

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
JUNE 26, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Granting an Easement to AT&T (Downers Drive Water Tower)	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A Resolution has been prepared to approve a grant of easement to Illinois Bell Telephone (doing business as AT&T) for ground space located in front of the Downers Drive Water Tower.

STRATEGIC PLAN ALIGNMENT

The Village Goals for 2011 includes a *Strong, Diverse Local Economy*. A supporting objective of this statement is *More Retail Businesses and Sales Tax Base*.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval on the July 3, 2007 consent agenda.

BACKGROUND

AT&T approached the Village asking to locate a new ground mounted cabinet adjacent to the one-story brick pump building in front of the water tower on Downers Drive. The cabinet would be used to upgrade the existing cell tower facilities. AT&T proposes to bring new fiber cable to the cabinet. The area of this cabinet/easement is to be 6.5 feet by 7.5 feet. There will also be an access easement granted so that AT&T may access their proposed cabinet. AT&T has agreed that they will dress the area appropriately so as to make the area look nicer after the cabinet has been placed. An easement agreement is attached showing the area in question as well as the proposed easement areas.

The utility easement is in no way related to *Project Lightspeed* and it is not subject to any franchise agreement.

ATTACHMENTS

Resolution

Easement Agreement with Attachment

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN EASEMENT AGREEMENT TO
ILLINOIS BELL TELEPHONE COMPANY D.B.A. AT&T ILLINOIS**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Easement Agreement (the "Agreement"), between the Village of Downers Grove ("Grantor") and Illinois Bell Telephone Company d/b/a AT&T Illinois ("Grantee"), for an easement for ground space located in front of the Downers Drive Water Tower, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

EASEMENT TO Illinois Bell Telephone Company d.b.a AT&T Illinois FOR ACCESS, UTILITY PURPOSES AND INDEMNIFICATION AGREEMENT

PIN: 09-06-307-013
Address: 4318 Downers Drive
Downers Grove, IL
60515

This space is reserved for recording purposes.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned GRANTOR, VILLAGE OF DOWNERS GROVE (the "VILLAGE"), an Illinois municipal corporation, in the County of DuPage and State of Illinois, its successors and assigns, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants, warrants and conveys to the GRANTEE, ILLINOIS BELL TELEPHONE COMPANY doing business as AT&T ILLINOIS, an Illinois corporation and utility company, and its successors and assigns, a perpetual non-exclusive easement and privilege on, over, across, under, in and through certain lands marked "Proposed AT&T Easement" on **Exhibit A**, attached with the right to construct, reconstruct, add to, or remove, operate and maintain its telecommunication system, consisting of such poles, anchors, guys, wires, cables, buried cables, conduits, terminals, manholes, other related fixtures and appurtenances that the GRANTEE may from time to time require for the purpose of telecommunications, including the right to ingress and egress for the purpose of this grant and the right to clear and keep cleared such trees, roots, bushes and other obstructions from the easement upon that certain real

property described as PIN: 09-06-307-013 and the common address of 4318 Downers Drive, Downers Grove, IL 60515.

All installations shall be subject to the ordinances of the VILLAGE of Downers Grove. Easements are hereby reserved for and granted to the VILLAGE of Downers Grove and other governmental authorities having jurisdiction of the land over the entire easement area for ingress, egress and the performance of any and all municipal and other governmental services and in no case shall the GRANTEE(S) permit any interference with the proper operation and maintenance of the water service facilities. GRANTEE(S) agree to restore all property, including but not limited to landscaping, sod and/or blacktop, disturbed by its activities in use of the easement to the condition existing prior to the disturbance or better. Further, GRANTEE(S) agree to dress the area with natural vegetation or other material to create an attractive setting. There shall be no fencing placed around this easement area.

Notwithstanding anything to the contrary herein, it is understood that the GRANTOR(S) hereby reserves the right to utilize the property which is the subject of the easement so long as it meets zoning requirements and does not reasonably interfere with easement rights granted hereunder which use shall specifically include but not be limited to the right to ingress and egress over, upon and through the property, and any and all other rights not inconsistent with use by the VILLAGE.

This easement and all the terms, conditions, rights and obligations contained herein shall run with the land and the covenants and agreements herein contained shall be binding upon the parties hereto, their respective GRANTEEs, lessees, GRANTORS,

successors, assigns and all subsequent owners of the fee title to the real estate described above by parcel number and common address.

Any mortgage, deed of trust, or ground lease granted or entered into with respect to the real estate which is the subject of this easement from and after the date of this grant of easement shall be subordinate and inferior to the easements, rights, benefits and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, right, benefits, and obligations created by this grant of easement.

INDEMNIFICATION

GRANTEE, its heirs, successors and assigns, assumes all liability and shall indemnify, defend and hold harmless the VILLAGE, its officers and employees, for any injury and damage to persons or property occasioned by or arising in connection with the AT&T telecommunications system located within the Village's property.

GENERAL TERMS

1. The provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, successors and assigns, and shall run with the title of Property;
2. Neither the VILLAGE, its officers, agents or employees, including any public utility that is authorized to use the public right-of-way, shall be liable for any damage incurred to the easement during or as a result of any repair, maintenance, operation, use or installation of equipment or facilities within the VILLAGE right-of-way, including but not limited to tree removal. Nothing herein shall relieve the VILLAGE or any other person from the obligation to comply with the Illinois Underground Utilities Facilities

Damage Prevention Act, 220 ILCS 50/1 et seq.

3. The persons executing this Agreement for and on behalf of the respective parties represent and warrant that they have the full power and authority to execute this Agreement and to bind the respective parties to all the terms conditions and covenants contained herein and that their authority has been granted and approved by the appropriate authority;

4. In case one or more of the provisions contained in this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein;

5. This Instrument shall be recorded and filed by the VILLAGE with the DuPage County Recorder of Deeds, at the GRANTEE's expense.

6. In case one or more of the provisions contained in the Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. Illinois law shall govern this Agreement in its performance and interpretation. Venue shall be the County of DuPage.

(Intentionally Left Blank)

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the date herein written below.

Date

GRANTEE (Illinois Bell Telephone Company dba AT&T Illinois, 225 W. Randolph St., Chicago, Illinois 60606):

Subscribed and sworn
to this ____ day of
_____, 2007

Notary Public

**GRANTOR:
VILLAGE OF DOWNERS GROVE**

Cara Pavlicek, Village Manager

Attest: _____
Village Clerk

ACKNOWLEDGMENT OF EASEMENT

This is to certify that the interest in real property conveyed herein to AT & T Illinois is hereby accepted by the undersigned, on behalf of AT&T Illinois pursuant to authority, consent(s) to the recordation thereof by its duly authorized officer.

(Print Name & Title)

By: _____
Signature

Date: _____

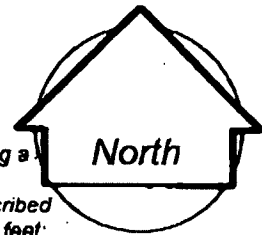
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Return to:
Village Clerk
Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515

Plat of Easement J. M. Hank & Associates

Land * Marine * Aerial Surveys
800 Busse Highway * Park Ridge, Il. 60068
telephone (847) 696-0010
fax: (847) 698-6920

Scale 1" = 40 feet

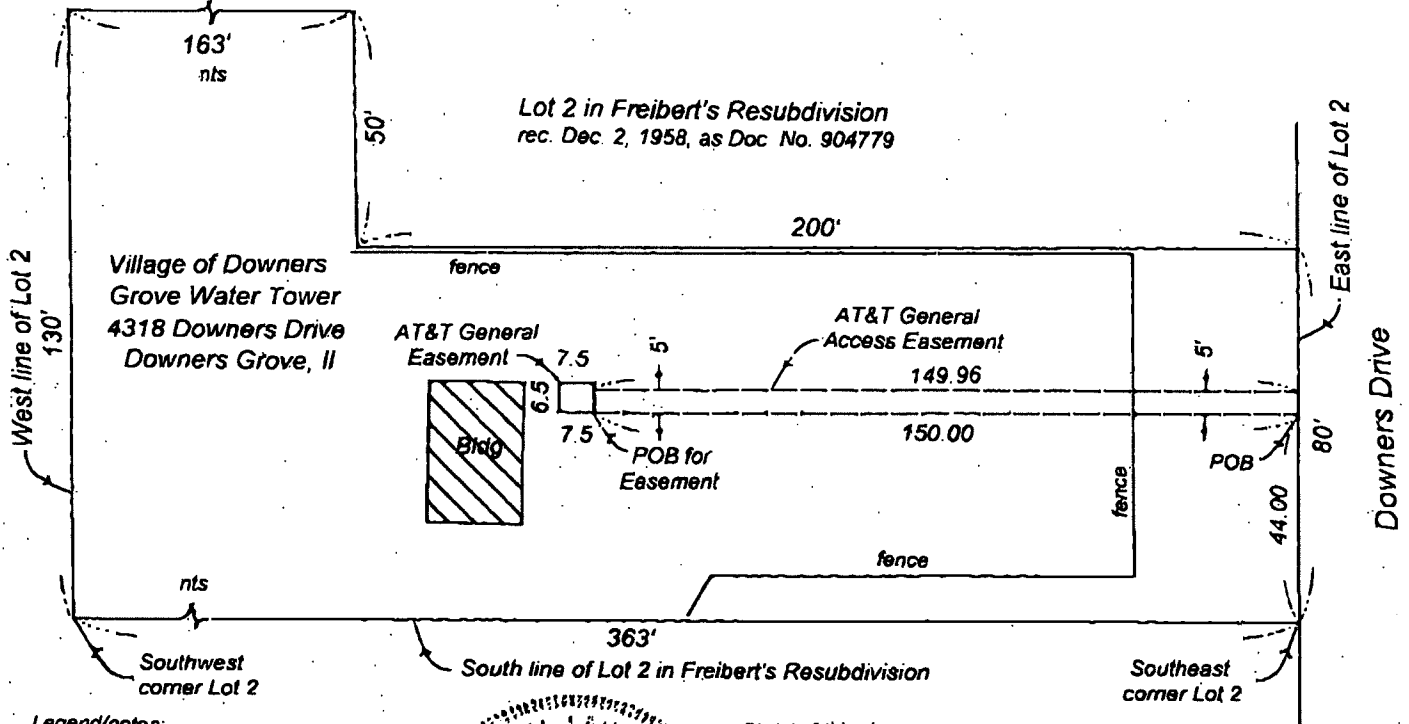


Legal description for an AT&T General Easement.

That part of Lot 2 in Freibert's Resubdivision of Lots 8, 9 and 10 in Myron H. Wilcox Ogden Avenue Addition, being a subdivision situated in the Southwest 1/4 of Section 6, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded December 2, 1958, as Document No. 904779, bounded and described as follows: Commencing at the Southeast corner of said Lot 2; thence North along the East line of said Lot, 44.00 feet; thence West along a line parallel with the South line of said Lot, 150.00 feet to the point of beginning; thence continuing West along a line parallel with the South line of said Lot, 7.50 feet; thence North along a line at right angles to the last described course, 6.50 feet; thence East along a line parallel with the South line of said Lot, 7.50 feet; thence South along a line at right angles to the last described course, 6.50 feet to the point of beginning, all in DuPage County, Illinois. Containing 49 Square feet.

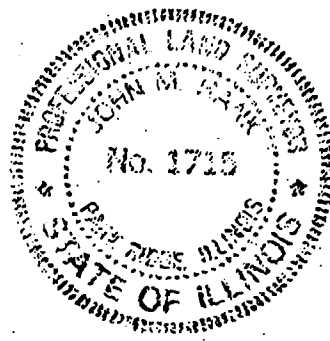
Legal description for a 5 foot AT&T General Access Easement

That part of Lot 2 in Freibert's Resubdivision of Lots 8, 9 and 10 in Myron H. Wilcox Ogden Avenue Addition, being a subdivision situated in the Southwest 1/4 of Section 6, Township 38 North, Range 11, East of the Third Principal Meridian, according to the plat thereof recorded December 2, 1958, as Document No. 904779, bounded and described as follows: Commencing at the Southeast corner of said Lot 2; thence North along the East line of said Lot, 44.00 feet to the point of beginning; thence West along a line parallel with the South line of said Lot, 150.00 feet; thence North along a line at right angles to the last described course, 5.00 feet; thence East along a line parallel with the South line of said Lot, 149.96 feet to the East line of said Lot; thence South along the East line of said Lot, 5.00 feet to the point of beginning, all in DuPage County, Illinois. Containing 750 Square feet.



Legend/notes:
nts indicates not to scale
POB indicates point of beginning

State of Illinois
County of Cook s.s.



I, John M. Hank, an Illinois Professional Land Surveyor, do hereby Certify that I have prepared this plat of easement from official records, and that this plat is a correct representation thereof.
Park Ridge, April 17, 2007

Illinois Professional Land Surveyor No. 1715
License expires November 30, 2008

Order No. 07-3308
Ordered by: AT&T
Scale 1" equals 40 feet

Exhibit A