

City of Ballwin

Memo

To: Robert Kuntz, City Administrator

From: Thomas H. Aiken, AICP, Assistant City Administrator / City Planner



Date: 11/26/14

Re: SUE Transfer

On March 24, 2014 the Board of Aldermen approved ordinance 14-09 which granted AT&T Mobility authority to erect and utilize a cellular tower in Ferris Park that exceeds the 35' height limit of the PA zoning district in place on the property. A building permit was issued for this tower in July. Work has not yet commenced. Ballwin has now received a petition to transfer the special use exception to Towerco which will own and maintain the tower. I assume that AT&T will lease rights to use the tower from Towerco.

All special use exceptions approved by Ballwin provide that they are issued to the named permittee only (in the case of this tower AT&T Mobility) and may not be transferred or assigned without the permission of the Board of Aldermen. Ordinance 14-21 dated June 16, 2014 authorized a lease with Cingular Wireless (a division of AT&T) outlines the uses permitted to be undertaken by the tenant on the land in Ferris Park. The lease specifically permits the tenant to assign sell or transfer its interests pursuant to the lease in whole or in part without Ballwin's consent to (A) an affiliate, (B) to any entity with a net worth of at least twenty million dollars or (C) to an entity that acquires all or substantially all of the Tenant's assets in the market. **No evidence has been provided that Towerco meets this requirement.**

No statement has been made pursuant to the petition to suggest that Towerco will not abide by the provisions of the SUE, but I recommend that the ordinance authorizing this transfer include language specifying that Towerco will provide written assurance by a company representative authorized to make such a commitment that it will abide by all of the provisions of the special use exception approved per ordinance 14-09 and that proper information is provided and kept current of the individual(s) with whom Ballwin is to communicate relative to the ongoing operation and maintenance of this facility.