

CITY OF BURTON
BUILDING BOARD OF APPEALS MINUTES
March 12, 2004, 3:00 P.M., COUNCIL CHAMBERS
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Tom Strasser, Deputy Planning Official, called the Meeting to order at 3:00 P.M.

MEMBERS PRESENT: Bob Carpenter, Bill Hall and Ted Hu

MEMBERS ABSENT: Bob Haneline and Wm. Berry

OTHERS PRESENT: T. Strasser, Deputy Planning Official and C. Ladd, Deputy City Clerk

PURPOSE OF THE MEETING: Discussion and possible action concerning the following: Interpretation of a utility pole within a "right-of-way".

Mr. Strasser said the first order of business is for the Board to select a Chairperson and then a Secretary. After a secretary is selected, he is to ask the Clerk to record the minutes for the board.

Bob Carpenter was selected as the Chairperson and Bill Hall as the secretary.

PRESENTATION:

Mr. Strasser noted that in the Board's packet consists of a letter from the City Attorney, Richard Hamilton, a few maps, assessment rolls and the application for the Building Board of Appeals and also an application for a wireless communication system. Mr. Hamilton has advised Mr. Wallace Haley, of Haley Law Firm, who is representing Sprint,

that we have a difference of opinion regarding our ordinance. We differ on the point of whether a utility pole, which is stated in the ordinance, would also include a Consumer's Energy structure or tower and whether or not, right-of-way would include private property. Mr. Strasser referred to Page 8 of the ordinance, Section 4, concerning a permitted communication facility. Mr. Strasser read paragraph 2 from the ordinance. He noted that the city's interpretation of a right-of-way is a public right-of-way, which is a public domain. He noted that the property in question is owned by Consumer's Energy and the city believes this is private property and not an actual right-of-way.

Therefore, the request was denied for the location of this antenna on that utility structure. Another item of interest is a letter from Mr. Berry, who is from Berry, Case & Associates and a regular member of this board. Due to a previous commitment, he was unable to attend the meeting. Mr. Strasser read the letter from Mr. Berry and a copy of this document is on file in the Clerk's Office.

T. J. Garrett, who is representing the Haley Law Firm, said that this is one of the sites that she was working on for Sprint. She addressed Mr. Berry's letter concerning the safety issues. Ms. Garrett indicated that Consumer's Energy and Detroit Edison both have master lease agreements with all of the cellular companies. When going into an area, she first looks for cell towers and then checks for Consumers or Detroit Edison towers. Most communities do not want us to put up new towers, so we try to co-locate as much as possible. The companies control the safety issues and make us use their contractors on everything we do. They have strict guidelines on what types of trees we can put around the facilities. She indicated that she was unaware the request was denied. Mr. Austin reviewed the ordinance with me and said he believed this could be done under a permitted use of the ordinance. She continued to give a brief history of how it was determined to come before this Board for an interpretation. We don't change the tower other than adding an antenna.

AUDIENCE PARTICIPATION:

There was no one in the audience.

BOARD DISCUSSION:

Mr. Carpenter asked if there was any equipment.

Ms. Garrett replied that there would be an electrical cabinet at the base of the tower, but nothing is built underneath the tower. She noted that the City has suggested that Sprint look at the possibility of using city property on Davison Road for a tower rather than using this site. We would prefer using an existing tower.

Mr. Carpenter inquired as to whether the residents were notified about the tower.

Mr. Strasser stated that all property owners within 300 feet of the property were notified concerning this issue.

A discussion was held concerning the property that is owned by Consumer's Energy in regards to the easement.

Mr. Carpenter stated that he is concerned about the liability for the City and whose responsibility it would be should something happen with the tower.

Ms. Garrett said that Consumer's Energy would not allow them to go on certain towers. They are very safety conscience.

Mr. Hu inquired as to the width of the frontage of the property. He was advised the property is 102' wide. He also asked for clarification of the 204 ft. as referenced in the ordinance. A lengthy discussion was held concerning this issue as stated in the ordinance on Page 8, Item A-3.

Mr. Hall commented that he too is concerned about the liability to the City.

Ms. Garrett indicated that she has a letter from Consumer's Energy allowing Sprint to co-locate on their tower.

Mr. Carpenter asked if this request had to go through a site plan review process.

Mr. Strasser said it is a site plan procedure but the process is done through the City Council. This Board may adjourn the hearing to get further information if necessary. The people that were previously notified do not have to be sent another notice.

Mr. Hu inquired about the screening or fencing of the Sprint equipment. He asked if there would be a problem with the public touching or getting to close to their equipment.

Ms. Garrett replied that Consumer's doesn't allow fencing or screening, but they are allowed to plant shrubs around their equipment. She said there is a utility box that is kept locked.

Further discussion was held concerning the issue of placing a new tower on city property.

Mr. Carpenter commented that maybe it would be best to get more information and possibly meet with the City Attorney concerning the ordinance.

Ms. Garrett asked what other information the Board would like to have.

Mr. Carpenter said he would like to have a copy of the letter from Consumer's Energy stating they approve of Sprint co-locating on their tower. Because this is private property and in the right-of-way, he would like someone to better advise him about this issue and would also like to know more about the liability issue.

Ms. Garrett said if this is postponed to another date, she would like to have it held within the next two weeks.

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Mr. Carpenter said he would be gone for two weeks so possibly we could meet in three weeks to allow time to meet with the City Attorney. Mr. Strasser could accumulate what information we need prior to meeting with the attorney so we may make a good interpretation of the ordinance.

BOARD ACTION:

Moved by Hu, seconded by Hall to table any action on this application until Wednesday, March 31, 2004 at 3:00 P.M.

Meeting Adjourned at 3:34 P.M.

Cheryl M. Ladd, CMC
Deputy City Clerk

CML