Request for City Council Committee Action
From the City Attorney's Office

Date: December 11, 2007
To: Ways & Means/Budget Committee
Referral to: None

Subject: **T-Mobile USA v. City of Minneapolis**

Recommendation: That the City Council approve settlement of the above-entitled claim by payment of $50,000.00 to T-Mobile USA and Larkin Hoffman Daly & Lindgren Ltd. from Fund/Org 690 150 1500 4000 and authorize the City Attorney's Office to execute any documents necessary to effectuate the settlement.

Previous Directives: None

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Approved by: Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)
___ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
___ Action requires an appropriation increase to the Capital Budget
___ Action requires an appropriation increase to the Operating Budget
___ Action provides increased revenue for appropriation increase
___ Action requires use of contingency or reserves
_x_ Other financial impact (Explain): Payment of $50,000.00 from Fund /Org. 690 150 1500 4000
___Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:
City Goals: Build Community

Background/Supporting Information

In July 2005, the City approved T-Mobile's application to construct a rooftop telecommunications facility on the fifth story location of the Andrew House Apartments located at 414 7th Avenue SE. At the time of the application, and in spite of multiple inquires, City staff failed to notify the applicant that the project site was located in the locally-designated Fifth Street SE historic district thereby triggering review by the Heritage Preservation Commission (HPC). As part of the application process, the applicant wrote two letters to HPC staff inquiring about historic district concerns with the location of the proposed facility. Staff did not respond

to the inquiries. The City ultimately issued building permits to the applicant and the construction of the communications facility commenced.

City staff did not realize the error until several inquiries and complaints were made by the neighborhood in late 2005. The Zoning Administrator issued a stop-work order to T-Mobile. After making substantial progress toward completion of the communications facility installation at significant expense, T-Mobile halted final construction efforts in compliance with the order. T-Mobile maintained that it had vested rights to complete construction at the location at issue based on the substantially completed construction in compliance with the terms of the building permit issued by the City. T-Mobile also contended that its installation was automatically approved pursuant to the 60-day law in Minn. Stat. § 15.99. Without waiving these legal claims, T-Mobile agreed to submit an HPC application in April 2007.

On May 15, 2007, the HPC approved the application subject to relocation of the communications facility from the fifth story of the site to the third story. T-Mobile appealed this decision to the City Council because the third story height was not technologically feasible. The City Council ultimately denied the appeal; however, certain Council Members expressed on the record that the City should bear the expense of relocation of the facility on account of the oversight if T-Mobile were willing to find a compromise location for the facility rather than pursue their legal claims. After working with the ward Council Member and neighborhood, a compromise location was approved by the HPC on October 23, 2007.

T-Mobile has filed a claim for $95,950.00 supported by an accompanying estimate reflecting the costs of demolition and relocation of the communications facility. Because of a strong claim to vested rights in completion of the communications facility construction at the originally approved, objectionable location and the applicant's willingness to find an acceptable alternative location in light of the expressed intent on the record to bear or share the expense, the parties entered into settlement negotiations. At this time, T-Mobile would agree to a full and complete settlement of their claim against the City of Minneapolis for the sum of $50,000.00 conditioned on your approval. I believe this is an appropriate resolution of this matter and is in the best interest of the City in light of the risks, delays and expense involved in going forward with litigation.