

**NORTH RIDGEVILLE MUNICIPAL COUNCIL
MINUTES OF
SPECIAL MEETING**

APRIL 19, 2002

CALL TO ORDER 3:00 P.M.

President of Council David Gillock: I'd like to call this Special Meeting of the North Ridgeville City Council to order. Would the Clerk please, call the roll.

ROLL CALL

Present were Council Members Nancy Buescher, Allen Swindig, Bob Olesen, Bernadine Butkowski, Denny Johnson and David Gillock.

Absent was Council Member Josanne Pagel.

Also, present were Mayor Deanna Hill, Safety-Service Director Jim Johnson, Law Director Eric Zagrans and Clerk of Council Charles A. Norris.

Absent were Engineer Tom Beutler and Auditor Chris Costin.

President Gillock: Would the Clerk please read the meeting notification.

READING OF NOTICE

Council Clerk Norris read the notice of the Special Council Meeting in full as on file in the Office of the Clerk of Council as it relates to informing Council of potential and threatened litigation against the City and to consider possible action in response.

SPECIAL MEETING

President Gillock: At some point we will adjourn into Executive Session but, prior to that we will start with Mayor Hill. You called the meeting. Would you like to review why we're here?

Mayor Hill: Yes, I would. I called this Special Meeting of City Council because of the strong possibility for loss of a large amount of City taxpayer funds. While this is no statement of position by me, I am rightfully concerned about the threat by Voice Stream to sue the City in Federal District Court in Cleveland. At this time, Mr. President, I would like to call on our Assistant Law Director Toni Morgan for information regarding just a brief summary of what occurred at Planning Commission followed by the Law Director for his legal advice.

Assistant Law Director Morgan: Mr. Chairman, Council, Voice Stream appeared before the Planning Commission on March the 12th of this year where they presented their application to build a monopole cellular communications tower. They proposed to build this tower in an I-2 district which has some residential use already pre-existing there. At that time they were represented by Attorney Graves, Attorney Russo and several of their technical people, and they made their presentation to Planning Commission. Part of that presentation was what they had been through, the sites they had looked at, how each site had been either, not appropriate or rejected or not useable by them, and it brought them to the particular site that they were there for that evening. Also present, since it was a public meeting, were several citizens. Some of the concerns that were expressed had to do with property values. Some of the concerns expressed

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had to do with health issues. There was also some concerns about possible lighting issues on this particular tower. All of these concerns were discussed and addressed by Voice Stream. At the end of their presentation, a vote was taken and that vote approved the application of Voice Stream by a three to two vote.

President Gillock: Thank you. Anyone from, Mr. Zagrans.

Law Director Zagrans: Several days ago there was a meeting held here at City Hall with representatives from Voice Stream and their attorney, Mr. Graves, who met with the Mayor, the Assistant Law Director and myself. This, of course, follows the decision by Council on April 1 at its regular meeting to reject the Planning Commission approval of the proposal to build a wireless telecommunications tower on Maddock Road. The attorney for Voice Stream made it abundantly clear that he considers the action by City Council to violate the Federal Telecommunications Act. He also maintains that as a public utility, Voice Stream is exempt by our Codified Ordinances from the very zoning regulations that Council was acting under in rejecting the application by Voice Stream or rather by rejecting the Planning Commission's approval of the application by Voice Stream. He further made the Mayor, the Assistant Law Director and myself aware of a case that he alleges to be extremely analogous to this situation involving the City of Mentor which turned down a request by Nextel, which is a competitor wireless company, to put up a tower in the City of Mentor. Nextel took Mentor to Federal District Court and we were informed that the outcome of that case was that the city of Mentor lost a million dollars of its own money at the end of the case and also lost its insurance coverage as a result of that decision. Those kinds of outcomes, if something like that were to face the City, would of course, not only be disadvantageous to the City, I dare say, it would be disastrous. In apprizing the President of Council of these concerns that were raised with us, the Council President authorized me to consult with legal experts in the telecommunications field, lawyers and experts who have had experience and expertise in the area, to advise the City. I have done so and am prepared to advise Council along with Ms. Morgan of what we have been informed during Executive Session.

President Gillock: Is there anyone from Council who would like to speak on this at this time?

Council Member Butkowski: Mr. Gillock.

President Gillock: Mrs. Butkowski.

Council Member Butkowski: Before we go into Executive Session I have something to suggest. The City owns property that was donated by Urban Buescher, years ago, that is south of the turnpike and it runs between the turnpike and the railroad tracks, between 83 and Maddock. Could be reached through the Kilby property off Maddock Road and Westwood Drive off of 83 and we may have an easement there. I'm not sure. It also comes up to, very close to the relocated Route 83 for the railroad tracks. If a tower was located there, the City could use the income from the tower to develop a new park in that area because it's plenty large enough for a park and we do not have any parks on the west side of town and this could be a win, win situation for everyone. I'm not sure if they ever looked into that property or not.

President Gillock: Would you like to respond, Mr. Russo? Or Mr. Graves?

Attorney Graves: Good afternoon. I'm Don Graves. I'm counsel for Voice Stream. We're here

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today, not to open up our application process but, to also make sure that you understand some of the processes we went through to get to where we are today and we anticipated that there would be some questions at this stage, justifiable questions because you haven't had the benefit of having heard the testimony that was brought before Planning Commission on that very topic, that very site that was discussed at Planning Commission. In fact, that particular site, when we looked at originally, might have been feasible at the time but, because of not having easement capability there, it became not equal for us to look at our intent at that place. At this juncture, it's no longer feasible for us to be at that particular facility. I think that is a fair characterization. Is that correct, Mr. Russo?

Ron Russo: (inaudible)

Attorney Graves: Again, for the record, we are here only after ten months of trying to locate a suitable location within North Ridgeville. This is not a new issue for us or any of the other carriers. I know of no carrier who wants to place an antenna in a site that is unacceptable to a committee. Unfortunately, on occasion, we run into these situations where someone is going to be impacted by putting a tower and unfortunately that's where we find ourselves today. After we look and examine all existing tall structures that are anywhere remote or were anywhere remote ten months ago, going through the process of elimination based on existing tall structures, a determination was made that there was no available, suitable tall structure in this area that could service the needs under our license to provide telecommunications services within this region. That's how we ended up being where we are. That's kind of a long winded response but the answer is (inaudible) not feasible.

President Gillock: The water tower was a suitable tall structure but, that was not available to you. Is that correct?

Attorney Graves: That is correct.

President Gillock: What other locations? We just want to assure ourselves, also, and we understand the process you've been going through. Was our baseball complex at Shady Drive considered, which is less than a quarter of a mile from there?

Attorney Graves: Without knowing about this one in particular, when you start moving a quarter mile difference from one site to another, it becomes particularly difficult. A quarter mile difference becomes very significant for placement. Again, once the other sites have (inaudible) I'd like to make it analogous to the checkerboard. If you jump your checkers all over the checkerboard, you have a lot of latitude to place checkers in each useable box. Once a site intended to become placed position, that limits the ability to move those checkers around the checkerboard. That's one of the situations that we found ourselves.

President Gillock: Understand. I just wondered if it was looked at because I know in other communities they've done that and used the tower for light stanchion for the ball fields for example.

Attorney Graves: I know that we've explored school locations.

????: (inaudible)

Attorney Graves: Again, we generally try to go to those types of facilities as a preference. None of those (inaudible).

President Gillock: Anyone else?

Council Member Buescher: Mr. President, if this violates the telecommunications act, I don't understand why the City had to go through any process whatsoever and why this was placed before the Planning Commission and the Zoning Board. What if the Zoning Board wouldn't give you the variance? Does this mean that we've gone through all these processes and in the end it doesn't matter. What we have to say, simply doesn't matter.

President Gillock: Mr. Graves.

Attorney Graves: I defer to the expertise of Mr. Zagrans and Ms. Morgan who have been able Council with this regard. The reality is, we don't have an absolute right to go in wherever we choose. We're very candid about that. That's why, if we had the right to go in wherever we choose we would not come to the communities and spend ten months trying to work with staff of the City and the community trying to find a suitable location. We don't have that automatic authority. What happened that's unique to this particular site is, in my interpretation, the way that your particular zoning ordinance is crafted. While most communities want and seek to place antenna facilities within industrial locations, as crafted, because you have that add on sentence (inaudible) actual condition in your Zoning Board that says it must be separated by 750 feet from a residential used parcel. It's almost, I think, there's only one or two occasions within the useable area of the sites that we were looking at that didn't have that kind of problem. So, no matter what we did, we knew we were going to have some residentially used facility that was going to call it into question. The one occasion that might have been included, wasn't buildable because of the concrete pilings that (inaudible) place a tower there. So, no communities do have authority and power. That's why we're here most of the time asking for some consideration and we would like to find a way to accommodate the community. What happened, in this particular location, was the antenna was placed to the furthest degree, that we possibly could, to be as far away from the nearest residential structure and it's actually more than, (inaudible) 900 feet from the nearest structure but because of the way the language is drafted, we have to be 750 feet away from the property line and the property lines are parallel (inaudible) extend a significant difference to the read. So no matter where we went on this industrial parcel, we would never be able to meet the 750 foot setback from an adjoining residential used piece of property. That's my feelings as to why its practically an impossibility to place one anywhere.

Council Member Swindig: Mr. Chairman.

President Gillock: Mr. Swindig.

Council Member Swindig: We have, in that area, I can think over there is Race Road, there's up at the old shopping center up there, where there is existing towers where I really think that's the best way to go, is on an existing instead of cluttering our City with extra towers. Or, go with a parcel of land and work to get an easement for them to go in to City land.

President Gillock: Mr. Graves, that's fine.

Attorney Graves: In actuality there was an effort to try to find a way to access (inaudible) it was an impracticality for us to even go there. With respect to (inaudible). We actively, honestly tried to place an antenna on an existing tall structure. It saves us a very substantial amount of money. Those poles that are 140 feet, 150 feet high are an expensive proposition. They are not

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something that you just pick up anywhere. There's a long lead time to order them and you have a six figure cost (inaudible). So the carriers are not in what I call the, real estate business. That is not the business they don't want (inaudible). If you look in downtown municipal areas, you will hardly ever see an antenna because they are able to place them on elevator facilities at the top of buildings and so forth (inaudible). I've facilitated and worked with Ron in the past on being on water towers like in Strongsville and Medina. It would be something that we would entertain. We even looked at placing an antenna adjacent to a water tower and then have the antenna go taller than the water tower so you can get the search. The idea behind that is, well, it's already been an existing water tower (inaudible) because of the location and so forth we weren't able to do that and we cannot do that at this time because, again, ten months have elapsed so, those kind of considerations are outside of our control at this time. (inaudible) I didn't mean to be rude and not introduce Miss Debbie Neidstrom, Mr. Michael Whitt, and you know Ron Russo and Alex Forsner, our Engineer. Again, we're here just because we want you to know that we would do anything, we're willing to do anything to help you better understand why (inaudible) again not for purposes of opening up this for further deliberation about this particular application (inaudible).

President Gillock: I appreciate you answering our questions. Anyone else from Council? Mr. Johnson?

Council Member Johnson: I'd like to first say, I'm an employee of Ameritech, SPC Company. I receive a paycheck and that's it. I have no financial interest. But, have we looked into co-locating at the Ameritech Building at the corner of Maddock and Center Ridge Road?

Attorney Graves: That's a free store building. We need 150 feet (inaudible).

Council Member Johnson: Okay. And one other thing, have we looked into the possibility of raising the height of the antenna above 150 feet to allow us to move it to a better area.

Attorney Graves: The elevation of the antenna doesn't necessarily (inaudible). Changing the height doesn't necessarily improve what we need to do. Sometimes, they on occasion, usually changing the elevation of the tower, the height of the tower, really accommodates more carriers. This tower already, the fact that it accommodates three antennas so, there can be other co-locators on this particular tower. We already have a design. We planned for the ground space for their equipment shelters (inaudible).

Mike Whitt: In addition, the way the network is designed, not only does the geographic location (inaudible)

President Gillock: Anyone else? Yes.

Council Member Butkowski: Mr. Gillock, if in fact this Voice Stream company folds, is there something in the contract to remove everything you've put on that property?

Attorney Graves: Generally, when that issue (inaudible), we're always willing and able to place a removal bond. It's never an unusual concept to (inaudible) post a bond with the City that will assure that in the event the tower becomes unuseable in the future or not used in the future or abandoned, it's guaranteed to be removed. There's not a likelihood that's going to occur. Quite candidly, once this antenna, tower facility is placed (inaudible) when they come to this community and (inaudible). We do not want to have to put you through the process for them

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(inaudible).

Council Member Butkowski: Mr. Gillock. We've heard that before about others that said that they would get co-locators and now we have another one that doesn't want to co-locate. AT&T did just co-locate on Center Ridge but most of them want to build their own.

President Gillock: He said he would prefer to co-locate but he can't. Is that correct?

Attorney Graves: That is correct because of the cost and then we have, Voice Stream has an existing standard agreement with distant other carriers so that there is some sort of reciprocity with regard to (inaudible) co-locate so they don't have to go out and renegotiate an extensive document. Time is very, very critical for these carriers and it's particularly true in this case. Unfortunately, your kind of a deal had a very long lead time and we have launch coming up and this is a very, very significant site. That's why we're at this juncture. We just don't have any more time.

Mike Whitt: We did co-locate on a pole on the east side of town so, (inaudible). Sometimes that drives where the other sites go because you try to co-locate on an existing tall structure. That sometimes determines where the rest of the designs may be. So you say okay, co-locate on this site and the next one may be in another situation.

President Gillock: Anyone else? Mr. Swindig?

Council Member Swindig: I have one more. With this tower, if we decide to go with it, how many more carriers can we put on this tower? What is the maximum amount, because I'm getting tired of hearing the story we've got to have another tower, we've got to have another tower? I think it's time where the City stands up and looks for the residents instead of being held blackmail all the time.

Mike Whitt: The reality is, if I can take the floor? When we first looked, we tried to go on an existing tower. It's faster, less inexpensive to have. We have the capability of having at least two of these (inaudible). We'll even go to (inaudible) if that's something desirable to the community. We'll even buy a more expensive pole to add a third carrier instead of just adding two more carriers as now we can go to three additional carriers (inaudible). Based upon our (inaudible) we're at 63 percent of our sites are co-locations, right now.

Council Member Swindig: Mike, excuse me.

Mike Whitt: Oh, I'm sorry, nine percent are on roof tops and other (inaudible).

Debbie Neidstrom: Another nine percent are on so a total of 71 percent we are co-located on (inaudible) structures.

Mike Whitt: And if you speak to just Lorain County and Cuyahoga County, where there are more existing structures to go from, I think out of the 90 percent that are co-location or roof top or (inaudible).

???: Together they have to be tall structures, right?

Council Member Swindig: Mr. Chairman, my question was, how many is the maximum we can put onto an antenna, not, you know, what we're talking here, I want to know what's the maximum amount that can go onto an antenna?

Mike Whitt: It depends upon how you design it. Ours as drafted, presently, will accommodate three, us plus two more. We're representing to you today, of what I'm hearing, that we will

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change that pole to make it accommodate three rather than two. It will cost us more money but, as the foundation in the interest of the community, we'll do that, we'll co-locate.

Council Member Swindig: That's still not my answer. What I'm asking for is, what's the maximum amount we can put, you can, I don't care what it's costing you to build this tower. I'm saying how many and how many is the maximum we can get onto this tower so, we don't have to come back again next week and say, this guy over here is going to blackmail us for one, too. What I'm saying is how many can we make it feasible? The cost you can recap from going out and letting it go to other.

Mike Whitt: Perhaps I didn't answer you artfully. I thought I did. We are one carrier that is on there and we can presently accommodate two more carriers as designed. So that would be three total. If you want us to, that's your call, if you want us to we'll build it able to carry four total, us plus three more. So, I hope that answers the question.

Council Member Swindig: I mean, can you go five or six onto the same tower if it's built properly?

Mike Whitt: What happens, it becomes more than a monopole, it becomes, it's an engineering issue and the pole becomes (inaudible). They don't design (inaudible). You can only space these antennas about 15 feet apart in elevation so, if we have four, that's a 60 feet or 75 foot separation. So, you're already down, half way down the pole, it's not going to be feasible to go there. That's why you don't see them go any more than four. Unless you start going on top of those extremely tall structures (inaudible).

Council Member Olesen: Mr. President, If I might just take this one step farther, I think the concern that Planning Commission has, Planning Commission has a mind set that there's not much you can do about these towers. I think that's the reason it went through. I think if you poll each individual member, do you want it there, they'd say no. But, it went through because of mind set, you can't do anything about it and I think the problem is growing because, ten years ago, there were very few companies in this business and there's a tower here and a tower there. Now, you're to the point where there's dozens and dozens, there might be hundreds. I don't know how many companies are in this business now and we wonder if every community is going to be faced with the same problem. Strangers coming in, new competition for you, the request for more towers and when does it cease?

Mike Whitt: Years and years ago the technology was cellular in nature and the range capabilities for the tower was about twice what it is today for purposes of radio frequencies. So, you could have much larger separation between antennas. There were truly, only a couple of carriers back in those days. That's why the cost of a cell phone was very expensive. At that time it would cost you several dollars per minute. (inaudible) The FCC, in looking at that, decided that competition was good because it would make it a much more accessible tool for everybody like you and me who don't want to spend that kind of money to talk to somebody or to take care of emergencies so, the FCC issued licenses for purchase by companies in the industry like Nextel and Voice Stream and AT&T. So, there's a (inaudible) number of licenses that have been issued. Reality is, I suspect that the number of carriers is probably going to drop rather than increase because of the competition in the market place. We'll begin to win out some of the smaller companies.

Voice Stream is the largest provider world wide. We're one of the major companies. So, to answer your questions, the (inaudible) of towers, we're probably reaching a saturation point in some communities because (inaudible), or it's not feasible because the (inaudible) within the market place becomes, each site becomes a very, very expensive proposition. So, it's not like (inaudible). Every time you put up a tower with (inaudible).

President Gillock: Anyone else from Council or the administration have any questions? In the interest of fairness, in that we get all the information that we can, I would like to open it up at this time, if there's anyone that would like to address Council regarding this issue?

Mr. Kane: I had some points to raise, before I do, discussion of easement came up. Now, I know why I brought this. I have a rather large photograph, maybe I should come to the front.

President Gillock: I think you're okay.

Mr. Kane: Of the area that is in question. This is the Pierce's property. The tower of proposed siting within, is in this area here.

President Gillock: Excuse me, Mr. Kane are you talking about whether anticipating placing the tower or are you talking about the other property that Mrs. Butkowski referred to?

Mr. Kane: Yes, I want to ask the question, I don't see why an easement (inaudible). I wanted to show this (inaudible)

President Gillock: You're talking about a potential alternative location?

Mr. Kane: I bring this up to support the questions about an alternative location, yes. I wanted to ask the people from Voice Stream. . .

President Gillock: No, I want you to talk to Council because I don't want to start getting into a back and forth.

Mr. Kane: On this photograph, I see no reason that the idea of moving the tower to the east on City property would not be acceptable. I see no physical barriers to that suggestion made by Mrs. Butkowski. The statement was made, an easement would not work, and I see no physical reason. I just wanted to raise that point.

President Gillock: I think their response was two fold. The primary one being that at this point in time, the alternative location is not acceptable, being the main thing, because of their delay. They're ready to build and to try to negotiate or work out an easement at this time gives them an undue hardship, if you want to phrase it that way.

Mr. Kane: I understand. Secondly, I'd like to mention to the Council, at the Board of Zoning and Appeals meeting, the residents that had requested a 30 day continuance were given a continuance for the purposes of submitting evidence of our concerns over the tower. I've come to represent all of use. We respectfully ask to retain that right (inaudible). That's what I want to add. I had some things to turn into Council which I could do if requested (inaudible) encouraging the Board to realize that they do have rights in this matter. They are not always mandated to kneel to every tower company that want's to set up shop, so to speak. That's all I got to say.

President Gillock: I appreciate that and the issue of the zoning is a question that we still have to resolve, where we go with that, depending on what deliberations or discussion we might have.

Anyone else?

Council Member Buescher: Mr. President, I just wanted to say that, if plans had been made for

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the people to speak at the Zoning Board at the end of May, I don't see why we have to have this resolved at this meeting. We should have more time to consider. Thank you.

President Gillock: Mr. Johnson?

Council Member Johnson: I would ask that the minutes of this meeting be kept verbatim as they are for a regular Council meeting for legal purposes.

President Gillock: We can make sure that's done. Anyone else?

Assistant Law Director Morgan: Mr. Chairman, I think I can speak to Mrs. Buescher's question as to the BZA. This was before the BZA at one point. After Council voted not to approve the project, we no longer have the authority to grant a variance on a project that has no approval in the City. So, that's the reason it has not been before the BZA again. There's no official application there and at this point there cannot be.

Mayor Hill: Mr. President?

President Gillock: Mayor?

Mayor Hill: I believe Mr. Olesen asked for a delay, but he did not get a second.

President Gillock: That was on Council.

Mayor Hill: Yes.

President Gillock: The Zoning Board asked for a delay which was granted. That's a different issue, but we have issues all the time before Zoning Board, getting variances, before the projects are approved.

Assistant Law Director Morgan: That's true but, that's not the case here. This project has been denied. We can't grant a . . .

President Gillock: For the time being.

Assistant Law Director Morgan: Until somebody approves it, we have nothing to grant a variance on.

President Gillock: That's a different issue anyway. Any other questions? If not, could we have a motion to adjourn into Executive Session.

motion by Mayor Hill to adjourn into Executive Session, 2nd by Johnson

President Gillock: Is there any further discussion? If not, please call the roll.

Yes, 7 6 No, 0

President Gillock: Meeting is now adjourned for Executive Session, to be resumed afterwards.

Council recessed into Executive Session at 3:35 P.M.

motion by Butkowski, 2nd by Olesen to reconvene the Special meeting

President Gillock: Is there any discussion? If not, please call the roll.

Yes, 6 No, 0

Clerk of Council Norris: Motion carries by a vote of six, zero.

Council resumed from Executive Session at 4:25 P.M.

President Gillock: Do we have a motion in regards to our discussion regarding Voice Stream?

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motion by Butkowski to place Voice Stream on the agenda for the next meeting in May
under Old Business, 2nd by Johnson

President Gillock: Is there any discussion? I have a motion by Butkowski, seconded by
Johnson to place Voice Stream on the agenda at the next regularly scheduled meeting. Any other
discussion? Please call the roll.

Yes, 7 No, 0

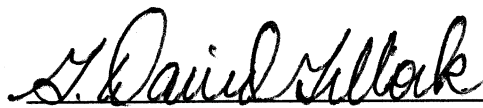
ADJOURNMENT

President Gillock: Being no other business allowed on the Special meeting, this meeting is
adjourn.

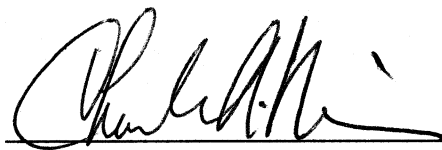
Meeting adjourned at 4:28 P.M.

MOTION (*as corrected*) Butkowski 2ND Buescher DATE May 6, 2002

YES 7 NO 0 ABSTAIN 0



PRESIDENT OF COUNCIL



CLERK OF COUNCIL