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CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA

RESOLUTION NO.: 2009-05

A RESOLUTION DENYING APPLICATION FOR A
WIRELESS TELECOMMUNICATION TOWER

1.0 Recitals.

- A. On August 26, 2008, the City received a completed original application from FMHC Corporation ("FMHC"), as agent for T-Mobile, requesting a wireless telecommunication tower permit pursuant to City Code Sections 150.110 – 150.126.
- B. FMHC's original application stated as follows:

T-Mobile is proposing to build a 125 foot monopole to locate antennas for a wireless telecommunication facility. The tower and the facilities will be available for 2 additional carriers to co-locate their antennas on the monopole and their ground equipment on the 40x40 fenced compound with the accessory ground equipment to be located within a shelter that complies with Lake Elmo's Tower Ordinance requirements.
- C. FMHC proposed to construct the 125 foot tower on property located at 9057 Lake Jane Trail, Lake Elmo, which is zoned rural residential and is greater than ten (10) acres in size ("Olinger Property").
- D. The plans submitted with the application were dated August 1, 2008 and consisted of the following drawings which are incorporated as **Exhibit A**:
 - 1. Project information and general notes drawing no. A1N672-T;
 - 2. Site Plan drawing no. A1N672-C1;
 - 3. Enlarged Site Plan drawing no. A1N672-C2;
 - 4. Landscaping Plan drawing no. A1N672-C3; and
 - 5. Antenna information and tower and tower elevation drawing no. A1N672-A1.

- E. On October 28, 2008, the City's Consulting Engineer, TKDA, submitted a memo indicating that it had reviewed the application and suggesting conditions for approval ("TKDA Report") which is attached and incorporated as **Exhibit B**.
- F. The FMHC application was reviewed by the Planning Commission at a public hearing on November 10, 2008. The Planning Commission considered the memorandum, comments and recommendations of the City Planner; the comments and materials presented by FMHC; the comments and materials presented by the public; and recommended approval of the wireless telecommunication tower application subject to the conditions contained in the TKDA Report.
- G. At various Council meetings, applicant and T-Mobile representatives:
1. Provided propagation maps illustrating coverage areas for towers which were 125 feet and 75 feet in height, but did not provide propagation maps for heights in between 75 feet and 125 feet;
 2. Indicated a willingness to revise the height of the proposed tower from 125 feet to 110 feet but stated it would not allow the review period to extend beyond February 10, 2009;
 3. Indicated that there could be ways to serve the required area other than by one tower on the Olinger Property but did not define the other options;
 4. Stated that the required coverage could be provided by a number of shorter towers instead of one taller tower;
 5. Stated that a 110 foot tower would allow T-Mobile to provide the required coverage but did not provide proof that a shorter tower could also provide the required coverage.
- H. On December 9, 2008, the City Council adopted Ordinance 08-011 relating to wireless telecommunication towers. The Ordinance became effective on January 8, 2009 and amended the City's wireless telecommunication tower regulations to emphasize that wireless telecommunication towers should be constructed in a manner that allows the towers to blend in with the surrounding environments; emphasize the priority of the site locations for wireless telecommunication towers; and to allow the City to waive collocation requirements when necessary to permit the construction of a wireless telecommunication tower that better blends into the surrounding environment.
- I. On January 20, 2009, FMHC, after discussions with the City Council, submitted revised tower plans. The plans depicted a 110 foot tower with a canister-style

mounted antenna. The revised plans were dated December 10, 2008 and consisted of the following drawings which are incorporated as **Exhibit C**:

1. Project information and general notes drawing no. A1N672-T1;
 2. Site Plan drawing no. A1N672-C1;
 3. Enlarged Site Plan drawing no. A1N672-C2;
 4. Landscaping Plan drawing no. A1N672-C3; and
 5. Antenna information and tower and tower elevation drawing no. A1N62-A1.
- J. On January 28, 2009, FMHC submitted a letter indicating a willingness to amend its application.
- K. On February 2, 2009, the City received a report prepared by Richard A. Comi from the Center for Municipal Solutions, attached and incorporated as **Exhibit D**, which includes an analysis of the City's regulations, the original FMHC application and the proposed amended FMHC application ("Comi Report"). The Comi Report concluded that the applications submitted was not in compliance with the City's regulations for the following reasons:
1. "Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the City. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts should be used in this analysis. If the maximum power is not used, an acceptable explanation why it has not been used should be provided.
 2. "In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the applicants search ring. Copies of written requests and responses for shared use shall be provided to the City in the Application, along with any letters of rejection stating the reason for rejection.
 3. "The City, as opposed to the construction of a new Tower, prefers locating on existing Towers or others structures without increasing the height. The Applicant has not submitted a comprehensive report inventorying existing Towers and other suitable structures within the

applicants search ring, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.

4. "Provided documentation that such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.
 5. "Provided documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown.
 6. "Provided RF information applicable to this site and expand the supporting data as outlined in this report.
 7. "Provided proper engineering analysis and certifications for the State of Minnesota for structural and electrical as stated in the ordinance.
 8. "Provided corrected letters from the landowner as addressed in this report.
 9. "Provided the correct the applicant information to either have the wireless provider as the applicant or provide written authorization from the provider."
- L. On February 3, 2009, FHMC submitted a memo in response to the Comi Report (FHMC Responsive Memo), attached and incorporated as **Exhibit E**.
- M. The FMHC application was reviewed by the City Council on December 2, 2008, December 4, 2008, December 8, 2008, January 6, 2009 and February 3, 2009. The City Council considered the memorandum, the comments and recommendations of the City Planner; the comments and materials submitted by FMHC; the comments and materials submitted by the public; and the recommendations of the Planning Commission. The City Council expressed concern that the tower, as proposed, would not reasonably blend into the surrounding environment.
- 2.0 Reasons for Denial. Based upon its review of the FMHC application, the City's regulations, the various reports submitted in connection with the application, including

the Comi Report, the City Council finds that the FMHC application does not comply with the City's regulations for the following reasons:

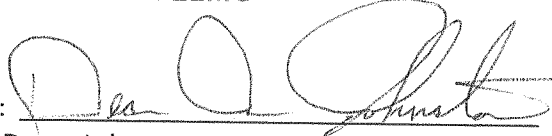
- A. The design standards applicable to wireless telecommunication towers state that the tower should be designed (1) To blend in with the surrounding environment through the use of color and architectural treatment; and (2) Be a monopole, unless the City Council determines that an alternative design will better blend in with the surrounding environment. One of the purposes of the City's Wireless Telecommunication Tower Permit Regulations is to minimize adverse visual effects of wireless telecommunication towers, antenna, or accessory equipment through careful design and site standards. Neither a 125 foot tower with a low profile platform and antennae array, nor a 110 foot tower with a canister system for antennas adequately blends the tower in with the surrounding environment.
- B. According to the statements of FMHC, their proposed tower could be shorter and of a different design while still accommodating T-Mobile's service objectives for this portion of the City. Although FMHC submitted revised plans on January 20, 2008, which depicted a 110 foot tower with a canister style mounted antennas and represented that it would treat or paint the revised tower as deemed appropriate by the City Council, the proposed revisions, when compared to the original application, were considered substantial and the City Council concluded that such revisions amounted to a new application which would need to be reviewed by the planning commission.
- C. The City could not accommodate the review of the revised plans, including Planning Commission review before expiration the agreed upon review period and FMHC indicated that it wanted a decision on its original application before expiration of the agreed upon review period.
- D. The City's regulations contain a priority listing for tower sites. The applicant has not sufficiently demonstrated an inability to use existing towers or structures. Secondly, there is City owned property adjacent to the Olinger Property, which should have been explored as a possible site. This option was never presented to the City Council for review.
- E. Applicant has not provided documentation that demonstrates the need for the proposed wireless telecommunication tower in order to provide service primarily and essentially within the Lake Jane neighborhood hood of the City.
- F. Applicant had not a provided written report demonstrating meaningful efforts to secure shared use of existing towers, structures or other sites within the Lake Jane neighborhood.

- G. Applicant has not submitted a comprehensive report inventorying existing towers, structures or other sites within the Lake Jane neighborhood that could be used for the proposed wireless telecommunication tower and has not demonstrated conclusively why existing towers, structures or other sites within the Lake Jane neighborhood could not be used.
- H. Applicant has not provided documentation to justify a tower height of 125 feet or possibly 110 feet.
- I. Applicant has not provided RF information for the proposed site as outlined in the Comi Report.
- J. Applicant has not provided electrical and structural engineering analysis and certification as outlined in the Comi Report.
- K. Applicant has not provided corrected letters from property owners as addressed in the Comi Report.
- L. Applicant has not provided authorization from the property owner and/or from T-Mobile as addressed in the Comi Report.

3.0 City Council Denial. Based upon the above reasons, the application of FMHC is denied.

Date: February 3, 2009

CITY OF LAKE ELMO

By: 
Dean Johnston
Mayor

ATTEST:


Craig Dawson
Interim City Administrator