



# **Town of Carrboro**

Town Hall  
301 W. Main St.  
Carrboro, NC 27510

## **Meeting Minutes Board of Aldermen**

**Tuesday, January 26, 2016**

**7:30 PM**

**Board Chambers - Room 110**

**Present:** Mayor Lavelle, Alderman Damon Seils, Alderman Sammy Slade, Alderman Bethany Chaney, and Alderman Michelle Johnson, Alderman Jacquelyn Gist, Alderman Randee Haven-O'Donnell

**Also Present:** David Andrews, Town Manager, Catherine Dorando, Town Clerk, Bob Hornik, Town Attorney

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### **APPROVAL OF PREVIOUS MEETING MINUTES**

MOTION WAS MADE BY ALDERMAN SLADE, SECONDED BY ALDERMAN HAVEN-O'DONNELL TO APPROVE THE MINUTES OF JANUARY 19, 2016, AS AMENDED. VOTE: AFFIRMATIVE ALL

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### **AUTHORIZATION TO RENEW LEASE AGREEMENT FOR COMMUNICATION ANTENNA CO-LOCATION ON TOWN HALL TOWER**

AT&T (New Cingular Wireless PCS, LLC) expressed interest in renewing their antenna co-location lease agreement for the Town's telecommunications tower. The current lease will expire in 2017 and staff has been working with the applicant to negotiate a lease renewal and the proposed lease was reviewed by the Town Attorney. The Board of Aldermen was requested to adopt the attached resolution authorizing the Town Manager to execute the lease agreement.

**A motion was made by Alderman Slade, seconded by Alderman Haven-O'Donnell, that this resolution be approved.**

#### **FIRST AMENDMENT TO CO-LOCATION AGREEMENT**

THIS FIRST AMENDMENT TO CO-LOCATION AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between Town of Carrboro, a North Carolina municipal corporation, having a mailing address of 301 West Main Street, Carrboro, NC 27510 (hereinafter referred to as "**Lessor**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "**Lessee**").

**WHEREAS**, Lessor and Lessee entered into a Co-Location Lease Agreement dated September 21, 2007 (the "**Agreement**"), whereby Lessor granted to Lessee an exclusive and non-revocable license to maintain and operate their Equipment, on and around the base of the Tower (hereinafter referred to as the "**Premises**") located at 301 West Main Street (Town Hall), Carrboro, NC 27510 (hereinafter referred to as the "**Property**"); and

**WHEREAS**, the term of the Agreement will expire on August 20, 2017 and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

**WHEREAS**, Lessor and Lessee desire to amend the Agreement to extend the term of the Agreement; and

**WHEREAS**, Lessor and Lessee desire to amend the Agreement to adjust the Base Fee in conjunction with the modifications to the Agreement contained herein; and

**WHEREAS**, Lessor and Lessee desire to modify, as set forth herein, the Lessee's obligations to pay the Base Fee to Lessor for a Base Fee Guarantee Period; and

**WHEREAS**, Lessor and Lessee desire to amend the Agreement to modify the notice section thereof; and

**WHEREAS**, Lessor and Lessee desire to amend the Agreement to clarify scope of Lessee's permitted use of the Premises; and

**WHEREAS**, Lessor and Lessee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The Term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years ("**New Initial Term**") commencing on August 21, 2017. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for one (1) separate consecutive additional period of five (5) years (such five (5) year additional period is hereinafter referred to as an "**Additional Extension Term**" and shall be considered an Extension Term

under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term. The New Initial Term and the Additional Extension Term are collectively referred to as the Term ("**Term**").

2. **Termination.** In addition to any rights that may exist in the Agreement, after the Base Fee Guarantee Period, as defined below, Lessee may terminate the Agreement at any time with twelve (12) months prior written notice to Lessor for any or no reason.

3. **Base Fee.** Commencing on August 21, 2017, the current Base Fee payable under the Agreement shall be Thirty-Four Thousand Five Hundred and No/100 Dollars (\$34,500.00) payable annually in advance, and shall continue during the Term, subject to adjustment as provided herein.

4. **Modification of Lessee's Obligation to Pay – Base Fee Guarantee.** Notwithstanding Lessee's obligations to pay the Base Fee set forth under the Agreement, for a twenty-four (24) month period commencing August 21, 2017 and ending August 20, 2019 ("Base Fee Guarantee Period"), Lessee's obligation to pay the Base Fee is guaranteed and such obligation will not be subject to offset or cancellation by Lessee, except as due to loss from casualty or condemnation. Notwithstanding the foregoing, if Lessor exercises any of Lessor's rights to terminate the Agreement, if any, Lessee will be released from any and all of its obligations to pay Base Fee during the Base Fee Guarantee Period as of the effective date of the termination. In addition, Lessee shall be released from any and all of its obligations to pay the Base Fee during the Base Fee Guarantee Period if any of the following shall occur: (a) Lessor is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Property; (c) the Lessor shall require Lessee to relocate Lessee's equipment and facilities to a location that is not acceptable to Lessee in its reasonable business judgment if allowed for in the Agreement, (d) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of the Lessee or (e) Lessee terminates the Agreement pursuant to the terms of the Permitted Use section as modified below. If this Agreement is further modified in the future with an obligation for Lessee to pay an additional Base Fee, the payment of base fee guarantee established in this paragraph will not be diminished or limited, but such base fee guarantee will not extend to that future additional Base Fee obligation.

5. **Future Base Fee Increase / Extension Term Increase.** The Agreement is amended to provide that commencing on August 21, 2022, the Base Fee shall increase by fifteen percent (15%)..

6. **Acknowledgement.** Lessor acknowledges that: 1) this First Amendment is entered into of the Lessor's free will and volition; 2) Lessor has read and understands this First Amendment and the underlying Agreement and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Lessor's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this First Amendment, the underlying Agreement between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect.

7. **Notices.** Paragraph 12 of the Agreement is hereby deleted in its entirety and replaced with the following:

"All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier,

postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Lessee:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: 368-130; Cell Site Name: Carrboro (NC)  
Fixed Asset No: 10017450  
575 Morosgo Drive NE  
Atlanta, GA 30324

With a required copy of the notice sent to the address above to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department – Network Counsel  
Re: Cell Site #: 368-130; Cell Site Name: Carrboro (NC)  
Fixed Asset No: 10017450  
208 S. Akard Street  
Dallas, Texas, 75202-4206

As to Lessor:

Town of Carrboro  
301 West Main Street  
Carrboro, NC 27510  
Attn: Town Manager

With a copy to:

The Brough Law Firm, PLLC  
1526 East Franklin Street, Suite 200  
Chapel Hill, NC 27514

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.”

8. **Expansion of the Premises.** Lessor grants, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Premises so that Lessee or its authorized sub lessees may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the communication facility or to any equipment related thereto, or for any other reasons, as determined by Lessee in its sole discretion. Should Lessee exercise the right to expand the Premises, Lessee will pay and Lessor will accept as additional Base Fee under the Agreement an amount equal to the then current Base Fee calculated on a per square foot basis as multiplied by each additional square foot added to the Premises. Upon notice to Lessor, a description and/or depiction of the modified Premises ground will become part of the Agreement without any additional action on the part of Lessee and Lessor; however, at the request of Lessee, the parties will execute a Memorandum of Lease in recordable form memorializing

the modification of the ground space of Lessor's Property, which either party may record at its option. Any new space taken must have the consent of the Landlord which will not be unreasonably withheld.

9. **Permitted Use.** Lessee, its personnel, invitees, contractors, agents, sublessees, or its authorized sub lessees, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon, or relocate the same within the Premises at any time during the term of the Agreement for any reason, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Lessee may terminate the Agreement and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee.

10. **Exhibit A-1.** Exhibit 1 to the Agreement is hereby deleted in its entirety and replaced with the new Exhibit A-1, which is hereby attached hereto and made part of this Third Amendment.

11. **Memorandum of Lease.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

12. **Sale of Property.**

(a) Lessor shall not be prohibited from the selling, leasing or use of any of the Property or the surrounding property except as provided below.

(b) If Lessor, at any time during the Term of the Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or surrounding property, to a purchaser other than Lessee, Lessor shall promptly notify Lessee in writing, and such rezoning, sale, subdivision or transfer shall be subject to the Agreement and Lessee's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Lessor or its successor shall send the documents listed below in this subsection (b) to Lessee. Until Lessee receives all such documents, Lessee shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement.

- i. Old deed to Property ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new Lessor including phone number(s)

(c) The provisions of this Section shall in no way limit or impair the obligations of Lessor under the Agreement, including interference and access obligations.

13. **Base Fee Stream Offer.** If at any time after the date of this First Amendment, Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of the Base Fee payments associated with the Agreement (“**Base Fee Stream Offer**”), Lessor shall immediately furnish Lessee with a copy of the Base Fee Stream Offer. Lessee shall have the right within ninety (90) days after it receives such copy to match the Base Fee Stream Offer and agree in writing to match the terms of the Base Fee Stream Offer. Such writing shall be in the form of a contract substantially similar to the Base Fee Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the ninety (90) day period, Lessor may assign the right to receive Base Fee payments pursuant to the Base Fee Stream Offer, subject to the terms of the Agreement. If Lessor attempts to assign or transfer Base Fee payments without complying with this Section, the assignment or transfer shall be void. Lessee shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Lessor complies with this Section.

14. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Lessor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The foregoing shall not apply to the Base Fee which is due and payable without a requirement that it be billed by Lessor. The provisions of this subsection shall survive the termination or expiration of the Agreement.

15. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

16. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

**This the 26<sup>th</sup> day of January, 2016**

**The motion carried by the following vote:**

**Aye:** Mayor Lavelle, Alderman Gist, Alderman Haven-O'Donnell, Alderman Slade, Alderman Chaney, Alderman Seils, and Alderman Johnson

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**OPENING AND CONTINUATION OF A PUBLIC HEARING FOR MAJOR MODIFICATION  
TO CONDITIONAL USE PERMIT FOR THE BUTLER TO ALLOW HILTON GARDEN INN  
TO FEBRUARY 23, 2016**

The purpose of this item was for the Board of Aldermen to open the public hearing for review of an application for a major modification to the existing Conditional Use Permit (with associated conditional use rezoning) for 107 Padgette Lane. The applicant requested that the public hearing scheduled to open on this date be continued to the Board's February 23, 2016 meeting to allow additional time to address Advisory Board recommendations from the January 7th Joint Review meeting.

**MOTION WAS MADE BY ALDERMAN SEILS, SECONDED BY ALDERMAN CHANEY, TO  
CONTINUE THE PUBLIC HEARING FOR REVIEW OF AN APPLICATION FOR A MAJOR**

**MODIFICATION TO THE EXISTING CONDITIONAL USE PERMIT (WITH ASSOCIATED CONDITIONAL USE REZONING) FOR 107 PADGETTE LANE TO THE FEBRUARY 23, 2016 MEETING. VOTE: AFFIRMATIVE ALL**

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**A PUBLIC HEARING TO OBTAIN COMMUNITY INPUT ON TOWN NEEDS AND BUDGET FOR UPCOMING FY 2016-17**

This was a public hearing to receive comments from the public regarding the upcoming budget for the Town beginning July 1, 2016.

David Andrews, the Town Manager, made the staff presentation.

**MOTION WAS MADE BY ALDERMAN GIST, SECONDED BY ALDERMAN CHANEY TO OPEN THE PUBLIC HEARING. VOTE: AFFIRMATIVE ALL**

Rob Pinder discussed an idea of community solar with the Town to be used as a host property. He asked the Board to consider setting aside funding for this project.

Alderman Gist asked if there are models for the Town to consider regarding public private partnerships for the use of Town land as a solar farm. She asked Rob Pinder to provide any information on this possible scenario that would allow the Town to rent the space for solar use.

**MOTION WAS MADE BY ALDERMAN SLADE, SECONDED BY ALDERMAN GIST FOR TOWN STAFF TO BEGIN WORK WITH ROB PINDER ON FIGURING WHAT A RETURN-ON-INVESTMENT SCENARIO FOR THE COMMUNITY SOLAR PROJECT AND TO ALSO CONSIDER RENTING TOWN LAND FOR SOLAR ENERGY USE. VOTE: AFFIRMATIVE ALL**

Robert Dowling, the Executive Director of the Community Home Trust, thanked the Board for their financial support and asked them to consider continuing the support in the next fiscal year with a \$75,000 allotment.

Colleen Barclay, representing the Bicycle Coalition, proposed that Carrboro establish a line item for bicycle and pedestrian issues in the budget.

Alderman Slade stated that he would be interested to see the Town's current budget percentage as it relates to biking and pedestrian work within the Town.

Alderman Seils stated that Carrboro's mode-share rating should be used for data. He also suggested using Carrboro's existing Bike Plan as a working tool.

Braxton Foushee asked the Board to get out of the box of thinking about affordable housing and stated that some folks can't afford affordable housing but can afford work force housing. He asked the Board to think about what could be done regarding affordable housing on the Green Tract.

Alderman Chaney asked staff to look into partnering with Chapel Hill and Orange County with efforts regarding a youth jobs project to find meaningful summer employment for young people.

Alderman Gist stated that her priority is ways to increase the Town's storm water system and creative ways to assist the residents that are experiencing a devaluation of their properties. She asked the Town

Manager to send the Board a list of the proposed properties in the plan. She also asked that OWASA be included as a responsible owner in paying for their share of the costs.

**MOTION WAS MADE BY ALDERMAN SLADE, SECONDED BY ALDERMAN JOHNSON TO CLOSE THE PUBLIC HEARING. VOTE: AFFIRMATIVE ALL**

Alderman Slade asked that public restroom facilities in the downtown area be included in the budget discussions.

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**CAPITAL IMPROVEMENT PROGRAM UPDATE**

The purpose of this item was to provide Board of Aldermen with an update on the Town's Capital Improvement Program (CIP),

Arche McAdoo, the Town's Finance Director, made the presentation to the Board.

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**CONSIDERATION OF PROPOSED CHANGES TO THE UNIFIED ANIMAL ORDINANCE**

The purpose of this item was to allow the Board to discuss, and adopt, changes made to the Unified Animal Control Ordinance (UAO).

Chief Horton provided the staff report to the Board.

**A motion was made by Alderman Chaney, seconded by Alderman Johnson, that this resolution be approved**

**RESOLUTION AUTHORIZING ORANGE COUNTY ANIMAL CONTROL ORDINANCE TO BE APPLICABLE WITHIN THE TOWN OF CARRBORO**

WHEREAS, the Town of Carrboro (the "Town") and Orange County (the "County") have heretofore each had separate animal control ordinances regulating the keeping and maintaining of domestic animals, pets, wild animals, and livestock; and

WHEREAS, the Town and the County consider it to be in their mutual best interests to work cooperatively with respect to the adoption and enforcement of ordinances regulating domestic animals, pets, wild animals and livestock;

WHEREAS, the Orange County Board of County Commissioners is now considering the adoption of a revised Animal Control Ordinance, to be found at Section 4-31 *et seq* of the Orange County Code of Ordinances;

WHEREAS, the Town has heretofore adopted and enforced regulations regarding keeping of domestic animals, pets, wild animals and livestock pursuant to Chapter 10 of the Town of Carrboro Code of Ordinances;

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-122, the Town of Carrboro Board of Aldermen may by resolution permit the County's Animal Control Ordinance to be applicable within the city;



WHEREAS on November 10, 2015, pursuant to the aforesaid statutory authority the Town of Carrboro Board of Aldermen adopted a “Resolution Authorizing Orange County Animal Control Ordinance to be Applicable within the Town of Carrboro” in anticipation that the Orange County Board of County Commissioners would adopt the then-current County draft of the Orange County Animal Control ordinance;

WHEREAS there have been subsequent amendments to the Orange County Animal Control Ordinance, and it remains the Town of Carrboro Board of Aldermen’s intention to authorize the enforcement of the Orange County Animal Control Ordinance within Carrboro to the extent that the County Ordinance is not inconsistent with Chapter 10 of the Town of Carrboro Code of Ordinances, as amended on November 10, 2015.

NOW, THEREFORE, the Town of Carrboro Board of Aldermen resolves as follows:

1. That upon the effective date of the revised Orange County Animal Control Ordinance, adopted by the Board of County Commissioners on January 21, 2016, the revised Orange County Animal Control Ordinance shall be applicable within the corporate limits of the Town of Carrboro to the extent that the County Ordinance is not inconsistent with Chapter 10 of the Town of Carrboro Code of Ordinances, as amended on November 10, 2015.

2. This Resolution shall remain in full force and effect until the Town of Carrboro Board of Aldermen withdraws the permission granted herein, in accordance with N.C. Gen. Stat. § 153A-122.

This Resolution shall become effective upon the effective date of the revised Orange County Animal Control Ordinance.

**The motion carried by the following vote:**

**Aye:** Alderman Gist, Alderman Haven-O'Donnell, Alderman Slade, Alderman Chaney, Alderman Seils, Mayor Lavelle, and Alderman Johnson

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**ADJOURNMENT**

**MOTION WAS MADE BY ALDERMAN SEILS, SECONDED BY ALDERMAN JOHNSON, TO ADJOURN THE MEETING. VOTE: AFFIRMATIVE ALL**