

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date	April 20, 2009
	Agenda Item No. 52 Roll Call No. 09- Communication No. <u>09-226</u> Submitted by: Donald M. Tripp, Director of Park and Recreation	

AGENDA HEADING:

Hearing on approval of lease amendment agreement with Verizon Wireless (VAW) LLC (Assignee of Des Moines MSA General Partnership) and use authorization and consent agreement with American Tower Delaware Corporation for Waveland Golf Course telecommunications tower.

SYNOPSIS:

Recommend approval to extend lease with Verizon Wireless (VAW) LLC, assignee and successor in interest to original lessee MSA General Partnership, for telecommunications tower on Waveland Golf Course beyond its current term expiring on October 31, 2013 for up to four 5-year renewal terms and providing for rental payments with annual increases beginning October 31, 2013. This action also approves a Use Authorization and Consent Agreement with Verizon’s co-locator manager, American Tower Delaware Corporation, to allow co-locations of telecommunications service providers for fair market value rents with an annual accelerator.

FISCAL IMPACT:

Amount:

- \$ 8,340 annual rent from existing co-location (January 1, 2009 to October 31, 2013)
- \$ 16,000 one-time fee payment
- \$ 15,500 (Initial annual rent commencing November 1, 2013) to increase 3% annually)

Funding Source:

This revenue will be placed in Golf Operations Fund, Waveland Golf Course, EN201, PKS010707, page 220.

ADDITIONAL INFORMATION:

1993 Lease

On June 21, 1993, the City Council approved an option to lease to Des Moines MSA General Partnership (“MSA”) a portion of Waveland Municipal Golf Course, for a period of 20 years, for the construction, maintenance and operation of a mobile communications facility consisting of one building and one monopole antenna structure of approximately 120 feet in height, including cellular antennas and link antennas, in conformity with the special Use Permit granted by the Zoning Board of Adjustment on May 26, 1993 (“ the Lease”). The Lease was in effect assigned by MSA to Verizon Wireless (VAW) LLC (“Verizon”) when MSA merged into Verizon in 2006. The cell tower is owned by Verizon and managed

for Verizon by American Tower Delaware Corporation, a Delaware Corporation, 116 Huntington Avenue, 11th Floor, Boston MA, 02116 (“American Tower”). The Lease allowed MSA to assign or transfer the Lease to its affiliates or subsidiaries, but requires the written consent of the City for assignment to others. The sole consideration under the Lease was the tenant’s construction of the Waveland Tennis courts. The Lease allowed one antenna on the tower and was silent regarding co-locations. Several years ago, City staff became aware that a second antenna and support structure had been installed on the leased site. The City immediately contacted American Tower. American Tower took the position that no permission was needed for co-location on the Verizon tower and for additional structures within the leased area and no resulting rent was due for co-locations. The Lease Amendment and Use Authorization and Consent Agreement are the result of negotiations providing for compensation to the City for the existing co-located antenna and any additional co-locations.

Lease Amendment

The Lease Amendment allows the Lease to be extended for up to four 5-year renewal terms at the option of Verizon beginning at the end of the initial term, November 1, 2013. If the Lease is extended for the first 5-year renewal term, the City will receive \$15,500 (includes two antennas) per year in rent. Beginning on November 1, 2014, and each November thereafter, this amount will increase by 3%.

Verizon specifically consents to the Use Authorization and Consent Agreement between the City and American Tower Delaware Corporation.

Use Authorization and Consent Agreement

The Use Authorization and Consent Agreement with American Tower allow co-locations of antennas on the Verizon tower and on ground supporting service buildings during the term of the Lease. The City will receive a one-time payment of \$16,000, and \$695.00 per month commencing January 1, 2009 (\$8,340 annually) plus \$695 per month (\$8,340 annually) for any future co-located antennas. Co-location payments increase 3% annually. The Park and Recreation Director has the right to require reasonable landscaping or fencing requirements for new structures within the sight lines of the fairways. All support structures are currently at the bottom of the ravine to the north of the tower and are not within the sight lines of the course. As part of this Use Authorization and Consent Agreement, an additional new support structure for Verizon is approved.

City Park and Recreation and Community Development staff believes that allowing additional co-locations of antennas on the tower will not adversely affect use of the Golf Course and will be more efficient than allowing additional telecommunications towers in the vicinity.

On October 21, 1996 by Roll Call No. 96-3616, the City Council adopted Lease Guidelines for Telecommunication Equipment on City-owned property. Those initial guidelines, which require substantial initial investment for placement of equipment on City property likely contributed to the result that no Telecommunication provider placed any equipment on City-owned property. Those guidelines did not provide rental amounts for the existing tower at Waveland Golf Course or for co-location amounts.

On January 6, 2003 by Roll Call No. 03-086 the City Council revised the guidelines, which in part substantially reduced the amount of the initial investment required by the provider for the placement of equipment on City-owned property and were directed to new towers. The guidelines established monthly lease amounts for additional antennas partially based on call volumes. To this date, the Waveland Golf Course tower remains the only monopole on City property.

During the course of these negotiations, substantial objections were raised about the proprietary rights of the telecommunication providers in regards to providing “call volumes” and confidential information for compensation determination.

Since the Lease was entered into before adoption of the guidelines, and covers an existing monopole rather than a new one, City staff negotiated the lease amounts based on Fair Market Value. Based on City staff review of the existing Telecommunication Lease Agreements with other Iowa public entities on public property that it was able to obtain, staff is reasonably certain that the Fair Market Value determination by the Real Estate Division is a fair compensation to the City.

The approval of this Lease Amendment and Use Authorization and Consent Agreement will provide for ongoing revenue for the continued use of the property where it had not existed in the previous agreement.

PREVIOUS COUNCIL ACTION(S):

Date: April 6, 2009

Roll Call Number: 09-546

Action: On Lease Amendment with Verizon Wireless (VAW) LLC (Assignee of Des Moines MSA General Partnership) and Use Authorization and Consent Agreement with American Tower Delaware Corporation for Waveland Golf Course Telecommunications Tower, (4-20-09). (Council Communication No. 09-190) Moved by Hensley to adopt. Motion Carried 7-0.

Date: January 6, 2003

Roll Call Number: 03-086

Action: Revised lease guidelines governing placement of telecommunications equipment on City-owned property. (Council Communication No. 03-018). Moved by Vlassis to adopt. Motion Carried 7-0.

Date: October 21, 1996

Roll Call Number: 96-3615

Action: Regarding form of lease for monopoles on Public Property. (Council Communication No. 96-458). Moved by Vlassis to approve. Motion Carried 5-2. Absent: Flagg and Hensley.

Date: June 21, 1993

Roll Call Number: 93-2343

Action: Approval of Lease Agreement.

BOARD/COMMISSION ACTION(S):

Date: March 24, 2009

Action: Park and Recreation Board received the report on Waveland Monopole.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Approval of five year renewal terms, at Verizon's option.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.