



**City Council – Special Meeting Agenda
September 21, 2017 – 12:00 P.M. – Foley City Hall**

1. Call the meeting to order.
2. Pledge of Allegiance.
3. Approve the agenda.

4. 320 Broadway Avenue N – Land Sale (Dollar General)
 - Adopt Resolution #2017-26 Authorizing Sale

5. Discussion on Small Cell Tower Moratorium
 - Adopt Ordinance #430 Small Cell Towers Moratorium

6. Other Business
 - Discuss potential wastewater workshop meeting.

7. Adjourn

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

RESOLUTION 2017 - 26

A RESOLUTION APPROVING THE SALE
OF PROPERTY TO THE OVERLAND GROUP LLC

WHEREAS, the City of Foley (the "City") owns property legally described in Exhibit A (the "Property");

WHEREAS, The Overland Group, LLC and its assigns (collectively the "Developer") wishes to purchase the Property from the City and the City wishes to sell the Property to the Developer pursuant to the purchase agreement approved by the City on June 6, 2017;

WHEREAS, Minnesota Statutes 462.356 requires that a city's planning commission review any purchase or sale of property by the City for consistency with its comprehensive development plan and submit a report or recommendation to the City Council;

WHEREAS, the City of Foley Planning Commission has reviewed, and the City Council has approved, re-zoning of the Property from R-1 to B-2 on August 1, 2017; and

WHEREAS, the City of Foley Planning Commission has reviewed the proposed sale of property between the City and the Developer and determined that the proposed sale will be consistent with the comprehensive development plan.

NOW THEREFORE, the Foley City Council hereby resolves:

1. The City approves the sale of the Property pursuant to the Purchase Agreement.
2. The Mayor and Administrator are authorized to execute all documents necessary to effect the sale of the Property.

Adopted by the Foley City Council on this 21st day of September, 2017.

Gerard L. Bettendorf, Mayor

ATTEST:

Sarah Brunn, City Administrator

EXHIBIT A

(Property Legal Description)

The Easterly 80 feet of the Westerly 100 feet of Block 1, of Holdridge Addition to the Village of Foley, lying Southerly of the State Trunk Highway #23, except the Southerly 155 feet thereof, Benton County, Minnesota, being part of Lot 1, Block 1.

AFFIDAVIT REGARDING BUSINESS ENTITY - SELLER

STATE OF MINNESOTA

COUNTY OF _____

Gerard L. Bettendorf and Sarah A. Brunn, being first duly sworn, on oath say that:

1. They are the Mayor and City Administrator of the City of Foley, a Minnesota municipal corporation, (the "Business Entity), named as Grantor in the document dated _____ and filed for record _____, as Document No. _____, in the office of the County Recorder of Benton County, MN.
2. The Business Entity is duly organized and validly existing and is in good standing under the laws of its state of organization and has legal authority to conduct business in the State of Minnesota and its principal place of business is at: 251 Fourth Avenue, P.O. Box 709, Foley, MN 56329 and its principal place of business during the last ten years has been at: 251 Fourth Avenue, P.O. Box 709, Foley, MN 56329.
3. There have been no:
 - a. Bankruptcy or dissolution proceeding involving the Business Entity during the time period in which the Business Entity has had any interest in the premises described in the above document ("Premises");
 - b. Unsatisfied judgments of record against the Business Entity nor any actions pending in any courts, which affect the Premises;
 - c. Tax liens filed against the Business Entity;
except as herein stated: _____
4. Any bankruptcy or dissolution proceeding against business entities with the same or similar names during the time period in which the Business Entity had any interest in the Premises are not against the Business Entity.
5. Any judgments, or tax liens against entities with the same or similar names are not against the Business Entity.
6. To Affiants' knowledge, there has been no labor or materials furnished to the Premises by or on behalf of business entity for which payment has not been made.
7. To Affiants' knowledge, there are no unrecorded contracts, mortgages, lines of credit, leases, easements, or other agreements or interests relating to the Premises except as may be shown on a survey.
8. To Affiants' knowledge there are no persons in possession of any portion of the Premises other than pursuant to a recorded document except as may be shown on a survey.
9. There are no encroachments or boundary line questions affecting the Premises of which Affiants have knowledge.
10. Affiants specifically and affirmatively state that they are properly authorized to act on behalf of Business Entity, that said Business Entity is desirous of effecting the conveyance of the Premises, and that said

Business Entity has specifically and affirmatively authorized Affiant to execute any and all documents necessary to effectuate such conveyance.

(Signature Pages to Follow)

Signature page to Affidavit Regarding Business Entity - Seller

Affiant knows the matters herein stated are true and make this Affidavit for the purpose of inducing the passing of title to the Premises.

CITY OF FOLEY, MINNESOTA

By: _____
Gerard L. Bettendorf, Mayor

By: _____
Sarah A. Brunn, City Administrator

STATE OF MINNESOTA)
) SS
COUNTY OF BENTON _____)

On this ____ day of _____, 2017, before me, a Notary Public for this County, personally appeared Gerard L. Bettendorf, who, being by me duly sworn, did say that he is the Mayor of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF BENTON _____)

On this ____ day of _____, 2017, before me, a Notary Public for this County, personally appeared Sarah A. Brunn, who, being by me duly sworn, did say that she is the City Administrator of the City of Foley, a Minnesota municipal corporation, and that this instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:
Rinke Noonan (AAR/mjr)
1015 W. St. Germain St., Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
File No. 04313-0243

WARRANTY DEED

STATE DEED TAX HEREON: \$ _____

Date: _____, 2017

FOR VALUABLE CONSIDERATION, The City Of Foley, Minnesota, a public body corporate and politic under the laws of Minnesota (“Seller”), conveys and warrants to **DGOGFoleymn LLC**, a Missouri limited liability company, (“Buyer”), real property (the “Property”) in Benton County, Minnesota, legally described as follows:

The Easterly 80 feet of the Westerly 100 feet of Block 1, of Holdridge Addition to the Village of Foley, lying Southerly of the State Trunk Highway #23, except the Southerly 155 feet thereof, Benton County, Minnesota, being part of Lot 1, Block 1

together with all hereditaments and appurtenances belonging thereto, subject to easements and restrictions of record.

The Seller certifies that the Seller does not know of any wells on the described real property.

CITY OF FOLEY, Seller

By _____
Gerard L. Bettendorf
Its Mayor

By _____
Sarah A. Brunn, City Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF BENTON)

The foregoing was acknowledged before me this _____ day of _____, 2017, by Gerard L. Bettendorf and Sarah A. Brunn, the Mayor and City Administrator, respectively, of City of Foley, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the organization.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Rinke Noonan (AAR)
300 US Bank Plaza
1015 West St. Germain Street
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
Our File No. 4313-0243

ORDINANCE NUMBER 430

AN INTERIM ORDINANCE ESTABLISHING A MORATORIUM ON THE APPROVAL
AND SITING OF TELECOMMUNICATION TOWERS AND WIRELESS
TELECOMMUNICATIONS FACILITIES WITHIN THE CITY OF FOLEY

WHEREAS, the Foley City Council administers zoning within the City of Foley (the “City”); and

WHEREAS, the Council may regulate land use as part of the City’s zoning authority;

WHEREAS, the Minnesota Legislature has, by laws of Minnesota for 2017, Chapter 94, Article 9, Sections 1 through 20, amended Minn. Stat. §§ 237.162 and 237.163 (the “Law”) which, among other things, developed a process for the deployment and use of small cell wireless technology and facilities along the public rights-of-way within the State’s local units of government, including the City;

WHEREAS, the City’s ordinances, as currently drafted, do not contemplate the deployment and use of small cell wireless technology and facilities along the public rights-of-way;

WHEREAS, the Law allows the City to enact or maintain a moratorium on the filing, receiving, processing or approval of applications for telecommunication towers and wireless telecommunications facilities within the City until December 31, 2107 in order to allow the City time to review its Comprehensive Plan and enact appropriate ordinances consistent with the Law.

NOW THEREFORE THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS:

1. In light of the Law created by the new legislation, the City has determined to complete the study to consider the impact of telecommunication projects and the Law on planning and development within the City;
2. The City remains concerned that unregulated telecommunication projects in the City may be inconsistent with future development under the Comprehensive Plan and may disrupt the development of the City;
3. The City is concerned that its existing regulations and ordinances are inconsistent with the Law and is also concerned that unregulated telecommunication projects in the City may have adverse aesthetic, environmental, social, health, and safety impacts on adjacent properties or people within the City;
4. The City desires to impose a moratorium on the construction of telecommunication projects in order to adopt regulations and ordinances consistent with the Law, facilitate further consideration of compatibility with future planning and development in the City, and to ensure such projects do not cause adverse aesthetic, environmental, social, health, and safety impacts on adjacent properties or people within the City;
5. The City Council needs an opportunity to review the Law and conduct a study of the potential impacts of telecommunication projects, review the appropriateness of existing

regulations and ordinances for consistency with the Law, codify appropriate definitions, consider appropriate performance standards, and schedule a public hearing before amending the zoning ordinance;

6. During the time of the study, it is necessary to protect the natural environment, the existing land uses, existing property values, and preserve and protect the rights of existing property owners within the City;
7. An interim ordinance, pursuant to Minnesota Statutes § 462.355, is necessary to allow the City time to update its ordinances and regulations to bring them into compliance with the Law as well as to restrict telecommunication projects from affecting the natural environment, existing land uses, and existing property values, and the rights of existing property owners during this time;
8. An interim ordinance prohibiting telecommunication projects is necessary to protect the planning process, development under the Comprehensive Plan, and the health, safety and welfare of the citizens of the City during the time of the study.

NOW, THEREFORE, pursuant to Minnesota Statutes 462.355 and the laws of Minnesota for 2017, Chapter 94, Article 9, Sections 1 through 11, the Foley City Council hereby ordains:

Section 1. Interim Ordinance.

1. Temporary Restriction on all new telecommunication towers and wireless telecommunication facilities. A moratorium prohibiting the construction, installation, replacement, or enlargement of telecommunication towers and wireless telecommunication facilities, including but not limited to, small cell wireless technology, and the interrelated planning factors to determine whether any new or different regulations, approaches or enhancements are necessary to effectively plan and reasonably regulate telecommunications towers and wireless telecommunication faculties and to protect the health, safety, and welfare of its citizens is hereby established. This moratorium also extends to the filing, receiving, processing or approval of applications for telecommunication towers and wireless telecommunications facilities
2. Duration. This moratorium shall be in effect until December 31, 2017, or until such earlier time as the Foley City Council determines the moratorium is no longer necessary.
3. Effective Date. This Ordinance shall be effective immediately upon its adoption.
4. Validity. Every section, provision, or part of this Ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this Interim Ordinance shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.
5. Enforcement and Penalty. The City may enforce this Ordinance by injunction or any other appropriate civil remedy in any court of competent jurisdiction. A violation of this Interim Ordinance shall constitute a misdemeanor. Each day a violation occurs shall be considered a separate offense.

6. Existing Permitted Towers. This moratorium shall not apply to the replacement of existing antennas on existing permitted telecommunication towers.

Section 2. Summary Publication.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

“AN INTERIM ORDINANCE ESTABLISHING A MORATORIUM ON THE APPROVAL AND SITING OF TELECOMMUNICATION TOWERS AND WIRELESS TELECOMMUNICATIONS FACILITIES WITHIN THE CITY OF FOLEY. It is the intent and effect of this Ordinance to prohibit all telecommunication projects until the City of Foley can study the effects of such activities and ensure that zoning regulations are consistent with existing law and adequately protect public health, safety, and welfare.”

Adopted this 21st day of September, 2017

Gerard L. Bettendorf, Mayor

ATTEST:

Sarah A. Brunn, Administrator

Focus on New Laws: Right-of-Way Management for Small Wireless Facilities

The final bill language preserves local authority over small cell wireless companies' access to the public right of way.

(Published Jun 19, 2017)

A new law was enacted during the 2017 legislative session that would allow small cell wireless equipment to be placed on city-owned infrastructure in the public right of way.

As introduced, the bill would have allowed wireless companies unregulated access to the public right of way, but the League strongly opposed the bill and actively negotiated new language to maintain local control. The resulting bill language successfully preserves local authority over access to the public right of way.

Read a previous Bulletin article for more background on the bill (*Link to: <http://www.lmc.org/page/1/smallcellwirelessupdate.jsp>*)

The negotiated bill language was included in Chapter 94 (*Link to: <https://www.revisor.mn.gov/laws/?year=2017&type=0&doctype=Chapter&id=94>*), the omnibus jobs and economic growth appropriations act. Article 9 describes the new law, and the notable sections are outlined below.

Zoning (Section 14)

Local government units retain ability to deny permits for reasonable public health, welfare, and safety reasons with no definitions or limitations on those reasons. Minimum separation distances are allowed between new wireless support structures.

Permitted use (Section 12)

General presumption of permitted use exists in all zoning districts except for being able to require a conditional use permit for districts zoned residential or historical districts established either by federal law or ordinance. Also, the local government's ability to deny a permit for public health, welfare, and safety still applies.

Separate agreements between cities and providers (Section 13)

Local government units can still enter into a separate contract with wireless providers. This way, local governments can negotiate different rent amounts (within the confines of the law) and address specific situations, such as indemnity, insurance, waiver of liability, and removal.

Permit fee (Section 3)

There is no cap on right-of-way management costs that are recoverable in permit fees, and the law still grants fees allowed under Minnesota Statutes, section 237.163.

Time frame for responding to permits (Section 15)

The local government has 90 days (which is longer than in other states) to issue or deny a permit, with a tolling period allowed upon written notice to the applicant if notice is given by the government unit within 30 days of receipt of the application.

Numerous permit requests at one time ("batch processing") (Section 13)

The batch numbers are lower than in other states (15 small wireless facilities) and geographic restrictions apply (must be within a two-mile radius, consist of substantially similar equipment, and be placed on similar types of wireless support structures).

Rent (Section 17)

Rent is allowed and it is not tied to the FCC formula or just costs. The flat amount (\$150/year plus \$25 maintenance) for rent exceeds any other states' rent with additional dollars for maintenance and electricity allotted. Cities can still require separate metering.

If electricity is not purchased directly from a utility, the rate is \$73/node using less than or equal to 100 watts, \$182/node using more than 100 watts, or actual costs if they exceed the flat rates.

Application information (Section 13)

Existing law still applies regarding specific information that can be requested, with one exception. Cities cannot request information from the applicant that the application already provided to the city in another small wireless facility application if the applicant has provided the city with the reference number to their other applications.

Application timeline extension (Section 13)

The number of simultaneous applications a city receives may trigger an extension. Thirty small wireless facilities applications triggers an additional 30 days for review. Cities can get the extension based on that number alone without asking the applicant, but must inform the applicant of the extension.

Height of pole (Section 14)

The height of wireless support structures shall not exceed 50 feet (lesser of either 50-foot pole or 10 feet above highest pole), unless the local government unit agrees to higher heights to match other poles within the vicinity.

Wireless support structure definition (Section 10)

The definition limits a support structure to a new or existing structure that the local government unit deems capable of supporting small wireless facilities.

Moratoriums (Section 12)

The law prohibits moratoriums; however, the Legislature included an extended effective date of Jan. 1, 2018, on the moratorium provision for cities that have not enacted an ordinance regulating public rights of way as of May 18, 2017. This allows those cities time to get ready for the new law.

Exemptions and grandfather clause (Section 20)

All 125 cities with municipal utilities are exempt from this law. This law also does not affect cities with existing agreements before May 31, but the new law will apply to agreements in those cities moving forward.

Next steps for cities

It is recommended that cities take the following actions to ensure compliance with this new law:

Work with your city attorney to adopt a right-of-way ordinance, if your city does not have one, or amend your existing right-of-way ordinance to accommodate for telecommunications right of way users. In the alternative, or in addition, adopt a separate telecommunications ordinance to include provisions specific to the installation of wireless facilities on existing poles or similar facilities, and addressing the potential installation of new "wireless support structures."

Whether implemented by amending an existing right-of-way ordinance or adopting a new, separate ordinance, be sure to incorporate the application process requirements noted above.

If necessary, amend your zoning ordinance or code to make small wireless a permitted use, with the exception of making it a conditional use in residential zones and historical districts.

Work with your city attorney to draft a template agreement governing the attachment of wireless facilities to municipal poles or other infrastructure in the right of way.

Educate the decision-makers to make and record reasonable findings documenting health, welfare, and safety reasons for denials.

Work with wireless providers on locations.

Read the current issue of the Cities Bulletin (*Link to: <http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp>*)

* By posting you are agreeing to the LMC Comment Policy (*Link to: <http://www.lmc.org/page/1/comment-policy.jsp>*) .