

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION 2018-083

*A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR A WIRELESS
COMMUNICATIONS FACILITY AT 11351 UPPER 33RD STREET NORTH*

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Verizon Wireless, 10801 Bush Lake Road, Bloomington MN 55438 (the "Applicant") has submitted an application to the City of Lake Elmo (the "City") for a Conditional Use Permit for a wireless communications facility the property located at 11530 Upper 33rd Street North (PID# 13.029.21.31.0018) (the "Property"); and

WHEREAS, the Applicant also submitted an application to the City for variances for nine feet from the maximum height allowed for wireless communications to allow a wireless communications facility 134 feet in height; a variance of 88.5 feet from the minimum setback from the eastern property line to allow a setback of 45.5 feet from the easterly property line; and a variance from the one-year expiration date requirement of the conditional use permit and variance requests; and

WHEREAS, notice has been published, mailed and posted pursuant to the Lake Elmo Zoning Ordinance, Section 154.102; and

WHEREAS, the Lake Elmo Planning Commission held a public hearing on said matter on July 9, 2018; and

WHEREAS, the Lake Elmo Planning Commission has submitted its report and recommendation to the City Council as part of a Staff Memorandum dated July 9, 2018, and

WHEREAS, the City Council considered said matter at its July 17, 2018 meeting; and

NOW, THEREFORE, based on the testimony elicited and information received, the City Council makes the following:

FINDINGS

- 1) That the procedures for obtaining said Conditional Use Permit are found in the Lake Elmo Zoning Ordinance, Section 154.106.
- 2) That all the submission requirements of said Section 154.106 have been met by the Applicant.

- 3) That the proposed Conditional Use Permit includes the following components:
- a) A Conditional Use Permit for a wireless communications facility for the property located at 11351 Upper 33rd Street North.
- 4) That the Conditional Use Permit for a school district transportation center will be for the Property legally described as follows:

ALL OF THE FOLLOWING DESCRIBED TRACT WHICH LIES SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY OF SAID ST. P. S. & T. F. RY., (NOW OWNED AND OPERATED BY THE UNION PACIFIC RAILROAD): THAT PART OF THE WEST HALF OF SECTION THIRTEEN (13), TOWNSHIP TWENTY-NINE (29) NORTH OF RANGE TWENTY-ONE (21), LYING WITHIN THE FOLLOWING BOUNDARIES, TO-WIT: BEGINNING AT THE QUARTER POST IN THE CENTER OF THE SOUTH LINE OF SAID SECTION; THENCE RUNNING NORTH ALONG THE CENTER LINE OF SAID SECTION TO A POINT IN THE CENTER OF THE SAINT PAUL & STILLWATER ROAD; THENCE SOUTHWESTERLY ALONG THE CENTER OF SAID ROAD TO A POINT FORTY FOUR (44) RODS WEST OF THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH ON A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION TO A POINT IN THE SOUTH LINE THEREOF FORTY-FOUR (44) RODS WEST OF THE CENTER POST IN SAID LINE; THENCE EAST FORTY-FOUR (44) RODS TO THE PLACE OF BEGINNING, EXCEPTING, HOWEVER, A STRIP OF LAND ONE HUNDRED (100) FEET IN WIDTH, BEING FORTY-FOUR (44) FEET ON THE NORTH SIDE AND FIFTY-SIX (56) FEET ON THE SOUTH SIDE OF CENTERLINE OF ST. P. S. & T. F. RY. TRACK AS CONSTRUCTED OVER AND ACROSS EAST FORTY-FOUR (44) RODS OF WEST ONE-HALF (W1/2), AND ALSO EXCEPTING THEREFROM THE EAST 726 FEET OF THE SOUTH 1800 FEET OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 13, TOWNSHIP 29 NORTH, RANGE 21 WEST, WASHINGTON COUNTY, MINNESOTA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY THEREOF, SUBJECT TO THE RIGHT OF WAY OF MINNESOTA TRUNK HIGHWAY NO. 5 (ALSO KNOWN AS STILLWATER BOULEVARD NORTH), AND IS ALSO SUBJECT TO A 20 FOOT ROAD EASEMENT RECORDED BY DOCUMENT NUMBER 328273 IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY, MINNESOTA, AND IS ALSO SUBJECT TO A NORTHERN STATES POWER EASEMENT RECORDED IN BOOK 136 OF DEEDS, PAGE 297, IN THE OFFICE OF THE COUNTY RECORDER, WASHINGTON COUNTY MINNESOTA SECTION 13 TOWNSHIP 029 RANGE 021

- 5) The proposed use will not be detrimental to or endanger the public health, safety, comfort, convenience or general welfare of the neighborhood or the city. *The tower has been engineered to withstand high winds and has a fall zone that will not cause it to fall on an adjacent property.*
- 6) The use or development conforms to the City of Lake Elmo Comprehensive Plan. *The property is guided for and zoned for public facilities, in which wireless communication facilities are an allowed use, and certain wireless communication facilities require a conditional use permit.*
- 7) The use or development is compatible with the existing neighborhood. *The wireless communication facility will be screened with existing trees.*
- 8) The proposed use meets all specific development standards for such use listed in Article 7 of this Chapter. *The proposed use meets almost all requirements of the City's Wireless Communications Facilities ordinance except for the required height and setback from property lines, for which the applicant has requested variances.*
- 9) If the proposed use is in a flood plain management or shoreland area, the proposed use meets all the specific standards for such use listed in Chapter 150, §150.250 through 150.257 (Shoreland Regulations) and Chapter 152 (Flood Plain Management). *The proposed use is not in a flood plain management or shoreland area.*

- 10) The proposed use will be designed, constructed, operated and maintained so as to be compatible in appearance with the existing or intended character of the general vicinity and will not change the essential character of that area. ***The proposed tower will be heavily screened by existing trees and will not change the essential character of the neighborhood.***
- 11) The proposed use will not be hazardous or create a nuisance as defined under this Chapter to existing or future neighboring uses. ***The proposed use will be setback further from the property line than the fall zone and so will not be hazardous. It will be well screened and fenced so as to not create a nuisance, and climbing will be discouraged.***
- 12) The proposed use will be served adequately by essential public facilities and services, including streets, police and fire protection, drainage structures, refuse disposal, water and sewer systems and schools or will be served adequately by such facilities and services provided by the persons or agencies responsible for the establishment of the proposed use. ***The proposed use has adequate access, and the Fire Department has reviewed the application and does not see an issue, as access can be achieved if need be through the fence.***
- 13) The proposed use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. ***The City will enter in to a lease agreement for which it will receive a negotiated amount.***
- 14) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare because of excessive production of traffic, noise, smoke, fumes, glare or odors. ***The proposed use will not create excessive production of traffic, noise, smoke, fumes, glare or odors.***
- 15) Vehicular approaches to the property, where present, will not create traffic congestion or interfere with traffic on surrounding public thoroughfares. ***There is an existing access road that will be utilized until such time the cul-de-sac providing connection from Easton Village is constructed.***
- 16) The proposed use will not result in the destruction, loss or damage of a natural or scenic feature of major importance. ***The proposed use will not result in in any destruction, loss or damage or a natural or scenic feature of major importance.***

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby approves the request by Verizon for a Conditional Use Permit for a wireless communications facility with the following conditions of approval:

- 1) The applicant shall enter into a wireless communications tower agreement that addresses all items listed in Section 150.121 of the Lake Elmo City Code addressing wireless communications facilities with the City prior to the issuance of a building permit for the proposed facility.
- 2) The applicant must submit proof of liability and worker's compensation insurance.
- 3) Monopole shall be constructed of, or treated with, corrosive resistant material.

- 4) An agreement providing for co-location and 6-month removal of unused and/or obsolete towers shall be attached and become part of the permit.
- 5) The addition of antennas and associated equipment of an additional provider to an existing permitted tower shall be considered co-location and shall require a zoning permit and site plan approval. An amendment to a conditional use permit shall typically not be required.
- 6) All towers shall be reasonably protected against unauthorized climbing. The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of 6 feet with a locked gate.
- 7) All obsolete or unused towers and accompanying facilities shall be removed within 6 months of the cessation of operations at the site unless a time extension is approved by the City. After the facilities are removed, the site shall be restored to its original or an improved state which includes removal of all concrete to 6 feet below normal grade and surrounding area returned to normal grading. Electronic equipment shall not be removed in advance of removal of obsolete or unused towers. To ensure compliance, the applicant must submit a performance bond or letter of credit in an amount sufficient to cover all removal costs as determined by the city prior to the issuance of a building permit for the facility. Failure to remove the structure shall be cause for the city to remove the tower and associated equipment and assess the cost against the required bonding or letter of credit instrument.
- 8) The city shall conduct a final inspection of the site to ensure that all requirements of the City Code and all conditions of approval attached as part of the wireless communications permit are met prior to the start of operation of the facility.
- 9) For installations of a facility in an area that could potentially be accessed by the public (including rooftop installations or other locations that would be considered public versus occupational) a radio frequency hazard analysis and a yearly report must be submitted before December 31 of each year showing the results of on-site measurements at the site. A registered professional engineer hired by the provider must sign these measurements and report. At a minimum, the report must document any changes to the site over the course of the previous year.
- 10) All lighting associated with the facility shall comply with the City's lighting ordinance. The wireless communications tower shall not be illuminated by artificial means, as it is not required by the Federal Aviation Administration.
- 11) The area around the base of the tower and guy wire anchors shall be enclosed by a fence with a minimum height of six feet with a locked gate.
- 12) Building permits shall be applied for and issued before any construction is started.
- 13) The applicant shall be compliant with all other minimum conditions outlined in Section 150.123 of the Lake Elmo City Code addressing wireless communications facilities.
- 14) The applicant shall enter in to a lease agreement approved by Council for both this site and the water tower site at the corner of Ideal Avenue North and 34th Street North.

15) The applicant shall design the accessory equipment building to accommodate any additional equipment that may be needed by additional carriers on the tower.

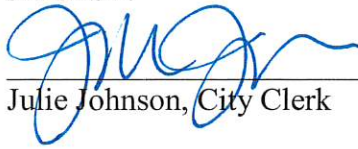
16) The applicant shall submit a landscape plan to provide sufficient screening from the base of the tower to be approved by the City's Landscape Architect.

Passed and duly adopted this 17th day of July 2018 by the City Council of the City of Lake Elmo, Minnesota.



Mike Pearson, Mayor

ATTEST:



Julie Johnson, City Clerk