-------- Original Message --------
Subject: RE: crown raymond (bun 816709) grant of easement
Date: Mon, 8 Apr 2013 15:45:43 +0000
From: Peter J. Van Hemel <pvanhemel@bernsteinshur.com>
To: Danielle Loring <danielle.loring@raymondmaine.org>
CC: Don Willard <don.willard@raymondmaine.org>, Shana Cook Mueller <smueller@bernsteinshur.com>, Philip Saucier <psaucier@bernsteinshur.com>

Good morning, Danielle – I attach the proposed final version of the Crown easement for the Patricia Avenue Extension cell tower site together with a "redline" version showing all changes that have been negotiated versus the original form offered by Crown, and will provide a brief summary below of the final document and the edits resulting from negotiations with Crown. As now drafted with all changes accepted, I recommend that the Town accept the easement.

The attached document is designed to replace the existing lease at the site with a permanent easement to Crown in exchange for a one-time payment of $900,000 from Crown to the Town of Raymond. You may note that the document is entitled as a "Grant of Easement and Assignment of Lease," since there is a provision in the document by which the Town's current (landlord) interest under the lease is assigned to the grantee of the easement, a Crown-controlled entity called Global Signal Acquisitions IV, LLC. The tenant under the lease is a different entity, and Crown is keeping the lease alive and technically on the books, so to speak, between its own related and controlled landlord and tenant "in-house" entities. There are a number of accounting and legal reasons why Crown might choose to do this, none of which matter at all from the Town's perspective. As far as the Town is concerned, the grant of easement to give Crown control of the site for tower purposes is the end of the Town's involvement as a landlord, and the site is being functionally turned over to Crown on a permanent basis (with limited exceptions) for Crown's own use as a tower site.

The main focus of the efforts in negotiations with Crown over the easement document were to conform the provisions of their typical easement with the unique situation presented by having a municipality as the grantor of the rights. Crown's original document reflected the more typical situation of having a private party grantor and large portions of it were legally inapplicable to the Town of Raymond. For example, numerous changes throughout the document were required to make sure that the Town's agreement to the easement did not modify or in any way effect the Town's role in issuing or enforcing permits and land use regulations against Crown, including application of the Town's existing tower ordinance (see changes to Sections 3, 5, 8, 10, and 21), and the allocation and/or collection of real and personal property taxes (Section 12). In addition, modifications to the form were made to ensure that the Town's liability remains subject to the provisions of the Maine Tort Claims Act (Section 17), and that the Town would not be obligated to provide any title covenants or unnecessary representations and promises about the adequacy of the site (Sections 2, 6, and 18).

The remaining substantive changes are centered around the concept of having the easement revert to the Town if, at some future point, Crown or any successor of Crown ceases to operate the site as a communications tower and abandons it (Section 31). The settling point for that was that if Crown ceases to use the site for 5 years, the Town may commence a process to reclaim it. This guards against the long-term future obsolescence of tower-based communications technology.

Minor changes were also negotiated to assist the Town in the unlikely event that the Town is in default of its very limited obligations under the easement by softening the risk of default and extending the ability on the Town's part to cure any performance defaults that do occur (Section 14). Note, however, that the Town does not have material performance obligations under the easement, and its performance can mostly be thought of as a duty not to unreasonably interfere with or illegally disrupt the easement (Sections 19 and 21). These are actually obligations that the Town has anyway under background Maine common law and the drafting of these obligations in the document does not create any new legal burden that the Town would not already have under any easement.

In reviewing our invoices, my time on this file amounted to 16.7 hours from 3/1/12 through today (not, however, including this email), for a total amount worked of $4,153.50. This does not include other timekeepers who may have added slightly to that figure as Shana Cook Mueller and/or Phil Saucier worked with you on the warrant language or other items.

If you need any additional summary or details please let me know.

Regards,

-Pete