

## NORWALK BOARD OF ADJUSTMENT MEETING 10-12-10

The Board of Adjustment meeting was held Tuesday, October 12, 2010 at Legacy Community Clubhouse, 600 Colonial Circle, Norwalk, Iowa. Chairperson Joe Smith called the meeting to order at 6:00 pm. Members present at roll call were: Joe Smith, Christin Grant, Steven Davidson, Chad Stevens and Lori Strum-Stravers.

City Staff present were Mike Johnson, Associate City Planner, Tim Hoskins, Public Works Director and Shelley Heisdorffer, Development Services Clerk.

**10-12** – Motion by Stevens and seconded by Grant to approve the agenda as presented. Approved 5-0.

**10-13** – Motion by Davidson and seconded by Grant to approve the minutes from the September 15, 2010 meeting. Approved 5-0.

Mr. Smith welcomed the guests and with none of them wishing to speak the business portion of the meeting was opened.

There was no new business on the agenda.

The next item on the agenda was current business, Special Use Permit – Cell Tower – Billy O'Phillips Park which was tabled at the September 15, 2010 meeting.

**10-14** Motion by Davidson and seconded by Grant to Untable Special Use Permit – Cell Tower – Billy O'Phillips Park. Approved 5-0.

At this time Mr. Smith opened up the floor to the residents who wished to speak.

Phil Buntensch, 2645 Lexington Drive, asking if this was a done deal. The Board responded that it was not.

Victoria Wickham, 338 Turnberry Drive; Libby Miller, 2678 Park Place; Andrew Buhrow, 219 Thornhill; Chad Layman, 2320 Lexington Drive; Chet Johnson, 343 Turnberry; and Shawn Baker, 406 Turnberry Drive asked questions regarding the cell tower, revenues, site location, impact of surrounding property values, vandalism, noise, lighting, safety for OSHA regulations and various related topics.

The following residents were not in favor of the cell tower being placed in Billy O'Phillips Park: Judy Adair, 300 Hawthorne Drive; Justin Dehmer, 517 Turnberry; Gregg Mooers, 2740 Georgetown; Andrew Buhrow, 219 Thornhill; Chad Layman, 2320 Lexington Drive; Victoria Wickham, 338 Turnberry Drive; Brian Bierstedt, 2615 Lexington Drive; and Chet Johnson, 343 Turnberry Drive.

An unidentified resident asked questions regarding the dangers of the effects of cell towers on children.

Boardmember Stravers asked if Mr. Mandolfo could explain why they chose the location they did.

Sam Mandolfo, Wireless Site Acquisition and representing AT&T reported that they looked at the fire department but that setbacks were a concern that they didn't have at the park. Mr. Mandolfo also noted that they still did not have FAA approval yet to locate the tower.

Mr. Johnson explained that the Board of Adjustment is quasi judicial. They have the decision of authority, much like the Council, on items like variances and special use permits. If the Board were to approve this, the Council has the option to remand it back to the Board. It is still the Board of Adjustment's decision at this point. The Council and the Board of Adjustment are two separate decision making groups that deal with entirely different areas of authority. The only authority that the Board of Adjustment has in this case is to approve, disapprove or table. They cannot make any decisions beyond that regarding revenues

from the tower or any related topics. That is all for the Council to decide should the tower be approved by the Board of Adjustment.

At 6:50 p.m. the meeting was closed to public comment and the Board discussed the topic at hand.

Mr. Johnson cautions the Board on their decision and how it is worded due to litigation possibilities. He would recommend the Board give very specific reasons as to why they would approve or deny the application.

Tim Hoskins, Public Works Director, spoke regarding the concerns and the parameters of the decision for the Board of Adjustment is limited by statute to the code. As far as aesthetics or financial impact, neither of those are concerns of this Board. The decision that is made has to be on the foundation that the only recourse based on the Board's foundation is district court. So the decision that is made has to be clear so that it can be judged through the legal process of district court. The issues today relate to the specifics that Mike has pointed out in his report, which is the height. Height is the only thing that the decision can be based on, the scale and the scope in relationship to the environment.

At 7:02 p.m. the meeting was opened.

**10-15** Motion by Grant and seconded by Stevens to Table Special Use Permit – Cell Tower – Billy O'Phillips Park with the conditions that the City Attorney be present at the next meeting and that Staff provide Board with a detailed brief outlining the City Code. Approved 5-0.

**10-16** Motion by Davidson and seconded by Stevens to adjourn meeting at 7:03 p.m.

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Joe Smith, Chairperson

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Mike Johnson, Associate City Planner