BILL 2018-51

Second & Final

Agenda Item

TO: Mayor and City Council

FROM: Timothy Wymes, Community Development Director

DATE: January 7, 2019

RE: Installation for Communication Tower

Issues

The attached ordinance is for the installation of a communication tower at 1015 S. West Street to be located in an "R-2" Two-Family Residential district. Petitioner Atlas Towers 1, LLC petitioned the Planning Commission at which a public hearing was held on November 26, 2018. Upon review of all information submitted, City staff and the Planning Commission it meets all the requirements under Article 31, Zoning Ordinance.

Recommendation

Staff along with the Planning Commission recommends approval of the Conditional Use Permit application to allow the installation of a communication tower.

Bill 2018-51

AN ORDINANCE FOR THE CITY OF CAMERON, MISSOURI, AUTHORIZING A CONDITIONAL USE PERMIT FOR A COMMUNICATION TOWER IN "R-2' TWO-FAMILY RESIDENTIAL AT 1015 SOUTH WEST STREET

WHEREAS, on July 17, 2018, Atlas Tower 1, LLC petitioned for a Conditional Use Permit to allow the installation of a communication tower in an "R-2" Two-Family Residential District; and

WHEREAS, due public notice in the manner prescribed by law regarding the above petition was given by publication in the *Cameron Citizen-Observer* on October 25, 2018 of a public hearing concerning this matter before the Planning and Zoning Commission of Cameron (the "Commission") for November 26, 2018; and

WHEREAS, the Commission did hold a public hearing and received evidence regarding the matter on November 26, 2018; and

WHEREAS, the Commission has met, considered said request and finds that it complies with the Conditional Use provisions of the Cameron Zoning Ordinance and recommends approval of said Conditional Use Permit by the City Council; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAMERON, MISSOURI, AS FOLLOWS:

Section 1. Pursuant to Article 31, Conditional Uses, of the Cameron Zoning Ordinance, petitioner Atlas Tower 1, LLC is hereby granted a Conditional Use Permit to install a communication tower at 1015 South West Street. The petitioner agrees to comply with the City of Cameron Codes and Zoning Ordinances regarding communication towers. As part of the Conditional Use agreement, Atlas Towers 1, LLC will provide a maintenance agreement (attached Exhibit A) for the property and equipment for all damages and repairs caused by the tower permitted under the Conditional Use Permit.

Exhibit A
Communication Tower Maintenance Agreement (attached)

Section 2. The Mayor is authorized to sign this ordinance approving it on behalf of the City of Cameron.

Section 3. The City Clerk is directed to attest to the Mayor's signature.

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

SECOND & FINAL

Passed and approved on first reading this 17th day of December 2018.
Passed and approved on second and final reading this 7th day of January 2019.

_____
Mayor Darlene Breckenridge

ATTEST:

_____
City Clerk

SECOND & FINAL

Communications Tower Maintenance Agreement *for*
Atlas Tower: 1015 S West St., Cameron, MO

THIS AGREEMENT, is hereby made and entered into by and between **Atlas Tower 1, LLC**, herein referred to as "Developer", and the CITY OF CAMERON, herein referred to as the "City."

WHEREAS, the Developer herein wishes to provide a guarantee of performance including maintenance responsibilities within their project area as shown on the approved building plans and as set forth within this agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the undersigned parties do covenant and agree as follows:

1. The developer agrees, at their own cost and expense:

    a. To furnish all labor, equipment and material necessary to perform and complete all maintenance for the project area in a good and workmanlike manner and to do all work incidental thereto in accordance with the approved plans and requirements of the City of Cameron.

    b. To maintain the site area in good working order and free of debris, excessive weeds and overgrowth, and clear of any other potentially hazardous condition. Developer shall also restore, repair or replace, to the satisfaction of the City, any defective work or labor done or defective materials furnished.

    c. Developer shall use reasonable best efforts to maintain the site in good working order at all times. The foregoing not withstanding, the City may inspect the site at any time and request Developer perform certain reasonable maintenance tasks to keep the site in a good working and safe condition. Maintenance required in this fashion shall be completed by the Developer within 30 days of written notice from the City directing performance of such activities.

    d. If the Developer fails to maintain the improvements as outlined within this Agreement consistent with the approved plans, the City shall have the right to make such improvements and charge Developer the cost of such improvements and maintenance along with reasonable penalty and/or administration fees.

2. Developer agrees that if suit is brought upon this Agreement with regard to the completion of the maintenance, all costs and reasonable expenses and fees incurred by the City in successfully enforcing such obligations shall be paid by Developer including reasonable attorney's fees, and that upon entry of judgment such costs, expenses and fees shall be taxed as costs and included in any judgment rendered.

3. The City shall not, nor shall any officer or employee of City, be liable or responsible for any accident, loss or damage happening or occurring to the works specified in this Agreement prior to the completion of approval hereof, nor shall City or any officer or employee thereof be liable for any persons or property injured by reason of the acts or omissions of Developer, his agents or employees in the performance of the work, and all of said liabilities are assumed by Developer. Developer agrees to protect, defend and hold harmless City and the officers and employees thereof from all loss, liability or claim because of or arising out of the acts of omissions of Developer, his agents and employees, in the performance of this Agreement, or arising out of the use of any patent or patented article in the performance of this Agreement.

4. The Developer hereby grants to the City, and to any agent or employee of the City, the irrevocable permission to enter upon the lands of the above referenced project for the purpose of completing the maintenance work described herein, as may be reasonably necessary.

5. Developer agrees at all times, up to the completion of any maintenance services, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the construction or maintenance of the improvements, and to protect the traveling public from such defective or dangerous conditions, if any.

6. It is understood and agreed by the Developer that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be constructed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

7. Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

   CITY OF CAMERON
   City of Cameron
   Economic Development Department
   205 North Main Street
   Cameron, Missouri 64429

   DEVELOPER
   Atlas Tower
   3002 Bluff St., Suite 300
   Boulder, CO 80301

8. If the Developer, or the Developer's successors, agents, or assigns, abandon the site and the City provides written notice of the potential abandonment to the Developer, and the

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Developer does not respond to the written notice stating that the site is not abandoned or remove the proposed telecommunications support structure within thirty (30) days of said written notice, the City in its discretion may either (1) remove the telecommunications support structure from the site and certify the costs of removal to the Developer, which the Developer shall pay said certified costs to the City within ninety (90) days of receipt of notice or (2) take possession of the telecommunications support structure.

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DEVELOPER:

_____ _____

Developer Signature Date

Address: 3002 Bluff St., Suite 300, Boulder, CO 80301

Telephone: (303) 448-8896

NOTARY ACKNOWLEDGMENT REQUIRED FOR SIGNATURE OF DEVELOPER

STATE OF COLORADO }ss.
COUNTY OF BOULDER }

On _____, before me, _____, a notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)