

MINUTES OF THE
SPECIAL MEETING
OF THE
ST. JOSEPH COUNTY COUNCIL
September 27, 2016

The special meeting of the St. Joseph County Council was called to order at 8:09 p.m., on September 27, 2016 by the President, Rafael Morton, in the Council Meeting Room, fourth floor, County-City Building, South Bend, Indiana.

Members in attendance were:

Mr. Robert L. Kruszynski
Mr. Corey Noland
Ms. Diana Hess
Mr. Rafael Morton
Mr. Mark P. Telloyan
Mr. Mark A. Catanzarite
Mr. Robert McCahill
Mr. Mark Root

Present from the Auditor's office was Mr. Michael J. Hamann, Auditor and Ms. Teresa Shuter, Chief Deputy Auditor.

Council staff present was Mr. Michael Trippel, Council Attorney and Ms. Jennifer M. Prawat, Executive Secretary.
Absent: Mr. James O'Brien

BILL NO. 48-16: AN ORDINANCE APPROVING THE PETITION FOR SPECIAL USE FILED BY HAYES TOWERS FOR THE PROPERTY LOCATED AT 51856 ELM ROAD, GRANGER, IN 46350 THE SAME BEING PETITION NO. 08-03-16-21 FILED WITH THE AREA BOARD OF ZONING APPEALS
PETITIONER: HAYES TOWERS

Mr. Nolan reported that Bill No. 48-16 comes without a recommendation.

Mr. Bulot, St. Joseph County Building Commissioner, at the August 3rd of the Area Board of Zoning Appeals, this petition for a special use for a communications tower within 500 feet of a residential structure was heard and comes to you with a favorable. This was by unanimous decision and there were 2 remonstrators.

Mr. Noland: Would you summarize what the remonstrance was entailing.

Mr. Bulot: Off the top of my head, there was one woman who lived within 400 feet of the tower and she was concerned about the proximity of the tower to her residence. The other was a neighbor in the area, and I don't recall exactly what the contention was but they were not in favor of it.

Ms. Anne Hayes, President of Hayes Towers, 814 Marietta Street, South Bend, first I would like to thank everyone for the thoughtful consideration that you have given to our petition thus far. As you know, reliable cellular networks are a necessary part of the infrastructure of homes, businesses, public safety entities and schools. Please recall the letter of support that I have submitted at the last meeting from Brent Croymans that referenced the statistics that 70% of 911 calls of some areas in the United States are made from cell phones and this further underlies the necessity of reliable, cellular infrastructure. (Ms. Hays distributed power point slides to the Council.) We will build this tower for Verizon but the tower will be built to accommodate multiple towers. When we look at this tower, it's important to remember that this is customer driven. Verizon receives many trouble tickets and customer complaints in the area surrounding State Road 23 and Elm Road. In addition to trouble tickets because of the lack of coverage and capacity in that area, we have towers to the west of our proposed location that are breaking for capacity. They are over loaded because they are having to handle the traffic from all of the voice and data calls at State Road 23 and Elm Road and those are being off loaded onto the towers to the west. If this tower is built, not only will the cellular network surrounding State Road 23 and Elm Road be enhanced, the towers to the west will also be able to function in a better manner providing more reliable coverage and capacity in those areas. At the last meeting, Harris Township did ask that if we were to move forward 51856 Elm Road, we would sign an agreement, which we had already verbally stated saying that Hayes Towers would not pursue revenue from AT&T at our proposed location. We have already verbally committed to that, we had no problem so here you see the signed document stating that Hayes Towers will not pursue AT&T at our proposed location, we understand that Harris Township benefits from the revenues of AT&T at their tower. This contract was drawn up by Pete Agostino, he has a copy of it, Ken Lyndsey has a copy of it and Jamie O'Brien has a copy of it. While Area Plan Commission stated that the tower would not negatively impact property values in the neighborhood, we did go a step further and we engaged the work of an independent appraiser, I have here with me today, his report that I would like to submit. I highlighted the closing sentence in his letter, "I find no evidence that the proposed cell tower will in any way create or have a damaging effect on this specific group of surrounding properties." I hope we can continue to move forward and enhance cellular network of Harris Township.

Mr. Kruszynski: The tower at the fire station, how tall is that?

Ms. Hayes: It's the same height; it's a hundred and ninety five feet.

Mr. Kruszynski: And the utility towers?

Ms. Hayes: Those are, I believe, between eighty five and hundred feet.

Mr. Kruszynski: Mr. Agostino, Harris Township is now only going to receive revenue from AT&T but they are also going to receive revenue from Verizon?

Mr. Agostino: Harris Township has a lease with AT&T with respect to the tower that's located on the Harris Township fire department site. The contemplated tower here is a different location that doesn't affect us particularly since they have undertaken the written commitment we requested which is to not go after AT&T. I would say Ms. Hayes at the request at the last committee meeting did meet at the Harris Township site to review alternative locations, she did do what was asked of her, we did meet with her, I just want to confirm.

Mr. Morton: As far as the meeting on Friday, how did that turn out?

Ms. Hayes: On Friday, we had 17 people in attendance, we invited the 13 residence that were within in 300 feet of the Elm Road location and we invited the 26 addresses that were within 300 feet of Harris Township property. Of those addresses that we invited, 7 of them were represented and then other people brought friends. There were concerns of aesthetics of the tower, which I hope we addressed, discussing the fact that we are placing this tower in an area surrounded by foliage and in close proximity to currently existing utility towers. There were questions about property values, which I hope I have also addressed. There were some questions with the necessity of coverage and I tried to explain coverage and coverage versus capacity and the towers to the west and how they would benefit.

Mr. Noland: I attended the meeting on Friday and also Jamie O'Brien was there and wanted to thank you guys for putting that meeting on, I think it's always important to get that information out there and take up your own time to come and meet with the residence and give them your side of the story, I do appreciate taking the time to do that. Additionally, as chairman of the Land Use Planning committee, I told Mr. O'Brien, who was not able to be here tonight that I would read his letter here.

"I submit this written narrative to explain my sentiments concerning the current cell tower project/matter that is before the St. Joseph County Council this evening, September 27, 2016. As I have explained to several of my colleagues on the Council and a number of the citizens located near the proposed cell tower project, I oppose the current project and would respectfully ask my colleagues to vote "NO" on the matter before the council this evening. Due to an important personal matter I am out of state and I regret that I am unfortunately unable to participate in the special meeting this evening. Nevertheless, my colleague has offered to read this statement into the record on my behalf, and I appreciate Mr. Noland's assistance. I have spoken to, met with, and/or corresponded with approximately thirty (30) people concerning the proposed cell tower project. The sentiment has universally been negative – that is – every single person, other than Ms. Hayes who is advocating for this project, has been opposed to the project. The reasons shared with me for the opposition seem valid to me and include: Safety concern during construction, safety concerns post-construction related to the maintenance of the cell tower and concerning the size and height (nearly 200 feet) of the cell tower. Safety concerns concerning the radio frequency and waves emitted by the tower. Negative impact on property values within the vicinity of the tower – at least one neighboring homeowner reported that he would not have purchased his home had he known the cell tower would be located nearby. Adequate cell coverage in and near the vicinity of the proposed tower – lack of a "GAP in coverage." Many neighbors stated that they have no problems with cell coverage, including a gentleman who uses the carrier for whom this tower is being constructed. Negative impact on wildlife and pets in the vicinity of the tower. Excellent potential for an alternate site that is not on a private residence parcel but rather on township property. I note that less than a week ago I heard from the Township Trustee – he believes that there is an opportunity to located a tower on township property near the fire station. A copy of a recent communication from the trustee confirming this is included with this statement and should be made part of the record of the proceedings this evening. Universal opposition to the current project/location. Last Friday evening I, as well as one other councilman attended a meeting that the Hayes Group held at the Library in Harris town ship. The meeting was remarkably well attended with 24 or 25 people participating. 100% (every single participant) of the attendees opposed the current cell tower project. During the question and answer portion of the meeting I asked those in attendance if any of them would oppose an additional cell tower on the township property near the fire station at the corner of State Road 23 and Elm. No one indicated that they would object or oppose that new location, in fact to the contrary there appeared to be unanimity that a location near the fire station on SR 23 would be not only preferred but embraced. In fact, I note that one of the attendees – who reported living much closer to the township property and who further indicated that he would definitely see the tower if it were on the township property – pointed out that he is used to seeing the existing tower and the fire station already, as well as the power lines, and that he wouldn't be bothered at all by an additional tower. It is worth mentioning that at this meeting, the representatives from the Hayes Group, in my opinion, appeared to discount the viability of a tower on the township property. I do not know if that is perhaps due to a misunderstanding or misinterpretation of the Township Trustee's position or if is simply the desire to exhaust other options before considering the Township – in either event I suggest that the Township Trustee is willing and apparently able to work toward a location near the fire station and that the current propose cell tower proposal ought to be denied. Potentially inadequate notice of the previous actions taken to grant variances/exception – a couple of the neighbors reported that they did not have any notice of these matters until very recently. Disparate impact on a less affluent part of the county – one of the neighbors observed to me that he feels that there is no way that this project would be permitted if it were being proposed in Shamrock Hills or Woodland Hills because of the Doctors and Lawyers would be upset and people would listen to them. While this current cell tower project is located in County Council District C, the area that I represent, we all have both the privilege to represent all County residents – an action that any Council member takes may and often does impact everyone in the County. To that end, I would remind my colleagues that in the 4 years I have served on the Council, I believe that have always (100% of the time) support and voted with the Council members representing the geographic portion of the County where a rezoning issue arose. And I would ask you, my fellow Councilmen and Woman, to please consider this as well as you cast your vote this evening. Please vote against the subject matter this evening. Thanks for your time and consideration - Jamie O'Brien"

Mr. Noland: His last point there is something I wanted to find out, is relocation to the Harris Park area not a viable option?

Ms. Hayes: I am going to let Verizon talk about this as well, but again, we did say, we made an offer on the tower at Harris Township in January and when that was not accepted we had to move forward and Verizon has emails as well that state that they had communications, Verizon was told that there were not options for them there and Verizon stated that they needed to move forward. This is a tight time line, this is a very important project for Verizon, they have been working on this for 2 years because of hold ups that they have had in the past. We found an ideal location that's better than the fire station because it's not in anyone's front yard. This is an area that's already dotted with very large utility towers and it will be in close proximity to those towers, in back yards, surrounded by foliage. This is an ideal location. In terms of safety, the FCC (The Federal Communications Commission) sets radio frequency emissions standard in consultations with many governmental and non governmental agencies. The emissions that are emitted from antennas on cell towers from carriers are much less than the limits that are put in place by the FCC and I invite people to visit the FCC's website. The impact on pets and wildlife, I am not really sure what the concerns are, we will have a chain link fence around the tower. We have addressed the property values. There were a couple of people who have Verizon at the meeting who said it works well for them and what I explained was that sometimes that's wonderful but as more and more people, especially at high population, high density times are using their phones both for speaking and data transmission it becomes more and more difficult to get the signals across. This is customer generated. Verizon and any other carrier has to put a lot of time, money and effort into building a tower, they do not move forward in this manner unless it's justified. This is an important gap for them. In terms of attendees, we had a sign in sheet, like I said, there were 17 people there and when we looked at the addresses, from the 26 addresses surrounding Harris Township, there was only 1 person who attended.

Mr. Kruszynski: Let's just say if the tower was built at the fire station, would that not be more visible there then where it is currently proposed to be built?

Ms. Hayes: Correct. That's in people's front yards. Verizon will talk about this, this is time sensitive and this is a major issue and Elm Road is the preferred location.

Mr. Catanzarite: So that meeting last Friday, 13 people were invited to attend?

Ms. Hayes: No. In order to decide who we should invite, we invited the 13 properties that are within 300 feet of the properties 51856 Elm Road, so there are 13 addresses. Again, something that Mr. O'Brien brought up was, some people didn't receive notices, that's all sent out by the Building Department especially so that there can be no way to say that Hayes Towers or whoever has the petition is purposely not mailing to people. We did knock on doors and left cards for everyone. Then there are 26 addresses that are within 300 feet of Harris Township property, of the 26 addresses within 300 feet of Harris Township property, there was 1 property present and he says he sees towers everywhere and does not care.

Mr. Morton: I guess I am perplexed, for the lack of a better word, when you say that State Road 23 and Elm location, you guys were considering that and you were going to strongly consider that location but the Harris Township Trustee was not in agreement back in January? I am trying to make sure I am understanding how this has all unfolded with this State Road 23 and Elm because from what I am hearing, at least from one side is that the Harris Township Trustee may have said no then but they are willing to talk about it in agreement of it happening now. Is that right?

Ms. Hayes: In January, we did approach him because we know there is a tower on Elm at the fire station and it has AT&T on it. That tower was built in 1993 and is not structurally capable of holding multiple carriers and we offered to purchase that tower to tear it down and to build a new tower in its place that would accommodate AT&T and new carriers. That was not accepted.

Mr. Morton: By the Harris Township Trustee?

Ms. Hayes: By the Harris Township Trustee.

Mr. Morton: Is this the same person as the trustee now?

Ms. Hayes: Correct.

Mr. Morton: So he has had a change of heart?

Ms. Hayes: Well, but it's a different location. Yes, yes. I don't know if it's a change of heart, he said he was willing to talk to us about other options which we did discuss.

Mr. Morton: Ok, that's not quite how I heard it. I am just trying to get this clarification. I heard that the Harris Township Trustee has had a change of opinion and would be willing to not talk about it but pretty much in agreement with it. I am just asking.

Mr. Catanzarite: Ms. Hayes, was he at your meeting the other night, the Trustee?

Ms. Hayes: No, he was not.

Mr. Noland: I think there is a little bit of discrepancy here because if a tower were to be built near the Harris Township fire station, it wouldn't be at the fire station where the existing tower is at, it would be in the park. It can't be there, it would have to be out in the park and that's what he's willing to entertain.

Ms. Hayes: It's a different location than what we proposed.

Mr. Morton: How far did you say it was from the original one?

Ms. Hayes: Maybe 300-400 feet, maybe?

Mr. Morton: Ok, so it's a very close proximity from the first offer?

Ms. Hayes: Yes.

Mr. Morton: Ok, that is what I make sure I am understanding. I think that our esteem colleague, Mr. O'Brien, I think that's part of his concern and when that was conveyed to me it brings up a question, well, if you were willing to do that in January and there was no cooperation, now the cooperation is there, then why aren't we at least talking about that?

Ms. Hayes: And that is why we have engaged in discussion but it is different now because when we offered to buy the tower in January, Harris Township did not have a signed lease with AT&T and when we offered to buy a tower, we suggested that they write into their lease that AT&T would need to move to the new tower that we would then build to accommodate multiple carriers and that did not happen so AT&T has a lease with Harris Township now. We cannot ask AT&T to move to a new tower so now we have this secondary option which is to build a second tower. Additionally, this is a time sensitive matter for Verizon.

Mr. Morton: In all fairness, when you say it's a time sensitive matter, everything we do is time sensitive. Every proposal is time sensitive. I do not mean any disrespect by that, I really don't.

Mr. Noland: And to that point I also wanted to say, with no disrespect to the gentleman who is here from Verizon but, Verizon has been working on this for two years and they are in a hurry now that really isn't our issue.

Ms. Hayes: That is part of their frustration is that they have really been trying to work and they did try to exhaust possibilities with Harris Township.

Mr. Morton: There again, I cannot help but at least consider if the Harris Township Trustee, allegedly had a change of opinion and wanting to at least negotiate, talk about, I have to take that into consideration.

Ms. Hayes: I understand.

Mr. Kruszynski: But again, going back to if the new tower was located on the park property, it will bring 26 more residents in....

Ms. Hayes: Correct. We would then be having this discussion with another group of remonstrators.

Mr. Morton: That is a fair concern and I would be more, I don't want to say excited to hearing what he has to say about that. I would think he has done his due diligence in knowing what that response would be. All he's telling us is hey, Harris Township Trustee is willing to negotiate now and I would appreciate you guys considering that. So if he has not talked to the potential 26 additional remonstrators, then shame on him.

Mr. Hayes: Unfortunately, I don't know if he has spoken to...

Mr. Morton: No no, I don't expect an answer from you that is my narrative.

Mr. Noland: I have to believe at the proposed location than the park but the residents, overwhelmingly do not want it at the proposed location and they don't have a problem with it at the park, now, it's a different 26 addresses but I have to say my patience would be less if they come back and say oh, we don't want it there either.

Mr. Morton: My patience would be very short with Mr. O'Brien. I'm serious because he is very adamant about this and if he has not done his due diligence with the other 26, then I have a problem with Mr. O'Brien, in this situation.

Mr. Noland: In land use planning, ever one of these things that comes up, no matter what it is, I will at least give it a drive by or get involved and talk to people before they come here and have these meeting. It's very unusual to have this level of opposition so it becomes very difficult, it's that's what everybody there wants; it makes it very difficult to go against that. I appreciate your over and above the efforts you have done to explain this. I agree with your explanation but I don't live there.

Bryan Donley, Representative for Verizon Wireless, the need for this tower has arose for a few reasons, first and foremost because the residents of St. Joseph County and Harris Township have asked for better signal level and quality over coverage from Verizon Wireless. This area has frequent customer complaints from customers living, working, shopping and commuting in this area. Customer complaints are not just due to the need for more signals strength and higher quality of service and for also more capacity during peak hours. The only way to improve this is more equipment in the air. As far as it relates most of the debate here tonight seems to be about the location in Harris Township. I personally tried to negotiate an agreement with Harris Township and the Trustee's office starting in late 2013, my first contact with Mr. Robert Worth who was the previous Harris Township Trustee was in

March in 2014, I exhausted many, many efforts to try and come to an agreement at that location including going on that existing tower and renting ground space for Verizon's equipment at the location. Once we were informed and aware that the existing tower that is there does not have the structural capacity to hold the equipment that is up there by current standards much less additional equipment, I approached him and said let's put a second tower on your property and remove the one that's there, move AT&T to that and then you will have a tower with two carriers. I enlisted the help of another tower company, my apologies to Hayes Tower, that has a very good relationship with AT&T and has a very good relationship with Verizon Wireless and Verizon spent money to help design this and present these options to the Harris Township Trustees office and the board. They had a site plan; I sent a lease agreement in the hopes of getting this approved and moving forward. Ultimately, we were shot down. At some point, we have to move forward. If we are getting shot down on municipal property which is what we wanted to do in the first place, I whole heartedly agree, but after two plus years of getting in touch with them to do it and were denied, it's time for us to move forward. This location does that, this is the preferred location is up.

Peter J. Agostino, 131 S. Taylor St. South Bend, IN, I wanted to clarify some things. This tower was a tower that was at one point owned by AT&T under the terms of the original lease agreement that ownership was going to revert back to Harris Township but there was a breach of that agreement because rent had not been paid and something happened with the administration, that contract that fell through the cracks between AT&T and prior trustee so I know the frustration that must exist with trying to negotiate with Harris but at that time, ownership had not been established on the part of Harris Township so that is why it took some time to occur. Then it was discovered that the current tower could not accommodate what was planned by Verizon and to relocate on the Harris site would have interfered with some other plans for reconfiguring the layout of the fire station at that site so there are some reasons why the current Trustee, Mr. Lyndsey was not interested in proceeding with putting up a new tower at the Harris site.

Mr. Morton: I appreciate that, that's very helpful.

Mr. Agostino: So when the discussion reopened up, the suggestion was made in committee that consideration be given for another location, another Harris property that's where the park property next to the station came up. Mr. Harris, to clarify some points here, he is open to the idea of negotiating for the park property but it is true that no agreement was ever reached with respect to the fire station property. I cannot comment on the timing issues or feasibility of the tower and the park property, all I can say is that there is a willingness by Mr. Lyndsey to consider that.

Mr. Morton: I am one of 9 but as far as my edification, that helps immensely.

Jim Frederick , 51925 Elm Road, Granger, Mr. Kruszynski I am not sure if your answer was answered property if this money is given to the township or a private individual. This money to where the property is proposed to have this tower put up at is going to a private individual who does not even live at that property. The other problem I have is, we have other properties in Harris Township, we have a baseball diamond. I would like to see the money be given to our township instead of an individual.

Judy Godfrey, 13964 State Road 23 Granger, I am here in support of my neighbors down the road who do not want the towers.

Gina Powell, 51810 Elm Road, Granger, I live two houses down from the proposed site. I have not received any information regarding this. The meeting on Friday, they did not answer our questions. I'd rather see this money go to the township.

Larry Scheibelhut 51925 Elm Road, Granger, It would make me sick, I can't imagine any of you board members would consider voting for private property when a township could use the money.

Debby Frederick, 51950 Elm Road, Granger, I just want to thank Mr. Noland for coming to Friday's meeting that means a lot that someone else is looking into this as well. I don't want this in my backyard.

Ms. Hayes: I would just like to say again, we have complied with the general standards with special uses, this is an ideal location. At this point, we are leasing land from a land lord, the house was in foreclosure, he had improved it, it is true that he does not live there but he is a small business owner, he participates and he contributes to our local economy and we have a very nice relationship with the renters who live there and we are actually helping them with some additional improvements. The fact that a private land owner is earning money, I think is ok. This is part of what America is about.

Mr. Catanzarite: I think the need was demonstrated by one of the letters we got from our PSAP director that there is a lot of usage of cell phones for 911 calls and the new technology we have now which is called Text-to-911 if somebody is not able to use the phone, if they are incapacitated or being held against their duress and I would personally, since I do feel I am pro public safety, I think a lot of us are but I would hate to see somebody have a lost call or a dropped call in that area as it relates to that in terms of public safety and I think hidden back behind the nestled in the already existing high tension power line and behind the trees seems to be more sightly than in the middle of the park. I think we owe it to the petitioner to take a vote on this tonight and I think they have done their due diligence and that's why my vote is in support this. No disrespect to the neighbors that live in the area.

Mr. Noland: I actually believe it's a better location where it's being proposed at and I wish the neighbors thought that same way but it's going to be very difficult to vote against the overwhelming opposition. I don't think it's going to end up that there won't be a cell tower there, whether it's a this park or, I didn't even know there was any discussion about the baseball diamond but I think the tower is going to happen, Verizon spent some money, they

obviously want to build this tower, they need it. It's just the level of opposition of this location and I don't know if it's personal, I don't know what it is but it's out of the norm of what I have seen in 9 years of doing this.

Mr. Kruszynski: Of all the people that were against it, where are they tonight?

Audience member: They are elderly...inaudible.

Mr. Kruszynski: I understand that there are circumstances.

Audience member: If I would have known a cell tower was going to go up, I probably would not have bought that property. To tell you the truth.... inaudible. It's not behind foliage, it's right in the middle of the back yard.

Mr. Kruszynski: Wouldn't it be more visible at the fire station than where it's going to be proposed now?

Audience member: inaudible.... Blinded by this tower? This lady says she doesn't care if she lived.... Inaudible if you have one tower or two towers.... I talked to Mr. inaudible on the phone and he told me that early in the season when they were talking to him, he said he was so swamped with that park that he had to talk to people changes he had to do to get this park going, he was overwhelmed and he just couldn't take on another project like that now the park is going on and he is ready to talk and I believe we should have a meeting, a Harris Township meeting and let's see you folks want to do about setting it in there now and what kind of cost it's going to be because I think there's enough.... Inaudible... people understand there is an interest here to have it on top of the property now.

Mr. Morton: The public hearing is closed.

Motion to pass Bill No. 48-16 was made by Mr. Catanzarite and seconded by Mr. Kruszynski. Bill No. 48-16 was failed

to-wit; 6-2 Against: Mr. Telloyan, Mr. McCahill, Mr. Root, Mr. Noland, Ms. Hess and Mr. Morton.

Motion to adjourn was heard at 9:15 p.m.

Auditor, St. Joseph County

President, St. Joseph County Council