

CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
MARCH 26, 2001, 5:30 P.M., COUNCIL CHAMBERS

The Special Meeting was called to order by Bob Centilli, Council President, at 5:37 P.M.

MEMBERS PRESENT: Bement, Brawner, Centilli, Martinbianco, Tinnin and Wells.

MEMBERS ABSENT: Cross.

OTHERS PRESENT: R. LaDuke, Assistant DPW Director; R. Austin, City Attorney and C. Ladd, Deputy Clerk.

PURPOSE OF THE MEETING: Review and Approval/Denial of an application for a wireless communication System to co-locate on an existing cell tower. New application WCS #01-02 by Sprint PCS, 5600 N. River Rd., Rosemont, IL 60018 at a location of 1107 S. Belsay Rd. (Brabbs Street/City Property).

PRESENTATION:

Claudine Anton, representing Sprint PCS, explained that she attended last week's meeting regarding the property on S. Belsay Road. She said Sprint PCS would like to co-locate at 135 feet within the 75x75 site compound. The cabinets will be towards the SE of the site compound and will be about 5-1/2 feet tall. She said she understood at the last meeting there were some issues with the lease and co-location with Trinity Wireless. We have met all ordinance requirements and respectfully request approval tonight.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh St., asked if further information was given with the handout than what the Council had last week. She spoke concerning the City collecting a fee from the property on Belsay Road and the ownership of the property. She reviewed previous materials regarding an application for Voicestream Wireless at this particular site.

The Planning Commission did a site plan review. The Mayor commented last year that Roadrunner had provided that property to the City as part of an agreement. Mr. Hamilton advised that there was to have been a Quit Claim Deed.

COUNCIL DISCUSSION:

Mr. Martinbianco said he was not at the last meeting, but he has reviewed some of the communications from the Attorneys. It appears that there was some concern that the City would own the property that the tower sits on, and ultimately would become a landlord. He said he doesn't have information that Trinity Wireless has connected with the operation of the tower. Mr. Martinbianco referred to Attorney Austin's correspondence with Mr. Beaugrand from Trinity Tower regarding the Lease Agreement between Trinity and Roadrunner. He said it is his understanding that we don't have a copy of the lease agreement for Sprint Tower. Normally with this type of request there is no problem, but we don't know who owns the tower.

Mr. Austin explained that he had spoken with Mr. Beaugrand regarding the Lease Agreement. After speaking with him, he said he contacted Greco Title Company and Greco faxed him a copy of the unrecorded warranty deed from I-69 and Belsay Road Investments LCC, a Michigan Limited Liability Company to the City of Burton. After speaking with someone from Greco Title, it was his understanding that this entity was created for the purpose of putting the different entities that owned these parcels, into one entity and this is the deed for the site where the tower is located. This warranty deed is being registered with the Genesee County Register of Deeds by Greco Title. Once it is recorded, we will get a copy and this is all the proof that is needed to that the City owns the land. This deed was faxed to Mr. Beaugrand and a copy of the lease document was requested from him. He thought it would be faxed that

same day. An Attorney called and said he would Federal Express the Lease Agreement to me, but as of this date, I still do not have it.

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Mr. Austin said he also requested a copy of the Lease Agreement for the Sprint PCS Tower but wasn't been able to obtain it in a timely fashion. He hasn't had an opportunity to review it before this meeting, except to note that the lease payments are whited out and he doesn't know what the lease payments are supposed to be. This is a document negotiated between Trinity, as the tower owner, and Roadrunner, as the owner of the land at that time. This was in August of 2000. He said he has done everything he could possibly do between the last meeting and this one to get this lease and review it to be ready to make some decisions tonight. Mr. Austin said that through his inquiries in this, he has found out that we are receiving regular revenues on the tower on Proper Street. However, nobody has a copy of the lease on this property. Today he received a copy of the lease payments from Attorney Wallace Haley, representing Sprint, saying there is some confusion about the payments. Actually, there is no confusion regarding the payments. The confusion relates to the fact that the lease agreement cannot be found. This doesn't directly affect the request before you tonight, but it does point out the confusion that surrounds the whole wireless communication facility permitting process. Mr. Austin said he is not prepared to give the Council the answers the need to make a decision this evening. The Council may determine that the City does not want ownership of the tower, depending on what the lease says. To approve the co-location at this point, would be potentially dangerous. Attorney Austin said his recommendation is for the City to appoint a person or entity, whether it be the Legislative Committee or a public utility committee or Tom Strasser, Dick Hamilton or myself or one of your membership or three of you, and study this issue. A recommendation could then be made as to where we are and where we are headed with these wireless communication facilities. These applications will be coming before you more frequently, but at this particular time, he doesn't think the City is as well prepared as we ought to be to deal with these facilities. We do have an ordinance, but that isn't enough. Someone should be in charge of these wireless facilities and right now there isn't anyone.

Mr. Martinbianco said that by not having the lease agreement, we might find that we are doing some things differently today than we did at the other location. He doesn't think the City should be in this position.

Mr. Austin said this is true. Also, the lease agreement on Belsay Road was not negotiated or entered into by the City of Burton. It has become ours by virtue of our becoming owner of the property.

Mr. Martinbianco said that because of the site plan of the Belsay Road LLC and I-69, it was their intent to give that property to the City.

Mr. Austin said he was not in on the original negotiations between Roadrunner and the City. I don't know which predates which, the signing of the lease or the formulation of plan to deed the property to the City.

Mr. Bement asked Mr. Austin if he were to be the one checking the information out on this property, what would the time frame be?

Mr. Austin replied that his recommendation is for a 90-day moratorium on consideration of any application. Possibly this could be done in less time, but there is a lot of information that needs to be gathered, considered and put together in some meaningful fashion so that somebody has a handle on this process. He doesn't want to delay anyone, but 90 days would give us an opportunity to distill all this information in one central location.

Mr. Centilli confirmed that the contract co-exists between Voicestream and Roadrunner, not Trinity.

Mr. Austin said he doesn't mean to give the impression he is familiar with the lease agreement delivered to his office today. However, on the first page is an assignment between Omni Point Holdings, Inc. to Trinity Wireless. How Omni Point fits into this, he is uncertain, but there is at least one assignment agreement. He doesn't know if there are any others. Mr. Austin briefly reviewed the lease agreement.

Mr. Wells confirmed that we do have a deed to the property. We have never claimed nor do we want to own the tower itself, right?

Mr. Austin said we only own the land the tower sits on. We have no interest in owning the tower itself.

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Mr. Wells confirmed that we do have a deed to the property. We have never claimed nor do we want to own the tower itself, right?

Mr. Austin said we only own the land the tower sits on. We have no interest in owning the tower itself.

Mr. Wells asked why we have an interest in who is co-locating the tower?

Mr. Austin replied we need to know exactly who is co-locating and what the respective interests of the parties are and how it affects future co-locations on that tower and on the other towers located on City property. The City should have a cohesive policy so that these matters are treated in a similar, if not identical fashion.

Mr. Brawner said we own the land, so do we now own the lease between the two parties? He also asked if the City is receiving money from the tower on Belsay Road.

Mr. Austin replied there has been no assignment of the lease interest from Roadrunner to the City of Burton. Only the Warranty deed from this entity, which isn't Roadrunner, to the City of Burton. Mr. Austin said he doesn't know if the City is receiving money or not from the property on Belsay Road.

Further discussion was held regarding the lease on the Proper Street property.

Moved by Tinnin, Seconded by Martinbianco, that based on Attorney Austin's recommendations, that we allow him adequate time and table taking any affirmative or non-affirmative action from now until appropriate time to get all the information compiled and present it to the Council as a whole. Attorney Austin will have 90 days or less, and there is to be a moratorium on any further action on any of the wireless communication towers.

Ms. Anton asked if this means that no one can put a tower or co-locate on an existing tower. She said she has a meeting with Sprint tomorrow and they will tell her to find another site to build a tower, because this process is taking too long.

Mr. Austin said with all of the questions he has regarding this tower, its ownership and the lease provisions of our right to the lease and our right to the lease payments, he doesn't feel comfortable moving forward. If the Council wants to approve this one tonight, they may, but that is not his recommendation. Sprint is welcome to come forward for a new tower or co-location and it will be considered. Although our ordinance is very clear that we favor co-locations over the erection of new towers, they would not be able to be approved for a permit for a new tower until demonstrating to your satisfaction why a co-location would not fit their needs. Mr. Austin commented that he is a little concerned that Ms. Anton has threatened this Council with the building of a new tower. However, he relies on this ordinance and its safe-guards in that regard.

Ms. Anton apologized and said she didn't mean to threaten the Council, but she knows that Sprint PCS will tell her to go find a new site for this because she can't co-locate on an existing site. She doesn't want to do that and doesn't think that the City of Burton wants another wireless communication facility being erected. The issues are with Trinity, not Sprint PCS, and she doesn't know how that will be detrimental to the City of Burton either way.

Mr. Austin commented that the City's relationship with Sprint PCS has been great. They have sent us payments on a regular basis, based upon an agreement that nobody can find. He has nothing against Ms. Anton nor her company and that is why he is recommending a 90-day moratorium.

Ms. Anton said she met all the ordinance requirements and thought it would be in the best interest of the City of Burton and for Sprint to co-locate. She understood the City's concerns with the questions concerning the lease and with Trinity, unfortunately she doesn't know how Sprint PCS got in the middle of the issue.

Mr. Brawner asked if Mr. Austin would be the facilitator for the wireless communications.

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Mrs. Tinnin said yes, that Mr. Austin drafted the ordinance and he is the one most familiar with it.

Ms. Anton asked if there was any way that it could be less than 90 days.

Mr. Martinbianco said the motion stated up to 90 days, so the time frame could be less.

Mrs. Tinnin commented that she did say 90 days or less.

COUNCIL ACTION:

Tinnin moved and Martinbianco seconded the following motion:

1. Approve and authorize Council to allow Attorney Austin adequate time and table taking any affirmative or non-affirmative action from now until an appropriate time to get all the information compiled and present it to the Council as a whole. Attorney Austin will have 90 days or less and there is to be a moratorium on any further action on any of the wireless communication towers.

Motion carried 6-0.

Meeting Adjourned at 6:10 P.M.

Cheryl M. Ladd, CMC
Deputy City Clerk

CML