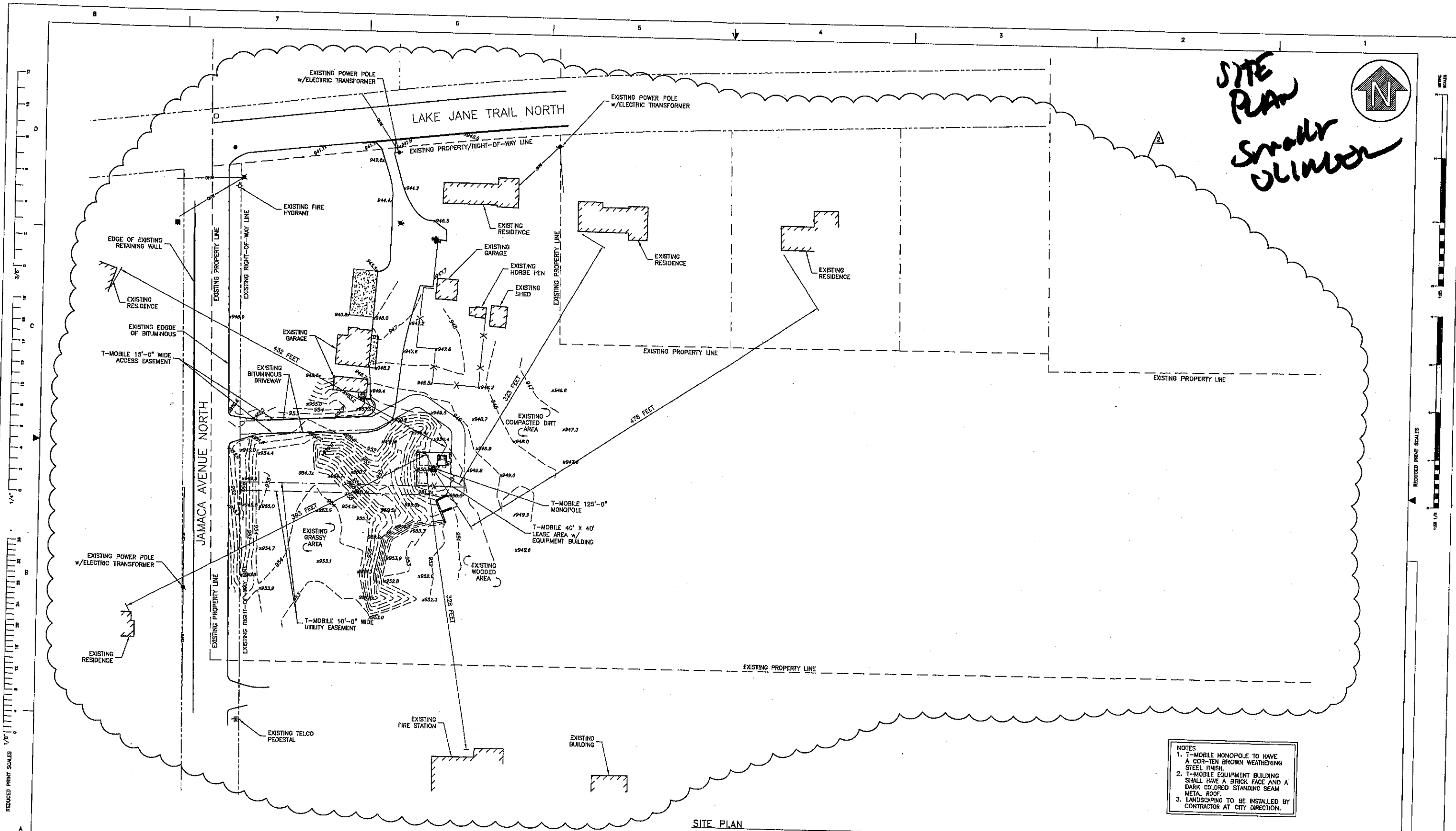
GREY AREAS: The grey areas provide only coverage for out of doors.







SITE PLAN
Smaller
Oliver



- NOTES**
1. T-MOBILE MONOPOLE TO HAVE A COR-TEN BROWN WEATHERING STEEL FINISH.
 2. T-MOBILE EQUIPMENT BUILDING SHALL HAVE A BRICK FACE AND A DARK COLORED STANDING SEAM METAL ROOF.
 3. LANDSCAPING TO BE INSTALLED BY CONTRACTOR AT CITY DIRECTION.

SITE PLAN
 SCALE: 1" = 50'-0" (1/4" = 125'-0")

REV	DATE	REVISION DESCRIPTION	DESIGN	APPROVED	RF	PH	OP	INSTALL	REFERENCE DRAWINGS
1	7/30/08	ISSUED FOR PROPOSAL	JG						
2	8/18/08	UPDATED SURVEY DATA	CM						
			PAR						

T-Mobile
 MINNEAPOLIS MARKET

NOTICE: THIS DRAWING HAS NOT BEEN PUBLISHED AND IS THE SOLE PROPERTY OF T-MOBILE - MINNEAPOLIS MARKET AND IS LOANED TO THE BORROWER FOR THEIR CONFIDENTIAL USE ONLY, AND IN CONSIDERATION OF THE LOAN OF THIS DRAWING, THE BORROWER PROMISES AND AGREES TO RETURN IT UPON REQUEST AND AGREES THAT IT WILL NOT BE REPRODUCED, COPIED, LENT OR OTHERWISE DISPOSED OF DIRECTLY OR INDIRECTLY, NOR USED FOR ANY PURPOSE OTHER THAN WHICH IT IS FURNISHED.

I hereby certify that this plan specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Signature: _____
 Title: _____
 Date: _____
 Reg. No.: 17852

DESIGNED BY	DATE
J. GEISTFELD	7/30/08
CHECKED BY	DATE
C. MILLER	8/1/08
APPROVED BY	DATE
CLIENT APPROVAL	DATE

LAKE ELMO - OLINGER PROPERTY
A1N672
SITE PLAN

9057 LAKE JANE TRAIL NORTH
 LAKE ELMO, MINNESOTA

SCALE: AS NOTED
 DRAWING NUMBER: **A1N672-C1**
 REV: **2**

SET BACKS



Kelly Jane Swenseth
FMHC Corporation
2901 Metro Drive, Suite 225
Bloomington, MN 55425
Office: 952-831-1043
Cellular: 218-791-0382
kswenseth@fmhc.com

AIN0672-D

**Memorandum
of
Lease**

**Drafted By: Vicky Sampah
T-Mobile Central
2001 Butterfield Rd
Downers Grove, IL. 60515**

Site Number: AIN0672

Site Name: Olinger
Market: Minneapolis

MEMORANDUM OF LEASE

Assessor's Parcel Number:

Between Daniel Olinger and Jean Olinger, a husband and wife ("Landlord") and T-Mobile Central LLC, a Delaware limited liability company ("Tenant")

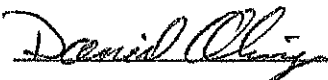
A Ground Lease with Option (the "Lease") by and between Daniel Olinger and Jean Olinger, a husband and wife ("Landlord") and T-Mobile Central LLC, a Delaware limited liability company ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes


The Lease is for a term of (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for four (5) additional and successive (5) year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

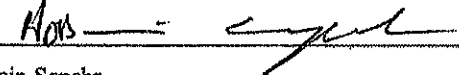
LANDLORD: Daniel Olinger

✓ By: 
Printed Name: Daniel Olinger
Title: Husband
Date: 8-05-08

LANDLORD: Jean Olinger

✓ By: 
Printed Name: Jean Olinger
Title: Wife
Date: 8-5-08

TENANT: T-Mobile Central LLC, a Delaware limited liability company

By: 
Printed Name: Hossein Sepehr
Title: Area Director of Network Engineering & Operations
Date: 9/15/08
Printed Name: _____

[Notary block for Landlord]

STATE OF MINNESOTA

COUNTY OF WASHINGTON

)
) ss.
)

This instrument was acknowledged before me on Aug 5, 2008 by Daniel Olinger, husband.

Dated: August 5, 2008



(Use this space for notary stamp/seal)

Patricia A. Conlin
Notary Public

Print Name Patricia A. Conlin

My commission expires 1.31.2010

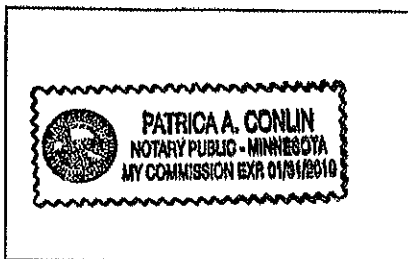
STATE OF MINNESOTA

COUNTY OF WASHINGTON

)
) ss.
)

This instrument was acknowledged before me on Aug 5, 2008 by Jean Olinger, wife.

Dated: August 5, 2008



(Use this space for notary stamp/seal)

Patricia A. Conlin
Notary Public

Print Name Patricia A. Conlin

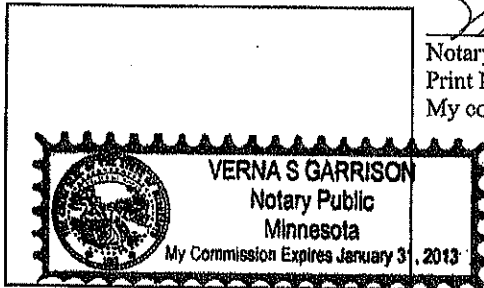
My commission expires 1.31.2010

[Notary block for Tenant]

STATE OF Minnesota)
COUNTY OF Hennepin) ss.

I certify that I know or have satisfactory evidence that Hossein Sepehr is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Network Engineering & Operations of T-Mobile Central LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: Sept 15, 08



(Use this space for notary stamp/seal)

Verna S. Garrison
Notary Public
Print Name Verna S Garrison
My commission expires Jan 31, 2013

Memorandum of Lease Exhibit A
Legal Description

The Property is legally described as follows:

That part of the East 186.00 feet of the West 405.00 feet of Government Lot 5 of Section Township 29 North, Range 21 West, Washington County, Minnesota lying northerly of the S. 1711.82 feet thereof, as measured at a right angle to the south line of said Government Lot 5, containing 1.97 acres, more or less, EXCEPT a 66.00 wide road parcel over that part of the above described tract lying 33.00 feet each side of the following described center line:

Commencing at the Southwest corner of said Government Lot 5; thence North 01 degree 42 minutes 37 seconds West, bearing oriented to the Washington County Coordinate System, South Zone, along the West line of said Government Lot 5 a distance of 1943.00 feet to the center line of Lake Jane Trail as presently traveled and the point of beginning; thence North 82 degrees 06 minutes 53 seconds East along said center line 218.31 feet; thence easterly along said center line and a tangential curve, concave to the south, having a radius of 3926.21 feet and a central angle of 02 degrees 45 minutes 10 seconds, a distance of 188.64 feet to the east line of the West 405.00 feet of said Government Lot 5 and said center line there terminate.

Proposed Lease



7415 WAYZATA BOULEVARD | MINNEAPOLIS MN 55426 | 952-546-8837 | www.efnsurvey.com

August 15, 2008

**PROPOSED LEASE TRACT, UTILITY &
ACCESS EASEMENT DESCRIPTIONS FOR:
T-MOBILE USA, INC.,
SITE A1N0672-Lake Elmo, MN
"Daniel Olinger"**

PROPOSED LEASE TRACT DESCRIPTION:

An area for lease tract purposes over, under and across that part of Government Lot 5, Section 10, Township 29 North, Range 21 West of the Fourth Principal Meridian, Washington, Minnesota described as follows:

Commencing at the southwest corner of said Government Lot 5; thence North 00 degrees 53 minutes 21 seconds West, bearings based on Washington County Coordinate Grid, along the west line of said Government Lot 5 a distance of 1543.70 feet; thence on a bearing of East a distance of 240.17 feet to the point of beginning of the lease tract to be described; thence on a bearing of North a distance of 40.00 feet; thence on a bearing of East a distance of 40.00 feet; thence on a bearing of South a distance of 40.00 feet; thence on a bearing of West a distance of 40.00 feet to said point of beginning.

Said lease tract contains 1,600 square feet.

PROPOSED UTILITY EASEMENT DESCRIPTION:

An easement for utility purposes 10.00 feet in width, over, under and across Government Lot 5, Section 10, Township 29 North, Range 21 West of the Fourth Principal Meridian, Washington, Minnesota. The center line of said easement is described as follows:

Commencing at the southwest corner of said Government Lot 5; thence North 00 degrees 53 minutes 21 seconds West, bearings based on Washington County Coordinate Grid, along the west line of said Government Lot 5 a distance of 1543.70 feet; thence on a bearing of East a distance of 295.17 feet; thence on a bearing of South a distance of 5.00 feet to the point of beginning of the center line to be described; thence on a bearing of West a distance of 262.08 feet to the east line of Jamaica Avenue North and said center line there terminating.

Said utility easement contains 2,621 square feet.



Egdon, Field & Nowak, Inc.

7415 WAYZATA BOULEVARD 1 MINNEAPOLIS MN 55426 1 952-546-6937 1 www.efnsurvey.com

PROPOSED ACCESS EASEMENT DESCRIPTION:

An easement for access purposes 15.00 feet in width, over, under and across Government Lot 5, Section 10, Township 29 North, Range 21 West of the Fourth Principal Meridian, Washington, Minnesota. The center line of said easement is described as follows:

Commencing at the southwest corner of said Government Lot 5; thence North 00 degrees 53 minutes 21 seconds West, bearings based on Washington County Coordinate Grid, along the west line of said Government Lot 5 a distance of 1543.70 feet; thence on a bearing of East a distance of 287.67 feet to the point of beginning of the center line to be described; thence on a bearing of North a distance of 52.77 feet; thence northwesterly a distance of 31.20 feet along a tangential curve, concave to the southwest, having a radius of 32.50 feet and a central angle of 55 degrees 00 minutes 00 seconds; thence North 55 degrees 00 minutes 00 seconds West, tangent to said curve, a distance of 19.35 feet; thence westerly a distance of 36.79 feet along a tangential curve, concave to the south, having a radius of 32.50 feet and a central angle of 64 degrees 51 minutes 53 seconds; thence South 60 degrees 08 minutes 07 seconds West, tangent to the last described curve, a distance of 32.54 feet; thence westerly a distance of 15.04 feet along a tangential curve, concave to the north, having a radius of 32.50 feet and a central angle of 26 degrees 31 minutes 04 seconds; thence South 86 degrees 39 minutes 11 seconds West, tangent to the last described curve, a distance of 148.85 feet to the east line of Jamaica Avenue North and said center line there terminating.

Said access and utility easement contains 5,048 square feet.

Warren E. Peterson
Jerome P. Filla
Daniel Witt Fram
Glenn A. Bergman
John Michael Miller
Michael T. Oberle
Steven H. Bruns*
Paul W. Fahning*
Sonja R. Ortiz
Amy K. L. Schmidt
Ben J. Rust
Jonathan R. Cuskey
Jared M. Goerlitz



Suite 800
55 East Fifth Street
St. Paul, MN 55101-1718
(651) 291-8955
(651) 228-1753 facsimile
www.pfb-pa.com

(651)290-6907
jfilla@pfb-pa.com

November 6, 2008

Kyle Klatt
City Planning Director
City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

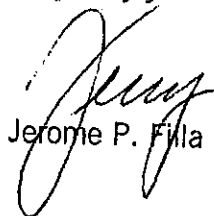
RE: Wireless Telecommunication Tower
Lake Jane Trail

Kyle:

Although wireless telecommunication towers are not listed as a permitted, conditional or accessory use in the agricultural or residential zoning districts of the City, this type of use is allowed in those zoning districts if located on parcels greater than ten (10) acres (City Code Section 150.113(C)); or if located on parcels less than ten (10) acres if the tower and support facilities are located within 100 feet of the right of way of a public utility transmission line (City Code Section 150.112(A)). However, the applicant must comply with the provisions of City Code Sections 150.110-150.126.

If you have any questions, please contact me.

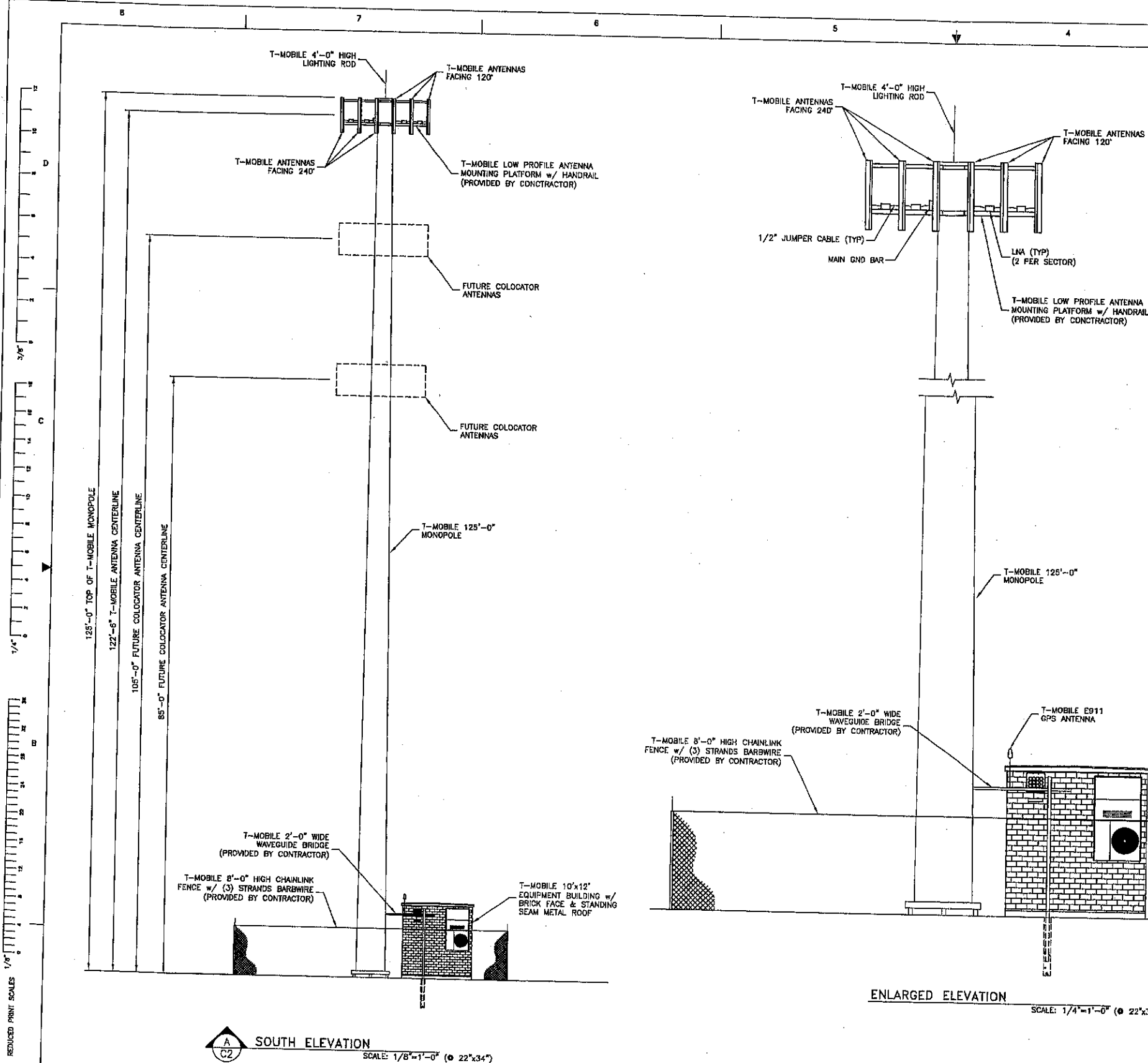
Very truly yours,



Jerome P. Filla

JPF/jmt

ANTENNA - TOWER



LNA REQUIREMENTS		
NO.	TYPE	SECTOR (DEGREES)
1	ETW190VS12UB LNA/TMA PER SECTOR	0°
2	ETW200VS12UB LNA/TMA PER SECTOR	0°
3	ETW190VS12UB LNA/TMA PER SECTOR	120°
4	ETW200VS12UB LNA/TMA PER SECTOR	120°
5	ETW190VS12UB LNA/TMA PER SECTOR	240°
6	ETW200VS12UB LNA/TMA PER SECTOR	240°

NOTES:
1. CONTRACTOR SHALL SET ALL T-MOBILE ANTENNAS TO ZERO DEGREES ELECTRICAL DOWNTILT AT TIME OF INSTALLATION.
2. T-MOBILE RF ENGINEERS WILL THEN SET TO PROPER TILT AT SITE TURN-UP.

NOTES:
1. T-MOBILE MONOPOLE TO HAVE A COR-TEN BROWN WEATHERING STEEL FINISH.
2. T-MOBILE EQUIPMENT BUILDING SHALL HAVE A BRICK FACE AND A DARK COLORED STANDING SEAM METAL ROOF.
3. LANDSCAPING TO BE INSTALLED BY CONTRACTOR AT CITY DIRECTION.

ANTENNA AND COAXIAL CABLE REQUIREMENTS						
NO.	ANTENNA		CONNECTION	COAXIAL CABLE		COLOR CODE
	TYPE	SECTOR DOWNTILT (DEGREES)		LENGTH	DIA.	
A1	TMBX-8516-R2M	0°	R1	170'	7/8"	RED
			R3	170'	7/8"	TRIPLE RED
			R4	170'	7/8"	QUAD RED
A2	TMBX-8516-R2M	0°	R2	170'	7/8"	DOUBLE RED
			R5	170'	7/8"	(5) RED
			R6	170'	7/8"	(6) RED
B1	TMBX-8516-R2M	120°	Y1	170'	7/8"	YELLOW
			Y3	170'	7/8"	TRIPLE YELLOW
			Y4	170'	7/8"	QUAD YELLOW
B2	TMBX-8516-R2M	120°	Y2	170'	7/8"	DOUBLE YELLOW
			Y5	170'	7/8"	(5) YELLOW
			Y6	170'	7/8"	(6) YELLOW
B3	TMBX-8516-R2M	120°	B1	170'	7/8"	BLUE
			B3	170'	7/8"	TRIPLE BLUE
			B4	170'	7/8"	QUAD BLUE
C1	TMBX-8516-R2M	240°	B2	170'	7/8"	DOUBLE BLUE
			B5	170'	7/8"	(5) BLUE
			B6	170'	7/8"	(6) BLUE
C2	TMBX-8516-R2M	240°	B3	170'	7/8"	TRIPLE BLUE
			B4	170'	7/8"	QUAD BLUE
			B5	170'	7/8"	(5) BLUE
C3	TMBX-8516-R2M	240°	B6	170'	7/8"	(6) BLUE
			B1	170'	7/8"	BLUE
			B2	170'	7/8"	DOUBLE BLUE

* FOR MORE INFORMATION REFER TO STANDARD DRAWING ESS.

NOTE: T-MOBILE COAX CABLE SHALL BE AIA COAX CABLE.

- NOTES:
- ANTENNA CABLE LENGTHS HAVE BEEN DETERMINED BASED ON THESE PLANS. CABLE LENGTHS LISTED ARE APPROXIMATE AND ARE NOT INTENDED TO BE USED FOR FABRICATION. DUE TO FIELD CONDITIONS ACTUAL ANTENNA CABLE LENGTHS REQUIRED MAY VARY FROM LENGTHS TABULATED.
 - ALL ANTENNA/COAX CABLES TO BE COLOR CODED AT THREE (3) LOCATIONS USING 1/2" WIDE PVC ELECTRICAL TAPE.
 - TOP OF TOWER (ANTENNA LEVEL)
 - BASE OF TOWER
 - AT BTS CABINET CONNECTION POINT
 - ANTENNA/COAX CABLES SHALL UTILIZE GROUND KITS GROUNDED AT THREE (3) POINTS OF TOWER AS FOLLOWS:
 - TOP OF TOWER (ANTENNA LEVEL) ONE END MECHANICALLY CONNECTED TO TOWER.
 - BOTTOM OF TOWER ONE END MECHANICALLY CONNECTED TO GROUND BAR.
 - AT BTS CABINET CONNECTION POINT.
 - ANTENNA SECTORS SHALL BE MEASURED WITH TRUE NORTH AS SHOWN ON THE SITE PLAN. MAGNETIC NORTH IS 2.5° EAST OF TRUE NORTH.

E911 ANTENNA REQUIREMENTS				
NO.	ANTENNA		COAXIAL CABLE	
	TYPE	SECTOR (DEGREES)	LENGTH	COLOR CODE
1	GPS L1 (58632A)	-	20'	1/4"

DOWNTILT CONTROL REQUIREMENTS				
NO.	COAXIAL CABLE		COAXIAL CABLE	
	TYPE	SECTOR (DEGREES)	LENGTH	COLOR CODE
1	ATCB-B01 SERIES	0°	170'	1/4"

REV	DATE	REVISION DESCRIPTION	DESIGN	APPROVED	RF	FN	OP	INSTALL	REFERENCE DRAWINGS
1	7/30/08	ISSUED FOR PROPOSAL	CHK						
2	8/18/08	UPDATED SURVEY DATA	JAG						
			CM						
			RR						

T-Mobile
MINNEAPOLIS MARKET

NOTICE: THIS DRAWING HAS NOT BEEN PUBLISHED AND IS THE SOLE PROPERTY OF T-MOBILE - MINNEAPOLIS MARKET AND IS LOANED TO THE BORROWER FOR THEIR CONFIDENTIAL USE ONLY. AND IN CONSIDERATION OF THE LOAN OF THIS DRAWING, THE BORROWER PROMISES AND AGREES TO RETURN IT UPON REQUEST AND AGREES THAT IT WILL NOT BE REPRODUCED, COPIED, LENT OR OTHERWISE DISPOSED OF DIRECTLY OR INDIRECTLY, NOR USED FOR ANY PURPOSE OTHER THAN WHICH IT IS FURNISHED.

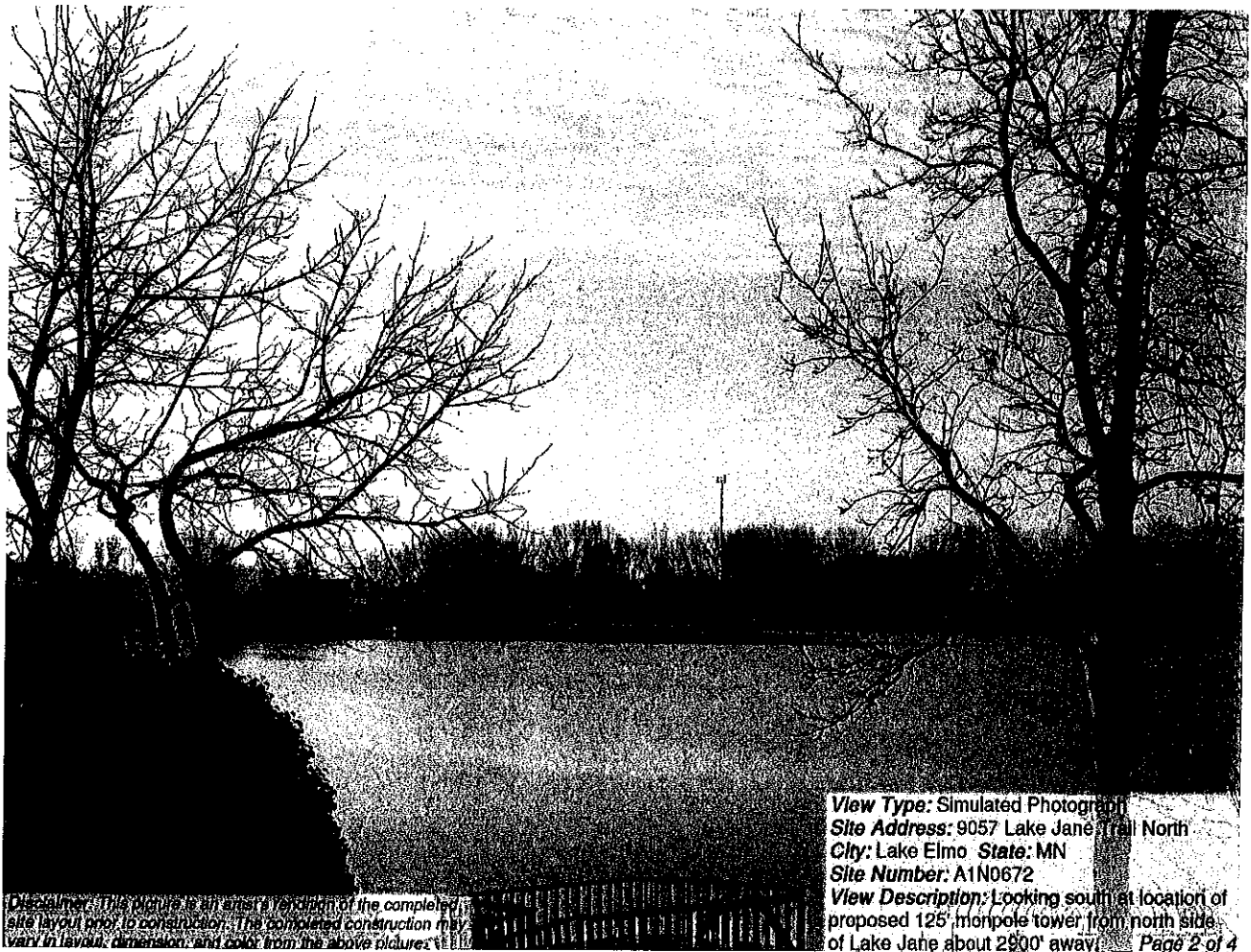
I hereby certify that this plan specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

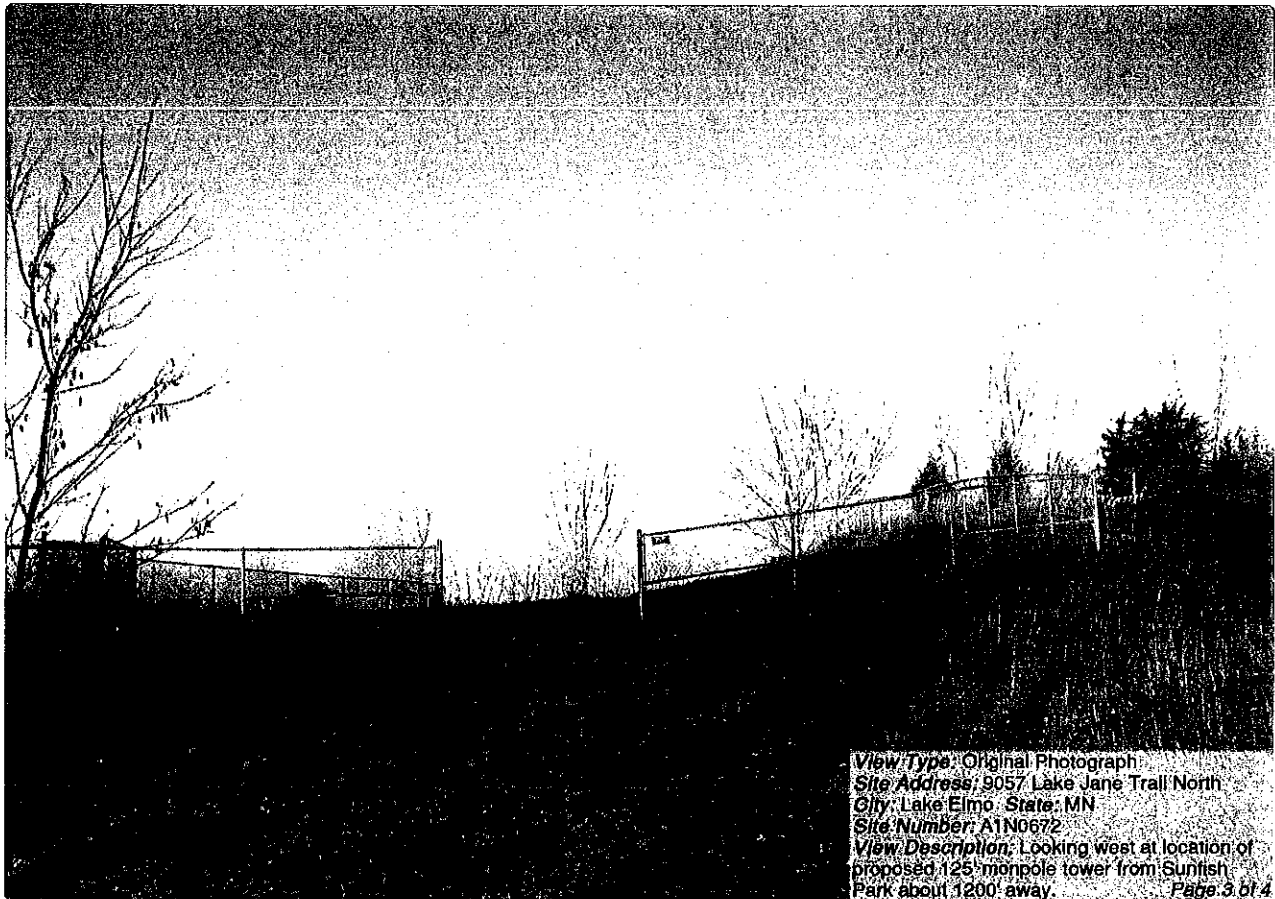
Signature: _____
Typed or Printed Name: MICHAEL HACHEY
Date: _____
Reg. No.: 17852

PROJECT NO.		LAKE ELMO - OLINGER PROPERTY A1N672 ANTENNA INFO. & TOWER ELEVATION	
DESIGNED BY J. GEISTFELD	DATE 7/30/08		
CHECKED BY C. MILLER	DATE 8/1/08		
APPROVED BY	DATE		
CLIENT APPROVAL	DATE		
SCALE AS NOTED	DRAWING NUMBER A1N672-A1	REV 2	

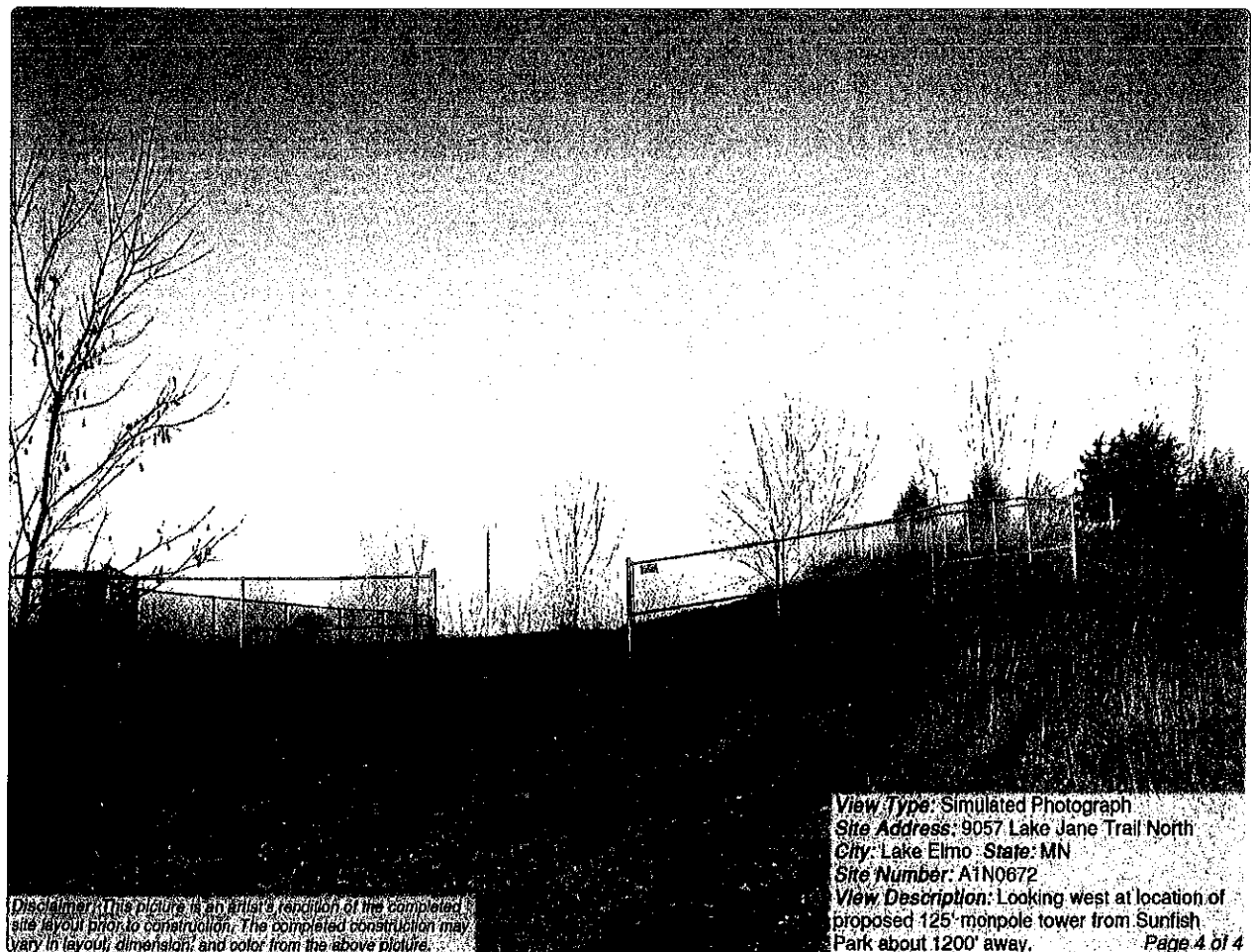








View Type: Original Photograph
Site Address: 9057 Lake Jane Trail North
City: Lake Elmo, State: MN
Site Number: A1N0672
View Description: Looking west at location of
proposed 125' monopole tower from Sunfish
Park about 1200' away. Page 3 of 4



View Type: Simulated Photograph
Site Address: 9057 Lake Jane Trail North
City: Lake Elmo, State: MN
Site Number: A1N0672
View Description: Looking west at location of
proposed 125' monopole tower from Sunfish
Park about 1200' away. Page 4 of 4

Disclaimer: This picture is an artist's rendition of the completed site layout prior to construction. The completed construction may vary in layout, dimension, and color from the above picture.

SUNFISH LAKE PARK PHOTOS

(Arrows indicate approximate location of tower)

Photo 1 – Western Edge of Park/Landfill Boundary



Photo 2 – Northern Edge of Park/Exterior Trail



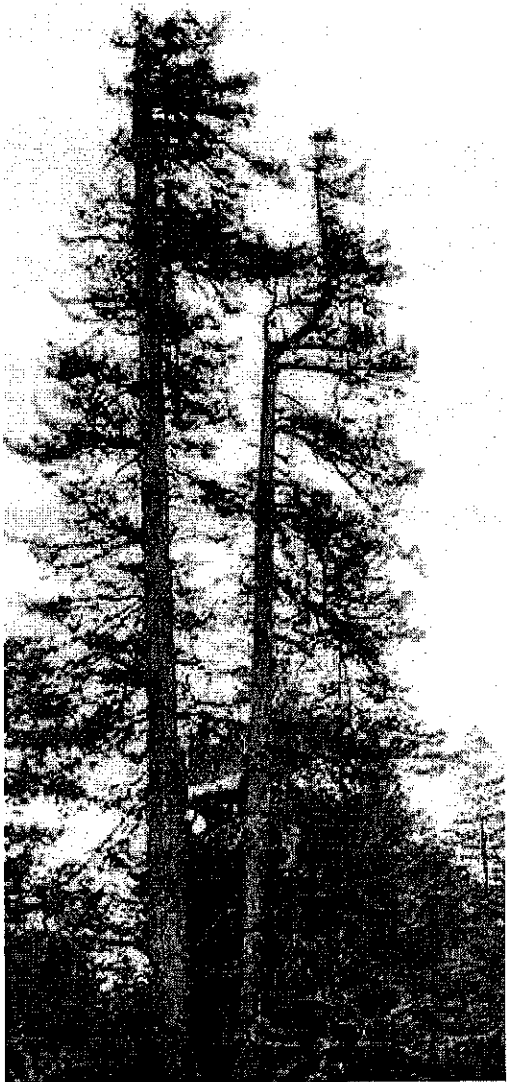
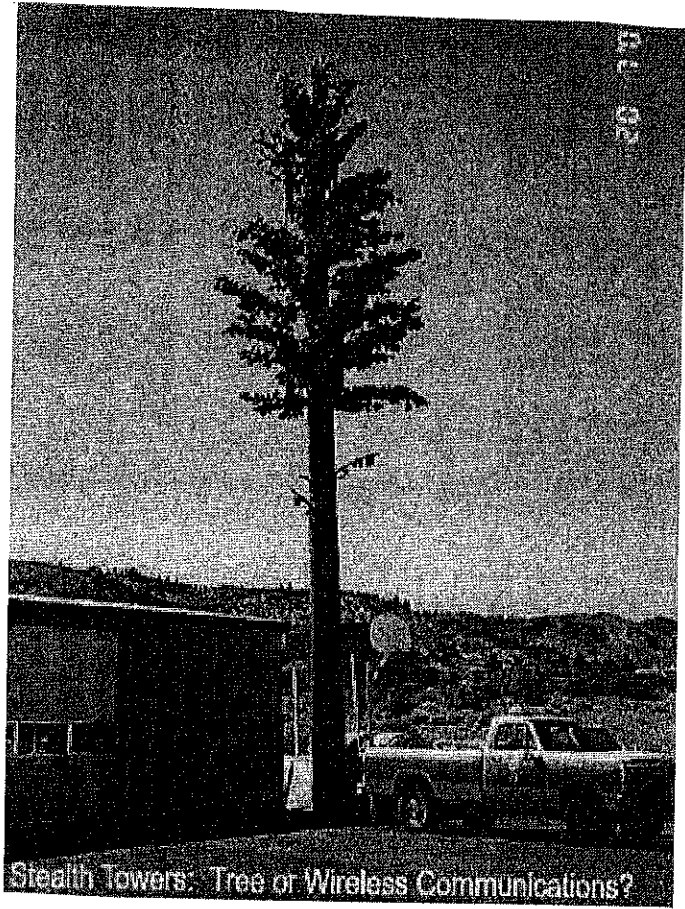
Photo 3 – Access Trail to Western Entrance to Park



Photo 4 – Fire Station No. 2 Parking Lot



ANTENNA TOWERS DESIGNED AS TREES FROM WEB SITE



Warren E. Peterson
Jerome P. Filla
Daniel Witt Fram
Glenn A. Bergman
John Michael Miller
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November 24, 2008

ATTORNEY-CLIENT PRIVILEGE

Susan Hoyt
City Administrator
City of Lake Elmo
3800 Laverne Ave. North
Lake Elmo, MN 55042

RE: Telecommunications Act of 1996
Local Zoning Authority

Susan:

The Telecommunications Act of 1996 (Act) was adopted by congress to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunication technologies". Generally, the Act conveys exclusive jurisdiction over these matters to the Federal Communications Commission, but reserves zoning authority for local units of government.

Sections 704(a)(7) of the Act is entitled "Preservation of Local Zoning Authority" and reads as follows:

- A. General Authority. Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.
- B. Limitations.
 - (i). The regulation of the placement, construction and modification of personal wireless service facilities by any state or local government or instrumentality thereof:
 - I. Shall not unreasonably discriminate among providers of functionally equivalent services; and

II. Shall not prohibit or have the effect of prohibiting the provision of personal wireless service.

- (ii). A state or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
- (iii). Any decision of a state or local government or instrumentality thereof to deny a request to replace, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in the written record.
- (iv). No state or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities to the extent that such facilities comply with Commission's regulations concerning such emissions.
- (v). Any person adversely affected by any final action or failure to act by state or local government or instrumentality thereof that is inconsistent with this subparagraph, within 30 after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action in an expedited basis. Any person adversely affected by an act, or failure to act by a state or local government, or any instrumentality thereof that is inconsistent with clause (iv) may petition the court for relief.

C. Definitions. For purposes of this subparagraph:

- (i). The term "personal wireless service" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
- (ii). The term "personal wireless service facilities" means facilities for the provision of personal wireless services; and
- (iii). The term "unlicensed wireless service" means the offering of telecommunication services using duly authorized devices which do not require individual licenses, but does not mean the

provision of direct-to-home satellite services. (As defined in Section 303 (v).

In regard to the limitations that prohibit local governments from adopting regulations that prohibit personal wireless services; that require local governments to review applications within a reasonable time; and that require local governments to make written findings supported by substantial evidence when it denies a request, I offer the following comments:

A. Regulations/City Actions that Prohibit or Have the Effect of Prohibiting.

1. The City's current tower regulations allow personal wireless service facilities in a number of locations which should give service providers a number of siting options. Any amendments to the City's tower regulations should be viewed with this limitation in mind.
2. In order for the City to be able to determine if a denial of an application will have the effect of prohibiting personal wireless service, the City must receive engineering data as part of the application. If the data establishes that a proposed site is the only location where the personal wireless facility can be located, it could be argued that a denial of the application prohibits or has the effect of prohibiting the provision of personal wireless service.

B. Review of an Application within a Reasonable Time.

1. Currently there is no specific (days/months) timeline contained in the federal regulations.
2. In the absence of a specific federal standard, a court would probably look to state standards that apply to review of other actions by local governments. The Minnesota Standards are contained in Minnesota Statutes 15.99 which, by its terms, applies to "applications related to zoning, septic systems, watershed district review, soil and water conservation district review, and expansion of the metropolitan urban service area, for a permit, license, or other governmental approval of an action".
3. The Minnesota Supreme Court, in *Calm Waters, LLC vs. Kanabec Board of Commissioners* (756 N.W.2d. 716; S. Ct.

9/25/08), was asked to determine if a county's review of a subdivision application was covered by Minnesota Statutes 15.99. In a concurring, albeit nonbinding opinion, Justice Dietzen, who had extensive experience in municipal and land development law before becoming a Justice, addressed the issue and concluded that subdivisions were related to zoning and therefore governed by Minnesota Statutes 15.99. It's likely that the Minnesota sixty day rule would be applied to a local government's review of a personal wireless service facility permit application, even though this type of action is not specifically enumerated in Minnesota Statutes 15.99.

4. What is the relationship between the provisions of Minnesota Statutes 15.99 and the City's authority to adopt a moratorium?
 - a. If a city is adopting or amending its comprehensive plan or official controls, it can adopt an interim ordinance applicable to all or part of its jurisdiction for the purpose of protecting the planning process and the health, safety and welfare of its citizens (Minnesota Statutes 462.355, Subd. 4(a). "Official Controls" means ordinances and regulations which control the physical development of a city, county or town, or any part thereof, or any detail thereof and implement the general objectives of the comprehensive plan. Official controls may include ordinances establishing zoning, subdivision controls, site plan regulations, sanitary codes, building codes and official maps (Minnesota Statutes 462.352, Subd. 15).
 - b. However, the interim ordinance may not extend the timeline for agency actions set forth in Minnesota Statutes 15.99 with respect to any application filed prior to the effective date of the moratorium (Minnesota Statutes 462.355, Subd. 4C). For purposes of Minnesota Statutes 15.99, "agency" means a department, agency, board, commission, or other group in the executive branch of state government; a statutory of home or charter city, county, town, or school district; and metropolitan agency or regional entity or any other political subdivision of the state.

5. Although federal courts recognize a City's authority to adopt a moratorium, if necessary to review the impact of federal regulations on local control, the courts will apply the following criteria when determining whether the adoption of a moratorium would unreasonably extend the review:
 - a. What length of time has lapsed between the adoption of the ACT in 1996 and the implementation of a moratorium?
 - b. What are the circumstances which caused the local governmental unit to adopt a moratorium?
 - c. Was the moratorium adopted before or after a comprehensive regulatory scheme governing personal wireless service facilities was enacted?
 - d. Is the moratorium a de facto denial of an application and is the adoption of a moratorium the product of open and local hostility?
- C. Decision to Deny must be in Writing and Supported by Substantial Evidence. Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable person might accept as adequate to support a conclusion (Sprint Spectrum, LP vs. Jefferson County, 968F Supp. 1457; N.D. Ala. 1997). The City has the burden of proof (APT Minneapolis, Inc. vs. City of Maplewood (N.O. 1997-2082, 1998 WL. 634224; D. Minn. 1998)).

There is a relatively recent case which might be instructive as the City reviews revisions to its regulations and/or an application for a personal wireless service facility permit. In APT Minneapolis, Inc. vs. Stillwater Township (Fed. Supp. 2d. 2001 WL 1640069; D. Minn.), the Minnesota Federal District Court was asked to determine if Stillwater Township acted appropriately when using the adoption of a moratorium as a reason for denying APT's application for a conditional use permit to construct a personal wireless service facility. Briefly the facts were as follows:

1. APT had a significant gap in coverage in a certain area of the township. The coverage gap resulted in dropped calls, poor quality calls and inability to start and answer calls.
2. APT engineers determined that it was necessary to locate a tower at a specific site in the Township.

3. APT signed a lease with the private property owner.
4. APT had approval from the FCC.
5. APT applied to the Township for a conditional use permit which was required by the Township regulations.
6. The Township planner recommended approval (on three occasions).
7. The application was reviewed by the township staff and planning commission between 6/5/00 and 10/5/00. The Township planning commission acknowledged that the application complied with its regulations but recommended that the town board adopt a moratorium.
8. On October 11/12, 2000, without taking action on the application, the town board adopted a moratorium for the following reasons which were presented by citizens at public hearings:
 - a. The National Parks Service wanted a visual impact review.
 - b. The Minnesota Historical Society recommended a review of the tower impact on buildings within the area.
 - c. Technologies may have allowed alternative structures and heights to fulfill the communication need.
 - d. Substantial and organized residential opposition.
 - e. Regional interests required a coherent tower policy on a multi-jurisdictional basis within the St. Croix River area.
9. On October 26, 2000, the Township board denied the application for a conditional use permit because it had adopted a moratorium.
10. On November 13, 2000, the township was sued by APT. APT alleged that the Township's actions had the effect of prohibiting the provision of personal wireless service; that the Township did not review the application within a reasonable time; and that the Township's actions were not supported by substantial evidence in the written record.

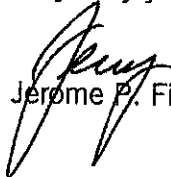
Although the court concluded that the Township board had provided written reason on the record contained, it did not think that the record contains substantial evidence because the concerns of the National Park Service had been satisfied; the

Susan Hoyt
November 24, 2008
Page 7

concerns of the Minnesota Historical Society had been satisfied; the applicant established that modifications based upon new technologies were not feasible in this particular case; the aesthetic concerns, decrease in property value concerns, and health affect concerns of residents were too generalized; and discussions for developing a region wide plan were still in the preliminary phases. Based upon all the circumstances in this case, the court concluded that the adoption of the moratorium by Stillwater Township was "more for purposes of delay then for legitimate reasons supported by substantial evidence" (APT, Supra, at p.15).

The City should proceed cautiously in determining whether to adopt a moratorium in this case, and if the City takes action on the current application for a personal wireless service facility permit, it should be sure to provide written reasons for its actions based upon substantial evidence contained within the record.

Very truly yours,


Jerome P. Filla

JPF/jmt

(B) Wind generator permits may be revoked by an affirmative vote of 3 Council members for noncompliance with the conditions of the permit.
(1997 Code, § 1385.06)

WIRELESS TELECOMMUNICATION TOWER PERMIT

§ 150.110 PURPOSE AND INTENT.

The wireless telecommunication tower permit regulations are intended to:

(A) Reasonably accommodate the provision of wireless telecommunication services to the general public;

(B) Minimize adverse visual effects of wireless telecommunication towers, antennae, or accessory equipment through careful design and siting standards;

(C) Avoid potential damage to adjacent properties from tower failures through structural standards and setback requirements; and

(D) Maximize the use of existing and approved towers, structures, and/or buildings for the location of new wireless telecommunication towers in order to reduce the number of the structures needed to accommodate wireless telecommunication services.

(1997 Code, § 1390.01) (Ord. 97-24, passed 1-21-1998)

§ 150.111 PERMIT REQUIRED.

No person shall install a wireless telecommunication facility or any portion thereof, at a height greater than is allowed for structures in the underlying zoning district without first being issued a wireless telecommunication tower permit.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.112 PROHIBITED AREAS.

Wireless telecommunication towers shall not be allowed in the following areas:

(A) Residentially zoned parcels of less than 10 acres unless the wireless telecommunication tower and ground facilities accessory thereto are located within 100 feet of the right-of-way of a public utility transmission line;

(B) Open space easements or conservation easements; and/or

(C) Airport impact zones without consent of the F.A.A.

(1997 Code, § 1390.03) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.113 ALLOWED TOWER SITES.

Applicants for a wireless telecommunication tower permit shall make a reasonable effort to locate the towers and accessory ground facilities in the following areas:

(A) On an existing public utility power line support structure, within an existing public utility power line right-of-way, or within 100 feet of the right-of-way;

(B) On publicly owned property, as approved by the City Council; and/or

(C) On agriculturally or residentially zoned parcels greater than 10 acres.

(1997 Code, § 1390.04) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.114 APPLICATION.

Applications for a wireless telecommunication tower permit shall be submitted on forms provided by the City Planner, which shall include the following information:

(A) A sketch drawn to scale acceptable to the City Planner and City Engineer which illustrates:

(1) The parcel on which the tower and accessory ground facilities;

(2) The buildings located and to be located on the tower parcel;

(3) The buildings located within 100 feet of the perimeter of the tower parcel; and

(4) Access easements as necessary to the tower parcel.

(B) A sketch drawn to scale or a photo image acceptable to the City Planner and City Engineer which illustrates the relative size of the proposed wireless telecommunication tower or existing structure on which the antenna will be located compared to structures located within 100 feet of the perimeter of the parcel on which the tower is located and which illustrates the visibility of the tower from adjoining parcels located within 100 feet of the perimeter of the parcel on which the tower is located. The City Planner may also require a visual impact demonstration including mock-ups and/or photo montages and plans for painting the tower;

(C) A report from a qualified and licensed professional engineer which:

- (1) Describes the wireless telecommunication tower height and design including a cross-section and elevation;
- (2) Certifies the wireless telecommunication tower's compliance with structural and electrical standards;
- (3) Documents the height above grade for the mounting positions, which can be used for co-location and the minimum separation distances between the co-location positions; and
- (4) Describes the wireless telecommunication tower's capacity to support antennae, including an example of the number and type of antennas that can be accommodated on the wireless telecommunication tower.

(D) A 2-year plan for wireless telecommunication facilities to be located within the city shall be submitted by the applicant. The city acknowledges that the plans are fluid and in all likelihood will change depending upon market demands for the service. The city will maintain an inventory of all existing and reasonably anticipated cell site installations. The applicant shall provide the following written information in each 2-year plan and the plan must be updated with each submittal for a new wireless telecommunication tower permit as necessary:

- (1) A description of the radio frequencies to be used for each technology;
- (2) A list of all existing sites to be upgraded or replaced, and proposed cell sites within the city for these services by the applicant; and
- (3) A presentation size map of the city, which shows the 2-year plan for cell sites, or if individual properties are not known, the geographic service areas of the cell sites.

(E) The cost of mailing addresses for all property owners of record located within 1,000 feet of the subject property to be complied by the city;

(F) An application fee in an amount prescribed from time to time by City Council resolution as necessary to reimburse the city for costs incurred to process the wireless telecommunication tower permit application;

(G) Confirmation that the applicant is properly licensed by the F.C.C., or is the authorized representative of a wireless telecommunication provider properly licensed by the F.C.C.;

(H) Written authorization from the property owner describing the area which will be subject to the tower lease and acknowledging that the property owner will be responsible for removal of the wireless telecommunication tower, antennae, and tower accessory equipment which is unused or abandoned for 12 consecutive months;

(I) Documentation of the steps to be taken by applicant to avoid causing destructive interference to co-located previously established public safety communications facilities; and

(J) A detailed landscape plan, which indicates how tower accessory equipment will be screened. (1997 Code, § 1390.05) (Ord. 97-24, passed 1-21-1998)

§ 150.115 PLANNING COMMISSION REVIEW.

(A) Upon receipt of a completed application, the City Planner shall schedule a hearing before the Planning Commission which shall be preceded by 10-days mailed notice to the record owners of property located with 1,000 feet of the parcel on which the tower will be located.

(B) The Planning Commission shall make recommendations to the City Council regarding the issuance of the wireless telecommunication tower permit and, in particular, in regard to the following:

(1) Compliance of application with the city regulations and development standards; and/or

(2) Proposed conditions, as necessary, to prevent the wireless telecommunication tower, antennae, and tower accessory equipment from becoming a nuisance to surrounding property owners. (1997 Code, § 1390.06) (Ord. 97-24, passed 1-21-1998)

§ 150.116 CITY COUNCIL REVIEW.

(A) Upon receipt of Planning Commission recommendations, the City Council shall review the application. The City Council may approve the application subject to conditions, table its review until a date certain, or deny the application for a wireless telecommunication tower permit. If the application is approved by the City Council, a wireless telecommunication tower permit and a building permit shall be issued upon the execution of a wireless telecommunication tower agreement.

(B) The agreement shall be signed by the applicant and property owner and the terms of the agreement shall include the following:

(1) A list of the conditions of approval to the wireless telecommunication tower permit;

(2) A statement indicating that failure to comply with the conditions of approval shall result in the removal of the wireless telecommunication tower, antennae, or tower accessory equipment;

(3) A statement indicating that the expenses incurred by the city to enforce the provisions of the wireless telecommunication tower agreement shall be reimbursed by the applicant;

(4) A statement, which requires the applicant to utilize the procedures established by the F.C.C. to resolve any complaints received relating to interference allegedly caused by the wireless telecommunication tower; and

(5) A statement indicating that a wireless telecommunication tower which has not been used for 12 consecutive months shall be deemed abandoned and may be required to be removed in the same manner and pursuant to the same procedures as for hazardous and substandard buildings (M.S. §§ 463.15 through 463.261, as they may be amended from time to time).

(1997 Code, § 1390.07) (Ord. 97-24, passed 1-21-1998)

§ 150.117 CO-LOCATION REQUIREMENTS.

Except as hereinafter provided, antenna utilized to provide wireless telecommunication services shall be located on existing towers or structures which exceed 75 feet in height and which are located within 1/4 mile of the antenna site being proposed by the applicant. In the event that co-location is not possible, the applicant must demonstrate that a good faith effort to co-locate on existing towers and structures was made but an agreement could not be reached.

(1997 Code, § 1390.08) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.118 EXCEPTIONS TO CO-LOCATION REQUIREMENTS.

The City Council shall waive any or all of the co-location requirements if it is determined that:

(A) The antennae and/or tower accessory equipment would cause the structural capacity of an existing or approved tower or building to be exceeded, as documented by a qualified and licensed professional engineer, and the existing or approved tower or building cannot be reinforced, modified, or replaced to accommodate the antennae or tower accessory equipment at a reasonable cost;

(B) The antennae and/or tower accessory equipment would cause interference materially impacting the usability of existing antennae or tower accessory equipment as documented by a qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost;

(C) Existing or approved towers and buildings within the applicant's search radius cannot or will not accommodate the antennae and/or tower accessory equipment at a height necessary to function reasonably as documented by a qualified radio frequency engineer; and/or

(D) Other unforeseen reasons make it infeasible to locate the antennae and/or tower accessory equipment upon an existing or approved tower or building.

(1997 Code, § 1390.09) (Ord. 97-24, passed 1-21-1998)

§ 150.119 CONSTRUCTION PERMITS.

All wireless telecommunication towers erected, constructed, or located within the city, and all wiring therefore, shall comply with the requirements set forth in the Uniform Building Code. (1997 Code, § 1390.10) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.120 TOWER STANDARDS.

(A) Wireless telecommunication towers shall comply with the following standards unless the City Council grants a variance as necessary to reasonably accommodate the wireless telecommunication tower. Variance procedures shall be processed according to the zoning code.

(B) (1) *Design.*

(a) To blend into the surrounding environment through the use of color and architectural treatment;

(b) To be of a monopole design unless the City Council determines that an alternative design would better blend into the surrounding environment;

(c) All proposed wireless telecommunication tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least 2 additional users if the tower is over 100 feet in height or for at least 1 additional user if the tower is between 75 feet and 100 feet in height; and

(d) Where possible, all proposed wireless telecommunication towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at various heights.

(2) *Setbacks from lot lines.*

(a) In all residential zoning districts, wireless telecommunication towers shall be set back 1 foot for each foot of tower height plus 20 feet.

(b) In all zoning districts, towers may encroach into the rear or side yard setback areas, provided that the rear or side yard property line abuts a commercial or business zoned property and the wireless telecommunication tower does not encroach upon any easements.

(c) Wireless telecommunication towers shall not be located between a principal structure and a public street.

(d) A required setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow for the integration of a wireless telecommunication tower with an existing or proposed structure such as a church steeple, power line support device, or light standard.

(e) A required setback may be reduced or its location in relation to a public street varied upon providing the city with a licensed professional engineer's certification that the wireless telecommunication tower is designed to collapse or fail within a distance or zone shorter than the required setback distance.

(3) Height.

(a) In all residential zoning districts, the maximum height of any wireless telecommunication tower including all antennas and other attachments, shall not exceed 1 foot for each 1 foot the tower is setback from a residential dwelling unit up to a maximum of 195 feet for parcels of 40 acres or more and 125 feet for parcels between 10 to 40 acres in size.

(b) In all non-residential zoning districts, wireless telecommunication tower and antennae shall not exceed 195 feet in height above ground for a freestanding wireless telecommunication tower, and 195 feet in height above ground as measured by the lowest ground elevation adjacent to a building on which the tower/antenna is located, including all antennas and other attachments where the zoning district is adjacent to a residential zoning district. The setback from a common lot line shall be 2 feet for each 1 foot of tower height.

(1997 Code, § 1390.11) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.121 LIGHTING.

At night, wireless telecommunication towers shall not be illuminated by artificial means.
(1997 Code, § 1390.12) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.122 SIGNS AND ADVERTISING.

The use of any portion of a wireless telecommunication tower for signs other than warning or equipment information sign is prohibited.

(1997 Code, § 1390.13) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.123 INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATION.

No wireless telecommunication facility shall interfere with public safety telecommunications. All wireless telecommunication towers/antennas shall comply with F.C.C. regulations and licensing requirements.

(1997 Code, § 1390.14) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.124 PROHIBITED SUBDIVISIONS.

Where a wireless telecommunication facility has been located on a residentially or agriculturally zoned parcel greater than 10 acres, except when the facility is located within a power line easement, or within 100 feet of the easement, the parcels shall not be further subdivided unless the resulting parcel on which the wireless telecommunication facility is located continues to be more than 10 acres in size.

(1997 Code, § 1390.15) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.125 ACCESSORY UTILITY BUILDINGS.

All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment.

(1997 Code, § 1390.16) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

§ 150.126 GROUND-MOUNTED EQUIPMENT.

All ground mounted equipment accessory to a wireless telecommunication tower shall be enclosed in a building with brick walls and have a dark colored standing seam metal roof and be further screened with sufficient trees, as determined by the City Planner, and shrubs to substantially reduce the visual impact.

(1997 Code, § 1390.17) (Ord. 97-24, passed 1-21-1998) Penalty, see § 10.99

ALARM SYSTEMS**§ 150.140 PURPOSE AND INTENT.**

(A) The purpose of §§ 150.140 *et seq.* is to encourage security, fire, or medical alarm users and alarm businesses (including, but not limited to, sales, installation, and/or monitoring) to maintain the operation reliability and the proper use of alarm systems so as to limit unnecessary police, fire, and emergency medical responses to false alarms and alarm malfunctions.

Considering a Cell Tower Permit?

by Jessica E. Schwie

Wireless communication facilities allow cellular phones, pagers, wireless faxes, and wireless internet to work. FCC Fact Sheet, <http://wireless.fcc.gov/siting/fact1.html> (visited Aug. 9, 2006). Antennas placed within a defined area comprise a cellular system, and the number and location of antennas within a given area affect the service available. Service areas are carved into cells and at least one cellular antennae is placed per cell. Where there are no existing structures high enough to accommodate an antennae, telecommunications companies must build a tower. Shannon L. Lopata, Note, Monumental Changes: Stalling Tactics and Moratoria on Cellular Tower Siting, 77 Wash. U. L.Q. 193, 196-197 (1999).

Congress enacted the Telecommunications Act of 1996 ("TCA"), 47 U.S.C. § 332, in order to provide a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications market to competition." H.R. Rep. No. 104-458, at 1 (1996) (Conf. Rep.); *APT Minneapolis, Inc. v. Stillwater Township*, 2001 WL 1640069 (D. Minn.); *Sprint Spectrum, L.P. v. Town of Easton*, 982 F.Supp. 47, 49 (D. Mass. 1997). As a part of the Act, providers are under a federal mandate to provide coverage.

While the federal government seeks to expand wireless services, the TCA balances the need for unified federal policy with the interests of local governments in retaining appropriate use of the land through local land use controls. See *Voicestream Minneapolis v. St. Croix County*, 342 F.3d 818, 829 (7th Cir. 2003) (citing H.R. Conf. Rep. No. 104-458, at 207-08 (1996)). As to the local review of a permit application, the TCA requires that:

- review take place "within a reasonable period of time." 47 U.S.C. §332(c)(7)(B)(ii). In addition to the timing requirements provided for in federal statute, Minn. Stat. §15.99 provides a specific time period of review which is applicable to cell tower applications. *American Tower v. City of Grant*, 636 N.W.2d 309 (Minn. 2001).
- the governmental entity maintain a "written record" and give reasons for any denial "in writing." § 332(c)(7)(B)(ii), (iii);
- any basis for denial may not:
 - be related to the environmental effects of radio frequency, §332(c)(7)(B)(iv);
 - discriminate or have effect of unreasonably discriminate among providers of functionally equivalent services, § 332(c)(7)(B)(i)(I);

and/or

- prohibit or have the effect of prohibiting the provision of personal wireless services, § 33(c)(7)(i)(II).

Because federal statute regulates cell towers, federal courts have original jurisdiction over lawsuits challenging the denial of a permit to erect a cell tower. The Eighth Circuit has recently issued its first decision under the TCA in *USCOC of Greater Iowa, Inc. v. Zoning Board of Adjustment of the City of Des Moines*, ____ F.3d ____, 2006 WL 2873046 at *3 (8th Cir. Oct. 11, 2006).

The court in *USCOC* confirms that it is the permit-seeker who carries the burden of proving that governmental entity's decision to deny a permit was either discriminatory, has the effect of prohibiting cell towers, or is unsupported by substantial evidence. *USCOC*, 2006 WL 2873046 at *2. Review of the governmental entity's decision is limited to the record that was developed before, and that makes up, the governmental entity's decision. *Id.* To the extent that there is conflicting evidence in the record, the court shall not second-guess the decision of the governmental entity; but rather, it should defer to the decision of the governmental entity. *USCOC*, 2006 WL 2873046 at *3.

The following is a list of considerations that courts have held are legitimate in determining whether to issue a cell tower permit.

- Protection of Historical buildings
 - Proven where there was evidence that tower could be seen from historic building nominated to National Register of Historic Places. *Voicestream*, 342 F.3d at 829; see also *Sprint Spectrum L.P. v. Bd. of Zoning Appeals of Town of Brookhaven*, 244 F.Supp. 2d 108 (E.D.N.Y. 2003).
 - Not proven where letter from the Minnesota State Historic Preservation Office stated that project did not adversely affect historic properties in the area. *APT Minneapolis, Inc.*, 2001 WL 1640069 at *3.
- Protection of protected lakes, riverways, wetlands or other preserved areas.
 - Proven through testimony of numerous citizens and organizations that "focused on the incompatibility of a 185-foot tower on the river bluff extending noticeably above the tree line with extraordinary scenery of the National Scenic Riverway." *Voicestream*, 342 F.3d at 831-32. Among the numerous groups and individuals opposing the plan, the National Park Service (NPS) presented maps and other photographic evidence that the proposed tower would be visible and interfere with unique scenery of the locality. *Id.* at 832.
 - Not proven where proposed site was outside of protected boundary for

National Scenic Riverway. *APT Minneapolis, Inc.*, 2001 WL 1640069 at *3.

- Negative impact on property values
 - Proven where real estate expert provided analysis for the area based upon local figures, *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 762 (11th Cir. 2005), but not proven by either mere comments, or even by real estate expert who relied upon an analysis for two other cities. *Id.*
 - Proven where "the proposed tower was not designed to blend in with its surroundings," *Minnesota Towers, Inc. v. City of Duluth*, 2005 WL 1593044, 8 (D. Minn. 2005); but no proven where proposed tower was to be constructed as flagpole. *PrimeCo Pers. Commo'ns v. City of Mequon*, 352 F.3d 1147, 1152-53 (7th Cir. 2003).
 - Proven where proposed tower was within in feet of apartment complex; and, thus limiting views from the complex to almost exclusively the tower itself. *USCOC*, 2006 WL 2873046 at *3.
 - Not proven where basis for reduced value was based on perceived fear of health effects from facility. *AT&T Wireless Services v. City of Carlsbad*, 308 F. Supp.2d 1148 (S.D.Cal. 2003).
- Inconsistent with regional plan/local ordinances.
 - Proven where inconsistent with county zoning ordinances that attempt to minimize adverse visual effects. *Voicestream*, 342 F.3d at 831-32.
 - Not proven inconsistent where no regional study in place, it was only being contemplated. *APT Minneapolis, Inc.*, 2001 WL 1640069 at*3.
- Unsafe structure is proposed.
 - Proven where evidence indicated danger of ice falling from tower onto cars parked in parking lot below tower; and, in close proximity to residential building. *USCOC*, 2006 WL 2873046 at *3.
 - Not proven where there was no engineering evidence that tower as designed might fall over. *USCOC of New Hampshire v. City of Franklin*, 413 F.Supp.2d 21, (D.N.H. 2006).
- Alternatives exist with less negative impact
 - Alternative forms of Technology exist obviating need for tower.
 - Proven where evidence indicated that although there was evidence of dropped calls, there was evidence that poor service was a result of

nearby facility not operating at capacity or corrected by new antenna or additional antenna supported denial. *Nextel of New York, Inc. v. City of Mount Vernon*, 361 F.Supp.2d 336 (S.D.N.Y. 2005).

- Alternative locations exist for proposed tower with less impact.
 - Proven where proposed location was seventh out-of eight preferred site locations and was 1/4 mile from town's historic district. *Cellco Partnership v. Town of Grafton*, 336 F. Supp.2d 71 (D. Mass. 2004); see also *USCOC*, 2006 WL 2873046 at *3.
 - Proven where evidence that provider could incorporate multiple cell towers, just at lower heights, thus minimizing the visual impact. *Voicestream*, 342 F.3d at 824.
- Adequate service is already in existence obviating need for tower.
 - Proven through anecdotal testimony of residents that they had service. *MetroPCS, Inc. v. City of San Francisco*, 259 F.Supp.2d 1004, *aff'd in part, rev'd in part and remanded*, 400 F.3d 715 (9th Cir. 2003); see also *USCOC*, 2006 WL 2873046 at *3.
 - RF engineering showed that service would not complete a void, it would only improve indoor service. *VoiceStream PCS I LLC v. City of Hillsboro*, 301 F.Supp2d. 1251 (D.Or. 2004).

Many governmental entities encourage providers to co-locate on existing towers, or to locate on existing governmental structures. Even though a governmental entity may encourage providers, by ordinance or otherwise, to locate on governmental structures, at least one court has concluded that the governmental entity does not have to lease government-owned property in order to afford service. *Omnipoint Communications Enterprises, LP v. Township of Nether Providence*, 232 F.Supp.2d 430 (E.D. Pa. 2002). However, where a governmental entity interferes with a provider's attempt to locate on existing towers or governmental structures as it is encouraged to do, the court will closely scrutinize any decision to deny a permit. See *USCOC*, 2006 WL 2873046 at *3.

Finally, it had been previously feared that an improper denial of a permit carried with it the danger that the governmental entity could be subjected to compensatory damages and attorneys fees. The United States Supreme Court has recently ruled that a violation of the TCA is remedied only by the issuance of the requested permit; it does not permit compensatory damages, nor attorney's fees and costs under 42 U.S.C. §1983. *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113 (2005).

Susan Hoyt

From: Weiss, Cynthia L (STP) [mailto:cynthia.l.weiss@state.mn.gov]
Sent: Monday, November 24, 2008 3:02 PM
To: Susan Hoyt
Subject: Just say no to cell tower on Lake Jane

Dear Miss Hoyt,

My family resides on Lake Jane Trail and we love just about everything about my neighborhood. The closed landfill was an initial concern, however, up to this point our well water has been fine. The landscape is beautiful and I couldn't ask to live amongst better folks.

Recently a neighbor mentioned the threat of a cellular tower being built on Lake Jane Trail and Jamaca. I couldn't imagine why anyone would want to install a tower across from a beautiful lake within a residential area.

I understand this will be a topic of discussion at your next council meeting. This tower would be a money maker for the person who owns the land, however, the rest of the neighborhood would suffer as studies indicate cell towers cause a loss in real estate value.

We already live with the potential landfill outcomes and I fear the cell tower placement positioned at this location (with it's buzzing, eye soar appearance) would truly have an adverse effect on our neighborhood.

Please do not allow the cell phone tower to be built in my neighborhood (Lake Jane Hills). I am sure there are open fields minus homes and a lake within Lake Elmo where they could build a cell tower with little concern or protest.

Thank you for your consideration on this matter. I truly hope you will represent my family and my neighbors wishes on this issue. Just say No.

Sincerely,
Cynthia Weiss
8687 Lake Jane Trail
Lake Elmo, MN 55042

FCC Info:
http://wireless.fcc.gov/siting/environment_compliance.html

Susan Hoyt

From: Todd Williams [REDACTED]
Sent: Monday, November 17, 2008 10:31 AM
To: Susan Hoyt; Steve DeLapp; Nicole Park; Elizabeth Johnson; Dean Johnston; Anne Smith
Subject: Cell Phone Tower Ordinance

I have been following the controversy about the location and form of cell phone antenna towers for some time. I am not familiar with all the details of the various court rulings, and whether they apply here. But here are my thoughts about what a proper compromise should be:

1. In general, the cell phone coverage, provided by cell phone antennae, is a useful public service. However, the presence of antennae, and their supporting structures, should not adversely affect the lives of neighbors any more than absolutely necessary.
2. I assume that the antennae themselves would extend no more than 10 feet above any supporting towers. Further, I assume these antennae are made of metal rods or tubing no more than 1 inch in diameter. On that basis, the height of towers should be no more than the height of nearby structures or trees. Therefore, a tower disguised as a silo should be no higher than other silos in the area. A tower disguised as a tree should be no higher than nearby trees. If the antennae themselves are larger than I assume, then the heights of the antennae themselves should be limited to the surrounding structures or trees.
3. The location of towers is a key issue. Where possible, antennae should be mounted on existing structures, thereby reducing the need for additional, separate towers. Suitable existing structures include water towers, buildings, silos, etc. Where an antenna allegedly "must" be located near existing homes, such as in the present Lake Jane case, that antenna should be no higher than the minimum needed. This minimum must be supported by verifiable documentation provided by the applicant. Further, if a new tower is needed for this antenna near existing homes, the new tower must be disguised to fit into the existing neighborhood. Therefore, a tower disguised as a silo would NOT be appropriate for a residential neighborhood. A tower disguised as a pine tree would be appropriate for that neighborhood. On the other hand, a tower disguised as a pine tree might not be appropriate for a farm location.
4. I do not know the technical details of antenna height vs area coverage, but in general I favor more, shorter towers (each disguised appropriately for its neighborhood) as opposed to fewer, taller towers.

Please act to ensure our City ordinance includes the above limitations and protects our neighborhoods. Thank you.
Best regards,
Todd Williams

RECEIVED

NOV 4 2008

8989 Lake Jane Trail N.
Lake Elmo, MN 55042
November 2, 2008

Ms. Kelli Matzek, Planner
City of Lake Elmo
3800 Laverne Avenue N
Lake Elmo, MN 55042

Dear Ms. Matzek;

Thank you for the opportunity to provide input into the planned erection of a new 125-foot Wireless communication tower on property at 9057 Lake Jane Trail N. We will be out of town should the matter be discussed on November 10th as is planned, so will not be attending the hearing,

Although we are in close proximity to this proposed tower, we have no objection to its construction and wish to have this noted. However, we do wish to be kept informed as to when and if construction is expected to be completed.

Sincerely yours,



Paul H. Pallmeyer

From: SDiederichs [mailto:SDiederichs@comcast.net]
Sent: Tuesday, November 04, 2008 9:00 AM
To: Kelli Matzek; Susan Hoyt
Subject: Proposed cell phone tower south of Lake Jane

Hello Susan and Kelli,

I cannot adequately express via email my total disapproval of a 125 foot cell phone tower proposed in a residential area. Placing that kind of structure, along with an 8 foot high fence with 3 strands of barbwire, is clearly not appropriate on Jamaca avenue next to homes and Lake Jane.

I am all for technology and a cell phone user, but placement of towers must minimize adverse visual impact, not introduce health/hazard concerns, and certainly not negatively impact property values. Certainly there has to be a less intrusive place for this tower.

Finally, we moved to Lake Elmo 16 years ago to get away from lights, noise, and to enjoy the character of Lake Elmo. The fact that this proposal even sees the light of day is unsettling.

Thanks for your time and hope to see you at the meeting on November 10th,

Steve Diederichs
4235 Ivy Court
Lake Elmo, MN 55042