CITY OF DELTA, UTAH
APPEAL AUTHORITY HEARING
JANUARY 14, 2013

UNAPPROVED [illegible] 1/14/13

PRESENT

Larry Hunt	Appeal Authority
Gregory Jay Schafer	City Recorder
Todd Anderson	City Attorney
Ken Clark	Acting Code Enforcement Officer
Jamie Hall (via electronic participation)	Channel Law Group
Brenna Fleming (via electronic participation)	SureSite Consulting Group
Howard Western	Appellant
Betty Jo Western	Appellant
Gayle Bunker	Delta City Mayor
Steven Pratt	Delta City Council Member
Dent Kirkland	Delta City Public Works
Elise Pratt	City Resident
Kassidy Western	City Resident
Brooks & Kaela Jackson	City Residents
Dean Draper	Millard County Chronicle/Progress

Mr. Hunt called the hearing to order at 6:00 p.m. He stated that notice of the time, place and agenda of the hearing had been posted at the City Building, on the Utah Public Notice website and Delta City website, and had been provided to the Millard County Chronicle Progress at least two days prior to the meeting.

Mr. Hunt advised those in attendance that, when called upon, they should speak to Mr. Hunt, not to anyone else in the room, and no disparaging remarks about another person's opinion will be tolerated.

Mr. Hunt stated that this is a hearing on the appeal of a Planning & Zoning Commission review of a cellular telephone communications tower. The hearing will determine whether the appeal should lay and Mr. Hunt would make the decision sometime after the hearing. In addition, Mr. Hunt requested that comments be kept short and to the point. The issue for this hearing is for the Appeal Authority to determine whether the non-conforming use of the cellular communication tower was authorized and whether that authorization was proper. Mr. Hunt has reviewed the minutes of hearings and meetings and has reviewed briefs that have been filed. Mr. Hunt indicated that Brenna Fleming, representing SureSite Consulting Group (which has requested to collocate on the existing communications tower), and Jamie Hall, representing SBA Communications (owner of the tower in question), will be participating in the hearing via telephone.

Mr. Hunt requested that Ms. Fleming and Mr. Hall provide a brief overview of their position, after

which those in attendance at the meeting would be provided the opportunity to present their information.

Mr. Hall, attorney representing SBA Communications, owner of the cellular communications tower in question, said they are participating to express support of their tenant, Google. Mr. Hall noted that the subject of this appeal is whether the building permit for collocation on the tower is an alteration or enlargement of a non-conforming use. Mr. Hall advised that there is a new law, referred to as the National Collocation Law, passed in 2012 as part of the Middle Class Tax Relief & Job Creation Act of 2012. The law was designed to promote the collocation of equipment on existing towers. This law specifically requires local governments to approve collocation on cellular facilities, as long as they do not substantially increase the size of the tower. The Federal Communications Commission (FCC) has defined "substantial increase in the size of the tower" as addition of "more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter. . .." Therefore, by definition, installing one new equipment shelter to the tower is not a substantial increase in the size of the tower. That being said, the building permit application that was filed with the City is required to be approved under this law, adopted by Congress and signed by the President.

(Cannot understand Mr. Hall's discussion regarding state law.)

Mr. Hall noted that, under Delta City ordinances, non-conforming uses can exist, but they cannot be enlarged or altered. There is nothing under state law or Delta City code that would prohibit collocation of antennas on the tower and it would not constitute an enlargement or alteration of a non-conforming use. The use will not expand the area or nature of activity of the non-conforming use.

Mr. Hunt asked Mr. Hall if they were trying to increase the height of the tower. Mr. Hall answered that they were not increasing the height of the tower. Mr. Hunt asked what has been done to the tower, itself. Mr. Hall responded that the building permit is for placement of an equipment shelter inside the existing fence of the tower. Brenna Fleming (unable to understand her comments). Mr. Hunt was advised that panel type communications antennas have been added to the existing tower and they want to place an equipment shelter inside the existing fence. The equipment shelter is proposed to be approximately twelve feet by ten feet. There was no building on the property prior to installation of additional antennas.

Mr. Hunt asked for comment from Delta City. City Attorney Anderson responded by outlining the process bringing us to this point. There was a conditional use permit issued for construction of a telecommunications tower, which included construction of an equipment shelter. However, when the tower was constructed, they elected to use equipment cabinets rather than constructing an equipment shelter. Therefore, the existing use was a tower and equipment cabinets inside a fenced area. The current building permit application includes installation of additional antennas on the existing tower, and the placement of an eleven foot by fourteen foot prefabricated building to be used

as an equipment shelter. The building permit application was considered by the Planning & Zoning Commission and was determined to not be an expansion of a non-conforming use. We are now here to decide whether or not that decision was correct. City Attorney Anderson stated that we need to determine whether this is an expansion of an existing non-conforming use and if the Middle Class Tax Relief and Job Creation Act of 2012 requires Delta City to grant the application as a collocation that does not substantially change the size of the tower and, is it an expansion of a non-conforming use. City Attorney Anderson noted that Delta City recognizes the non-conforming use doctrine which, basically, says that something that was legal when it was constructed and has become illegal through an operation of law is a non-conforming use and it can remain so long as that use is not expanded. There is substantial case law stating that intensification, or increased volume of the same use, is not an expansion.

Mr. Hunt invited Howard Western to present his comments and advised him to keep them short and on point. Betty Jo Western, wife of Howard Western, requested permission to present their information in the form of a power point presentation. Mr. Western stated that the ground that is being leased is only 1,600 square feet and the minimum required for a lot was ½ acre when the original tower was constructed. Mr. Hunt noted that the initial tower and the footprint of the tower is already in place and that is not going to change. The only matter being discussed at this hearing is whether the building can be installed.

Mr. and Mrs. Western proceeded with their presentation, quoting information from the current Delta City Zoning Ordinance, the International Building Code, showing pictures they had taken of the tower site, and asking questions regarding information presented. Mr. Hunt advised Mr. and Mrs. Western that the only information that applies to this appeal is information regarding whether or not a permanent structure can be constructed on the tower property. Mr. Hunt also instructed that other matters connected with the tower are not subject to appeal; only the decision of the City Council or Planning & Zoning Commission can be appealed. There was discussion of other matters that cannot be appealed. Mr. and Mrs. Western presented their power point information. Mrs. Western stated that twelve antennas, measuring ten feet by six feet, have been added to the tower. Mrs. Western also quoted from the Middle Class Tax Relief and Job Creation Act of 2012 regarding expansion of more than twenty feet and excavation outside the original site. Mrs. Western completed her comments by describing what the term "eligible facility" means in terms of collocation and reiterated her comments regarding lot size, whether a building is allowed, and addition of electronic equipment.

Mr. Hunt asked if anyone else had comments. Mr. Hall provided additional comments, which were difficult to understand. Mr. Hall and Ms. Fleming terminated their telephone connections so they could be reestablished to see if better connections could be obtained. After reestablishing the connection, Mr. Hunt advised Mr. and Mrs. Western that he would allow any summary comments they may have before inviting comments from other people in attendance. Mrs. Western stated that the conditional use permit was issued to T-Mobile and they elected to removed the building from their site. Mr. Hunt stated that he would review all information pertaining to this issue, including the information provided by the Westerns, prior to making a decision. Mrs. Western specified that, based

on the information they had found in their research, and presented to the Appeal Authority, it is the property owners responsibility to prove that the non-conforming use is legal.

Ms. Fleming said that they had gone through the Planning & Zoning staff to determine what was required. Mr. Hall noted that Herca Telecomm had filed the application for building permit through a contractor who was on site.

Mrs. Western mentioned the noise created by the generator at the existing facility and the additional noise that would be created by placing an additional generator at the site.

Mr. Hunt stated that he would review all information presented, listen to the tape of the meeting, read the minutes of the meeting and compare all information with the ordinances. After this review, he will issue a decision on the matter. Mr. Hunt will be contacting all parties, in the next few days, if he needs clarification of any issues involved.

Mr. Hunt declared the hearing adjourned at 7:58 p.m.

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LAWRENCE H. HUNT, Appeal Authority

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GREGORY JAY SCHAFER, MMC, City Recorder