

**Village of Somers  
7511 12th Street  
Somers, WI 53171**

**Special Village Board Meeting  
Agenda  
Tuesday November 21, 2022  
Immediately Following Village Work Session**

<b>Special Village Board Meeting:</b>	
<b>Item #</b>	
1	Call to order
2	Pledge of Allegiance
3	Citizen Comments
4	Action on approval of purchase agreement with Landmark Dividend for the unexpired leasehold interest owned by the Village in the cellular communication towers at 818 12 <sup>th</sup> Street
5	Adjourn

On November 16, 2023, A Special Board Meeting Request was filed by President Stoner, pursuant to s. 2.02(B) of the Code of Ordinances of the Village of Somers and s. 61.32 of the Wisconsin State Statutes.

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the November 21, 2023 Special Village Board Meeting & Agenda in 1 public place & on the Village website.

Dated this 17th day of November 2023

Brandi Baker  
Clerk/Treasurer

Requests from person with disabilities who need assistance to participate in this meeting should be made to the Clerk's Office at 262-859-2822 with as much notice as possible. **Notice is hereby given that members of the Village Board may participate telephonically. Notice is hereby given that members of the Town Board may be in attendance for the sole purpose of gathering information. A quorum may be present. However, no Board action will be taken.**

**VILLAGE OF SOMERS  
SPECIAL VILLAGE BOARD MEETING  
ITEM MEMORANDUM**

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**MEETING DATE:** November 21<sup>st</sup>, 2023

**TO:** Village President Stoner and Village Trustees

**PREPARED BY:** Jason J. Peters, Administrator

**AGENDA ITEM:** #4 Action on approval of purchase agreement with Landmark Dividend for the unexpired leasehold interest owned by the Village in the cellular communication towers at 818 12th Street

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**BACKGROUND:**

The Village currently has two cell towers on Village property that generate income through lease agreements. One is located at Village/Town Hall and the other is at Station #2. The cell tower lease for the Village/Town Hall was renewed earlier this year.

In 2009, the Town entered into a ground lease agreement with US Cellular for the tower that is located at Station #2. The initial five-year term ended in 2002. The lease called for three additional five-year terms. We are currently in the second of the three additional terms. The lease would end in 2028. Based on the lease our current monthly income is \$2,160 or \$25,920 yearly.

Within the past year, Administrator Peters has received an offer from US Cellular to change the easement to a permanent one. Their offer at the time was \$379,481.55. Administrator Peters has received an additional offer from ATC. The offer was as follows:

- Option 1
  - \$491,428, as a lump sum or
- Option 2
  - \$542,400, paid in a three-year installment.
    - \$135,000 at closing
    - \$135,800 in year one

- \$135,800 in year two
- \$135,800 in year three.
- Both options also include a 50% rental revenue share from any additional tenants.

In October, Administration reached out to Landmark Dividend to inquire as to their interest in the site. Landmark has provided an additional offer of \$500,000 at closing with a 50% rental revenue share from any additional tenants. This deal offers greater upfront money that can be invested, now. In Administrator Peters discussions with Landmark, they seemed to be more aggressive in their marketing of the site for new tenants.

Additionally, there has been discussions in the market that US Cellular may be selling off their business. This could leave the Village with no tenants for the site.

If a buy-out is considered, Administrator Peters would suggest that the funds received be placed into an investment account to create a stable source of income to replace the annual payments we have received since 2009. The 50% rental revenue would be a good source of income, if Landmark can secure additional tenants.

#### PRIOR ACTION TAKEN:

The original offers were reviewed at our June 6<sup>th</sup> Work Session. Due to a confidentiality clause in the Landmark Dividend offer, The Landmark Dividend offer was reviewed in closed session on November 7<sup>th</sup>. During said closed session, Administrator Peters was directed to continue negotiations and bring back an offer for action.

#### SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Attorney Davison has reviewed the Letter of Intent with Landmark Dividend. Staff would recommend approval of the proposed agreement. Staff would also point out there are no closing cost to the Village for this agreement. In the event that the Village Board agrees with the suggested action, a suggested motion to approve would be as follows:

*“Motion to enter into proposed purchase agreement with Landmark Dividend for the unexpired leasehold interest owned by the Village in the cellular communication towers at 818 12th Street”*

#### ATTACHMENTS:

Letter of Intent



October 06, 2023

## Terms of Agreement

### Lease Information:

Seller/Site Owner: Jason Peters  
Town Of Somers  
Mailing Address: Po Box 197  
Somers, WI 53171

Tenant	Current Rent	Escalation Rate	Site Address
US Cellular	\$2,160.00 Monthly	20.00% Per Term	818 12th St, Kenosha, WI 53140

**Easement Area and Assignment of Lease:** The Easement Area shall be approximately the leased premises described by the existing cellular lease (the “Lease(s)”) and a non-exclusive access and utility easement. The Easement Area will be confirmed by a survey performed during due diligence. Landmark will be assigned the Lease(s) for the duration of the easement.

**Confidentiality:** Site Owner agrees not to disclose any of the terms of this agreement to any unrelated third parties, except for its broker, agent, lawyers, consultants, bookkeepers and tax advisors, without Landmark’s prior written consent for the later of one (1) year from the date of this document or the date on which both parties enter into a mutually acceptable easement and purchase and sale agreement.

**Exclusivity:** Until the expiration of this agreement, Site Owner shall not, directly or indirectly, (a) offer the Lease(s) or the Easement Area for sale or assignment to any other person; (b) negotiate, solicit or entertain any offers to sell or assign any interest in the Lease(s) or the Easement Area to any other person; or (c) modify, amend, supplement, extend, renew, terminate or cancel the Lease(s).

The purchase price shall be the gross purchase price from which will be deducted:

- Prorated rent for the remainder of the month/year of closing
- If applicable, the next two months’ of rent payments to account for the time it takes the tenant time to recognize Landmark as the new payee (Site Owner shall be entitled to receive and deposit the next two monthly rent checks after closing, provided however, if one or both rent checks are received by Landmark, Landmark will pay to Site Owner the sum of the rental revenue not received by Site Owner for the 2 months following closing once received by Landmark); and
- Transfer taxes.

**Offer Expiration Date:** October 25, 2023

\* Landmark will complete a title search of the property on which the telecom site is located (the “Property”) and perform any and all due diligence on the Property, including a survey of the Easement Area and site inspection at its sole cost and expense. Site Owner will provide Landmark with attorney comments to any of Landmark’s transaction documents within five (5) days of the receipt of such documents. If there is a mortgage or lien on the Property, Site Owner agrees to use commercially reasonable efforts to obtain a non-disturbance agreement (“NDA”) from the lender or lienholder. In the event the NDA cannot be obtained, Landmark may still close the transaction subject to a twenty percent (20%) reduction in the Purchase Price, provided the Property satisfies Landmark’s loan-to-value calculation and Site Owner complies with Landmark’s additional due diligence requests.

\* Our signatures below acknowledge that these are the business terms upon which this transaction will be completed and authorizes Landmark to proceed with this transaction. Closing is subject to Landmark’s receipt and evaluation of the document checklist items, completion of due diligence and final underwriting approval, and a mutually acceptable easement and purchase agreement. Landmark will endeavor to close this transaction within forty-five (45) days of its receipt of Site Owner’s signature below or if that is not possible, within five (5) days of the receipt of all due diligence including any necessary NDAs or consents and the expiration or waiver of any right of first refusal (the “ROFR”) of any tenant. If Landmark does not close the transaction within ninety (90) days of the date of Site Owner’s signature below, this agreement will expire unless extended by mutual written consent.

\* For the purposes of this document, “Landmark” and “Site Owner” shall refer to and mean Landmark Dividend LLC and its affiliates and Site Owner and their respective affiliates, successors and/or assigns.

**Additional Terms:**

- Landmark and Site Owner also agree to share any future rent from carriers 50/50 (50% to Site Owner) who may require additional space outside of the ground lease. In the event an agreement is executed with a carrier for space outside of the ground lease, the parties shall enter into a mutually agreeable amendment to the easement contemplated herein to include such additional space.
- Landmark does not charge any closing costs to Site Owner.

**Purchase Price and Term:** Initial below

1. \_\_\_\_\_ Purchase Price: \$500,000.00  
Term: Perpetual  
Type: Lump Sum

Please sign and date below and return at your earliest convenience

**Approved by:**

\_\_\_\_\_  
Jason Peters

\_\_\_\_\_  
Landmark Authorized Signatory

Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

# Document Checklist

1. I agree to provide my representative with the following information required for closing within 7 days of Site Owner's execution of this agreement:

- Fully Executed copy of cellular lease, including any addenda, amendments, assignments, site plans, construction drawings, notices or exercise letters, any other available tenant correspondence
- Copies of the last two months' rent checks or the last annual check if paid annually
- Proof of Site Owner's existence and authority, as applicable: articles of incorporation, articles of formation, by-laws, operating agreement; partnership agreement; trust agreement; probate documents, death certificate; divorce decree; property management agreement
- Deed
- Current tax bill for Property
- Prior title report or title insurance policy, if available
- Existing environmental reports (for fee purchase only)

2. Attorney Contact Information

Name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

3. Representation

Site Owner has not received any verbal or written notice from the Tenant(s) that the site is or will be decommissioned or that the site is or will be subject to a reduction in the rental revenue.

Initial \_\_\_\_\_

4. Mortgage:  Yes  No

Bank: \_\_\_\_\_

Mortgage Amount: \_\_\_\_\_

Lender Contact: \_\_\_\_\_

Lender Phone: \_\_\_\_\_

Lender Email: \_\_\_\_\_

\_\_\_\_\_  
Site Owner Signature

Date: \_\_\_\_\_




## REQUEST FOR CALL OF SPECIAL VILLAGE BOARD MEETING

I, the undersigned President of the Village of Somers, request the Clerk-Treasurer to call a Special Village Board meeting in accordance with Chapter 2.02 (B) of the Code of Ordinances of the Village of Somers, for the purpose of taking action on the following:

- a) Action on approval of purchase agreement with Landmark Dividend for the unexpired leasehold interest owned by the Village in the cellular communication towers at 818 12th Street

The Special Board meeting will be held following the 5:30 p.m. work session meeting on November 21, 2023, at the Somers Village/Town Hall, 7511 12<sup>th</sup> Street, Somers, WI.

  
George Stoner, President