

Lee County Board of County Commissioners
Agenda Item Summary

2003 1123
Blue Sheet No.

1. REQUESTED MOTION:

ACTION REQUESTED: (1) Approve the "Disclosure and Waiver of Conflicts of Interest" document supplied by Holland & Knight. A conflict of interest could potentially arise out of the representation by Holland & Knight LLP of Verizon Wireless ("Verizon Wireless") and/or its affiliates during lease negotiations for the placement and construction of a communications tower on the Lee Civic Center property. (2) Provide direction to county staff on scope of Lee County Fair Association "Agreement for Management of Lee Civic Center Complex" and whether negotiations for the lease of civic center property for placement of a communication tower should be pursued.

WHY ACTION IS NECESSARY: (1) Board approval is required to waive any potential conflicts of interest. (2) Board direction is needed as to scope of "Agreement for Management of Lee Civic Center Complex" and negotiations for land lease to Verizon.

WHAT ACTION ACCOMPLISHES: Allows Holland & Knight LLP to represent Verizon Wireless in connection with negotiations for a lease agreement allowing Verizon to construct a communications tower on the Lee Civic Center site.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # C12B

3. MEETING DATE:
10-07-2003

4. AGENDA:

CONSENT
ADMINISTRATIVE

APPEALS
PUBLIC
WALK ON
TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE
 ORDINANCE
 ADMIN. CODE
 OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER
B. DEPARTMENT County Attorney's Office and Parks & Rec.
C. DIVISION

BY: John Yarbrough
[Signature]

7. BACKGROUND: (1) Verizon Wireless asked Holland & Knight LLP to represent its interests in negotiating a lease agreement for the construction of a communications tower on the Lee Civic Center site. Holland & Knight LLP has and is presently representing Lee County in various other legal matters. Verizon has entered into negotiations with Lee County Fair Association to construct a communication tower on the civic center property.

Continued on Page 2

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<u>9-18-03</u>	N/A	N/A	N/A	<u>[Signature]</u> 9/25/03	OA 9/25/03	OM 9/25/03	RISK 9/25/03	GC 9/25/03	<u>[Signature]</u> 9-25-03

10. COMMISSION ACTION:

APPROVED
 DENIED
 DEFERRED
 OTHER

Rec. by CoAtty
Date: 9/25/03
Time: 11:55 am
Forwarded To: [Signature]
9/25/03

RECEIVED BY
COUNTY ADMIN: [Signature]
9/25
4:05 pm
COUNTY ADMIN
FORWARDED TO: [Signature]
9/25/03
[Signature]

Blue Sheet #:

Page No: 2

Subject: Conflict of Interest - Holland & Knight - Verizon

Per the "Agreement for Management of Lee Civic Center Complex" dated October 31, 2000, Lee County gave the Fair Association the authority to manage the property. Based upon that management authority, the Fair Association seeks to lease land at the civic center site to Verizon.

(2) Direct county staff on whether to pursue negotiations with Fair Association and Verizon for the lease of civic center property to construct a communication tower at the Civic Center.

Attachments: (1) Memos dated April 21, 2003 and July 24, 2003 from Kristie Kroslack, Assistant County Attorney to John Yarbrough, Director of Parks and Recreation; and

(2) Conflict Waiver Letter supplied by Holland & Knight, LLP

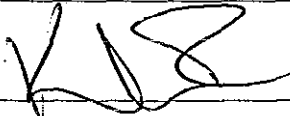
MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

FILE COPY

DATE: April 21, 2003

To: John Yarbrough, Director
Parks and Recreation

FROM:



Kristie L. Kroslack
Assistant County Attorney

RE: VERIZON TOWER AT CIVIC CENTER

I have reviewed the proposed Consent and Recognition Agreement prepared by Verizon Wireless Personal Communications LP, for construction of a tower at the Lee Civic Center property.

Based upon the "Agreement For Management Of Lee Civic Center Complex", dated October 31, 2000, it does not appear that the Fair Association has the authority to enter into a lease for space within the property for a Lessee to construct a communication tower.

The Management Agreement allows the Fair Association to manage (use, lease, sublease, etc.) the property. Property, as defined in the Agreement, means "buildings and all structures". The lease of land by the Fair Association to Verizon for the construction of a tower is clearly beyond the scope of the Agreement and appears contrary to the intent of the parties.

Furthermore, under the newly enacted Lee County Ordinance 03-11, the Board of County Commissioners (BOCC) expressed their intent to continue to permit towers in excess of 100 feet only by Special Exception and to consider the impact of those towers on woodstorks and compatibility with surrounding land uses. Whether this tower would meet the criteria for a Special Exception is unclear.

Finally, the Consent and Recognition Agreement would require BOCC approval and execution, which this office can not recommend.

Should you require anything further, please do not hesitate to contact me.

KLK/awe
Attachment

xc: James G. Yaeger, County Attorney
David M. Owen, Chief Assistant County Attorney
Tim Jones, Chief Assistant County Attorney

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: July 24, 2003

To: John Yarborough, Director
Parks and Recreation

FROM: 

Kristie L. Kroslack
Assistant County Attorney

RE: **VERIZON LAND LEASE AGREEMENT WITH FAIR ASSOCIATION**

The matter of the placement of a communications tower at the Lee Civic Center has previously been presented to the Board of County Commissioners (BOCC). [See, Blue Sheet #20010230 dated 2/27/01 for American Tower.] However, I am not convinced that the building of communication towers on County property was a power delegated to the Fair Association by the "Agreement for Management of the Lee Civic Center Complex" nor was the "installation, maintenance of utility wires, poles, cables, conduits, pipes over or under" the property. As such, this issue should be raised and the BOCC's intent clarified when the Agreement is presented to them for review and execution. I respectfully suggest that we jointly meet with the Commissioners to discuss this prior to scheduling it as an agenda item.

Accordingly, I have reviewed the proposed "Land Lease Agreement" and "Consent and Recognition Agreement" as prepared by Verizon Wireless Personal Communications, LP, for construction of "communications facilities" at the Lee Civic Center property. As such, I offer for use the attached "Non-Disturbance Agreement" as an alternative to Verizon's "Consent and Recognition Agreement."

While the County is not a party to the Land Lease Agreement, and the Fair Association will likely have their legal counsel review the document for legal sufficiency, I offer the following items for your consideration and discussion:

(1) Paragraph 1- Premises:

(A) Verizon seeks to lease a 40' by 50' parcel containing 2,000 square feet for \$12,000 [How competitive is this price as it seems low] a year. The location of this parcel is unclear. As such, a detailed Exhibit, depicting the exact location of the leased parcel and the placement of the communication facility, should be prepared and attached to the Agreement.

(B) The Agreement allows Verizon to install and maintain utility wires, pole, cables, conduits and pipes over, under and along such property. However, it is unclear how many and where such wires, poles, cables and pipes will be installed. Again, a detailed Exhibit, depicting the location of such equipment should be prepared and attached.

FILE COPY

Re: Verizon Land Lease at Civic Center

(2) I suggest replacing the language in Paragraph 4-, Extensions with the following language:

"This Agreement may be extended for four (4) additional five (5) year terms at the end of the initial five (5) year term, upon mutual agreement of the Parties, in a signed writing. Either Party may terminate the current lease term by providing at least (3) months written notice."

(3) Paragraph 7- Use; Governmental Approvals: In this Paragraph, Verizon indicates that it wants to construct "communication facilities". This term needs to be defined. If it is a tower, then a description (how high & type), diagram and picture of the tower should be attached to the lease.

Also, the following language should be added: " The tower must meet the criteria for a Special Exception and be constructed in accordance with Lee County Ordinance 03-11, taking into consideration the impact of the tower on wildlife and its compatibility with surrounding land uses."

(4) Paragraph 11- Interference: This Paragraph should be deleted since, in 2001, the BOCC approved the Non-Disturbance Agreement with American Tower. American Tower has an executed Lease Agreement with the Fair Association. As such, contrary to this provision, American Tower's equipment might interfere with Verizon's equipment.

(5) Paragraphs 13 and 16: Should be deleted since the Fair Association does not own the property and can not attest that it does.

(6) Paragraph 19 - Assignment: or subletting should not be permitted.

Once the Fair Association and Verizon have a negotiated Lease Agreement, the Non-Disturbance Agreement can be scheduled for BOCC review and/or execution. At that time, perhaps the depth of the Management Agreement should be explored as well.

Should you require anything further or have any questions, please do not hesitate to contact me.

KLK/awe
Attachments

xc: James G. Yaeger, County Attorney
David M. Owen, Chief Assistant County Attorney
Tim Jones, Chief Assistant County Attorney
Andrea Fraser, Assistant County Attorney

FILE COPY

xc: Southwest Florida and Lee County Fair Association, Inc.
11831 Bayshore Road
North Fort Myers, Florida 33917

NON-DISTURBANCE AGREEMENT

THIS NON-DISTURBANCE AGREEMENT ("AGREEMENT") is entered into this _____ day of _____ 2003, by and among **LEE COUNTY**, a political subdivision of the State of Florida (the "COUNTY"), with an address of P.O. Box 398, Fort Myers, Florida 33902-0398; **SOUTHWEST FLORIDA AND LEE COUNTY FAIR ASSOCIATION, INC.**, a not-for-profit organization (the "LANDLORD"), with an address of P.O. Box 398, Fort Myers, Florida 33902; and **VERIZON WIRELESS PERSONAL COMMUNICATIONS LP** d/b/a **VERIZON WIRELESS** ("VERIZON WIRELESS"), a Delaware limited partnership ("the TENANT") with an address of 180 Washington Valley Road, Bedminister, New Jersey, 07921.

WITNESSETH:

WHEREAS, the COUNTY is the owner of that certain real property located in Lee County, State of Florida, known as the Lee Civic Center Complex (the "Complex"); and

WHEREAS, the COUNTY and LANDLORD entered into an Agreement for Management of Lee Civic Center Complex, dated October 31, 2000 (the "Management Agreement"), that commenced on October 1, 2000, for an initial term of twenty (20) years; and

WHEREAS, under Paragraph 5 of said Management Agreement, LANDLORD is authorized to enter into leases and other agreements regarding use, maintenance and/or operation of Complex; and

WHEREAS, LANDLORD and TENANT intend to enter into a Land Lease Agreement ("Lease") whereby LANDLORD shall lease to TENANT certain real property as shown on the attached Exhibit "A" for placement of a communications facility, as illustrated in the attached Exhibit "B", (which meets the criteria for a special exception under Lee County Ordinance 03-11), located within the Complex at 11831 Bayshore Road, Fort Myers, Florida 33917, which is more particularly described in Exhibit "A" attached hereto and made a part hereof ("Property") together

with easements for ingress, egress and utilities on that real property.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and TENANT hereby agree as follows:

1. **Non-Disturbance**

In the event of the termination, cancellation or expiration of the Management Agreement for any reason while the Lease is still in effect, the Property shall remain subject to the Lease for the remainder of the then current lease term unless the County exercises its right to terminate for cause. COUNTY, its successors and assigns, shall honor and agree to be bound by the terms of the Lease, provided that TENANT is not in default under the terms of the Lease, and treat the Lease as if the Lease were between COUNTY, as Lessor, and TENANT. Unless renewed in writing by the COUNTY, the Lease will automatically terminate at the end of the ten current term.

2. **Obligations of Tenant**

TENANT shall perform and observe all of the obligations imposed by the Lease upon TENANT.

3. **Default by Landlord**

COUNTY shall give TENANT notice of any default by LANDLORD under the terms of the Management Agreement.

4. **County and Landlord's Representations**

COUNTY and LANDLORD represent as of the date of this Non-Disturbance Agreement that:

- (a) there have been no other supplements, amendments, modifications or additions to the Management Agreement;
- (b) there are no additional agreements, either written or oral, between COUNTY and LANDLORD regarding the Property or LANDLORD's obligations under the Management Agreement other than the Agreement with American Tower;
- (c) the Management Agreement is in full force and effect and COUNTY does not have any claims against LANDLORD; and to date, LANDLORD has not defaulted under the Management Agreement.
- (d) the COUNTY'S execution of this Non-Disturbance Agreement is not to be construed as direction to the Hearing Examiner to approve the tower.

- (e) The COUNTY'S execution of this document does not constitute approval of the tower on the site.

5. **Notices**

All notices required or permitted to be made under this Agreement shall be deemed properly served if delivered in writing personally or if sent by certified mail return receipt requested to:

COUNTY: Board of County Commissioners of
Lee County, Florida
P.O. Box 398
Fort Myers, Florida 33902-0398
Attention: Chairman

LANDLORD: Southwest Florida and Lee County Fair Association, Inc.
P.O. Box 398
Fort Myers, Florida 33902

TENANT: Verizon Wireless Personal Communications, LP
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: David C. Felton

6. **Waivers to be in Writing.**

No modification, amendment, waiver or release of any provision of this AGREEMENT or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

7. **Successors and Assigns.**

This AGREEMENT shall be binding upon and inure to the benefit of COUNTY, TENANT and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date above first written.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Ray Judah, Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

WITNESS

Print Name

WITNESS

Print Name

WITNESS

Print Name

WITNESS

Print Name

SOUTHWEST FLORIDA AND LEE COUNTY
FAIR ASSOCIATION, INC.

BY: _____

Print Name

VERIZON WIRELESS PERSONAL
COMMUNICATIONS

BY: _____

Print Name

EXHIBIT "A"

That portion of the following described real property, together with easements thereto:

The South one-half ($\frac{1}{2}$) of the Northwest one-quarter ($\frac{1}{4}$) of the Northeast one-quarter ($\frac{1}{4}$) of Section 24, Township 43 South, Range 25 East; and the North one-half ($\frac{1}{2}$) of the South-west one-quarter ($\frac{1}{4}$) of the Northeast one-quarter ($\frac{1}{4}$), Section 24, Township 43 South, Range 25 East; and the North one-half ($\frac{1}{2}$) of the Northwest one-quarter ($\frac{1}{4}$) of the Northeast one-quarter ($\frac{1}{4}$) of the Northeast one-quarter ($\frac{1}{4}$) of Section 24, Township 43 South, Range 25 East, Lee County, Florida.

The East one-half ($\frac{1}{2}$) of the East one-half ($\frac{1}{2}$) of Section 24, Township 43 South, Range 25 East, lying North and West of State Road #78, less State Road right-of-way, less the North one-half ($\frac{1}{2}$) of the Northwest one-quarter ($\frac{1}{4}$) of the Northeast one-quarter ($\frac{1}{4}$), of the Northeast one-quarter ($\frac{1}{4}$), Section 24, Township 43 South, Range 25, East, Lee County, Florida.

Law Offices

HOLLAND & KNIGHT LLP

One East Broward Boulevard, Suite 1300
P.O. Box 14070 (ZIP 33302-4070)
Fort Lauderdale, Florida 33301

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FAX 954-463-2030
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Helsinki	Tokyo
Mexico City	
Rio de Janeiro	*Representative Office

September 10, 2003

ROBERT M. MOTES
954-525-1000
rmotes@hklaw.com

VIA FEDERAL EXPRESS

David Owen
County Attorney's Office – Lee County
2115 Second Street
Fort Myers, Florida 33901

2003 SEP 11 AM 9:11
RECEIVED BY
LEE CO. ATTORNEY

Re: Verizon Wireless – Lee County Civic Center - Conflict Waiver Letter

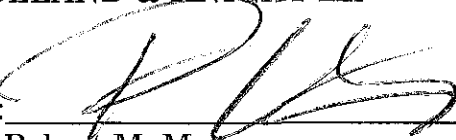
Dear David:

Enclosed are 2 conflict waiver letters with Verizon Wireless' original signature. Upon execution by the County, please forward 1 certified copy of the fully executed waiver letter to my attention at the above address.

Thank you again for your help with this matter. If you need any further information, please do not hesitate to contact me at (954) 525-1000.

Very truly yours,

HOLLAND & KNIGHT LLP

By: 
Robert M. Motes
For the Firm

Law Offices

HOLLAND & KNIGHT LLP

One East Broward Boulevard, Suite 1300
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International Offices:	São Paulo
Caracas*	Tel Aviv*
Helsinki	Tokyo
Mexico City	
Rio de Janeiro	*Representative Office

September 3, 2003

ROBERT M. MOTES
954-468-7886
rmotes@hklaw.com

Via Facsimile

Kirk Jamieson
Verizon Wireless
FAX: (678) 339-8642

David Owen
Lee County Attorney's Office
FAX: (941) 335-2606

Re: Disclosure and Waiver of Conflicts of Interest

Dear Kirk and David:

The purpose of this letter is to disclose the existence of a potential conflict of interest arising out of the representation by Holland & Knight LLP ("Firm") of Verizon Wireless Personal Communications LP d/b/a Verizon Wireless and/or its affiliates ("Verizon Wireless"). Verizon Wireless has asked us to represent its interests in connection with a certain lease transaction between it and Southwest Florida And Lee County Fair Association, Inc. (the "Fair Association"). In connection with such lease transaction, Verizon Wireless will be requesting that the Lee County, a political subdivision of the State of Florida (the "County") and owner of the underlying real property, execute a non-disturbance agreement with Verizon Wireless, whereby the County agrees that in the event the management agreement between the County and the Fair Association is terminated prior to termination of the lease agreement between Verizon Wireless and the Fair Association, then the County will become landlord under the lease between Verizon Wireless and the Fair Association. The property in question is the Lee County Civic Center Complex.

The Firm has been requested by the County to represent the County in various other matters. The County is being represented in the aforementioned transaction between the County and Verizon Wireless by counsel independent of the Firm, and the County understands that the Firm is not representing the County in its dealings with Verizon Wireless.

The applicable ethics rules permit us to represent clients with adverse, or potentially adverse interests in circumstances where our responsibilities to and relationship with one client will not be adversely affected by our representation of another client, and on the condition that both clients have provided consent after consultation.

We hereby confirm to you that, under the circumstances of this matter, our current representation of the County will not adversely affect our responsibilities to and relationship with Verizon Wireless and vice versa. We further confirm to you that the Firm will not share with either client any confidential or proprietary information related to the Firm's work for the other client.

In the event of any litigation arising between the County and Verizon Wireless, the Firm will not represent either party to the litigation without the express written consent of both parties.

Under these circumstances, if you agree that Holland & Knight LLP may undertake the concurrent representation of Verizon Wireless and the County in the matter described above, and that all conflict issues with respect to such concurrent representations are waived by you, please indicate your consent and waiver by signing below. Also, please return, via facsimile and U.S. Mail, the executed copy to me as soon as possible, keeping a copy for your records. We appreciate your assistance in this matter.

Very truly yours,

HOLLAND & KNIGHT LLP



Robert M. Motes

Acknowledged and agreed to:

LEE COUNTY, a political subdivision
of the State of Florida

By: _____

Name: _____

Title: _____

Dated: _____

VERIZON WIRELESS PERSONAL
COMMUNICATIONS LP
d/b/a VERIZON WIRELESS

By:  _____

Name: D. Kirk Jamieson

Title: Area General Counsel - South

Dated: 9/09/03