

6540221

12/31/96 6540221 4:39 PM 41.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
REC BY: B GRAY DEPUTY - WI

WHEN RECORDED MAIL TO;
CARL W. BARTON, ESQ
175 EAST 400 SOUTH,
SUITE 900
SALT LAKE CITY, UTAH 84111

NOTICE OF UTILITY RIGHTS

The undersigned hereby asserts and claims the utility rights described in the attached Exhibit "A". Such utility rights affect the real property located in Salt Lake County, Utah and more particularly described on attached Exhibit "B".

Dated : December 31, 1996

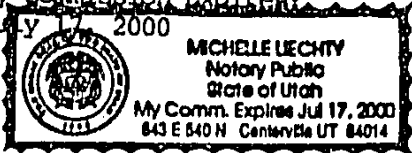
Woodward Industrial Park Enterprises,
L.C.

BY: *Doney Leon Woodward*
Doney Leon Woodward, Manager

STATE OF UTAH,)
) ss.
COUNTY OF SALT LAKE)

On the 31st day of December , A.D. 1996, personally appeared before me Doney Leon Woodward, manager of WOODWARD INDUSTRIAL PARK ENTERPRISES, L C. a Utah Limited Liability Company, the signer of the within instrument, who duly acknowledged to me that he executed the same., for and on behalf of WOODWARD INDUSTRIAL PARK ENTERPRISES, L C., a Utah Limited Liability Company as manager therein.

My Commission Expires:
July 17, 2000



Michelle Liechty
Notary Public: Michelle Liechty
Salt Lake City, Utah

DK 7569PG1589

LTC #



EXHIBIT "A"

CITY OF GILLETTE

P. O. BOX 3003 • GILLETTE, WYOMING 82717-3003
PHONE (307) 686-5200

DEPARTMENT OF UTILITIES ADMINISTRATION

June 15, 1995

Dee Woodward
2135 Pheasant Lane
S.L.C., UT 84121

RE: Whitmore/Woodward Property -- Approx 4850 S. 300 West

Dear Dee,

I have given much thought to the situation that has been developing on your property. Your call yesterday morning certainly showed me your frustration in reaching a mutual accord with the City Power Department. It must be a character trait of mine to always try to be accommodating within reason and be pro-development. If I could help to gain a win-win situation for the utility and a developer then so good for everyone!

I too am frustrated with the developing situation concerning your property on 300 West. The spirit of the understanding and agreement we had was to allow orderly development of the property with your planned industrial park. The City was to gain a transmission line corridor and provide cleaned-up distribution lines. I honestly don't recall the extent of the buried lines that were finally placed on your property to clean up the old overhead distribution lines. However, I vaguely recall that the buried distribution lines extended from about mid-point on your property to 300 West.

We had an agreement that if you ultimately needed your building (or buildings) to extend over part of the buried lines, that could be accommodated by colored concrete encasement of the electrical conduits, specially designed foundations or hold-outs, or placement of the conduits at a depth where they would ultimately be below the bottom of the footings. I believe that the latter was in-fact the method initially used by the Power Department during the burial process. That is not to say that any of the other methods couldn't be used at a later time to accommodate construction needs.

EW 7569 PG 1590

Woodward
June 16, 1995
Page 2

I am in possession of Mr. Crutcher's letter (as you are) dated March 24, 1986, wherein he stipulates the overhead clearances and requirements for building heights to accommodate those clearances. It would seem that at that time your contemplated building plans could adequately take care of any concerns of the Power Department over clearances. I don't believe that the NESC has materially changed those clearance requirements in the last 15 years -- even though the NESC has been updated at least 3 times since then. The current NESC (1993) requirements seem to differ significantly from those stated in Mr. Crutcher's letter dated April 27, 1995. I can't determine where his stated clearance requirements came from. However they certainly don't conform to the NESC clearance tables found in C2-1993 NESC §234. If the City has passed ordinances that establish tighter specifications than the most current edition of the NESC, then it is my opinion that you should be grandfathered to the conditions prevailing at the time the agreement was made with you back in 1980.

It would appear that, again, the spirit of the arrangement with you was to clean up the property from the tangle of old distribution lines, establish a transmission line corridor, underbuild the new transmission lines with the relocated and upgraded distribution lines, bury part of the distribution near the 300 West side of your property, and work with you as you developed the office/warehouse project. It was contemplated and agreed that there might be buildings or portions of some buildings that would need to be placed adjacent to or under the overhead lines. In some cases the building(s) may need to be placed over the buried distribution lines. The accommodation was that the Power Department was to work with you "cooperatively" to insure that the buried lines were protected. When they were installed, they were placed, as I recall at about a 6 foot depth. This was to try to get them deep enough to be beneath the anticipated depth of any footings or foundations you might need to place. If the depth was still in conflict, then the developer was to work with the Department and encase the conduits. This was to be done, if required, cooperatively. It may require engineering to mechanically separate the encased conduit system from the building foundation, or, integrated into the foundation system.

The City's refusal (letter, April 27, 1995) to allow the buildings over the conduit system now is in direct conflict to the agreement we had reached in 1980, is not supported by the March 24, 1986 letter from the Department, and frankly, the construction of buildings over conduit systems is done all the time. Just look at metropolitan systems in the cities around the country. I would say that the Department's refusal to allow the proximity for the building could be construed and an unjustified taking of your property.

The vertical and/or horizontal clearance issue to your proposed buildings from the overhead lines, if the City insists on the new clearance requirements as stated in the April 27, 1995 letter, is not supported in their March 24, 1986 letter,

BK7569PG1591

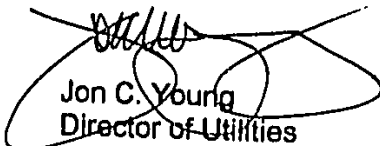
Woodward
June 16, 1995
Page 3

is not consistent with the current NESC, and could also be construed as an unjustified taking of your property.

Again, I would hope that cooperation, patience, innovation, mutual help, and the desire to move ahead with a win-win result for the developer and the Department will prevail. You can both be winners. Should the negative prevail, I would suggest that you would need an expert witness that is familiar with the NESC, transmission and distribution construction techniques, and licensed in the State of Utah to practice engineering. I. Russ Boyer, P.E., used to be my Chief Engineer just prior to my leaving City employment. He is currently employed at Ford, Bacon and Davis, Inc., a consulting engineering firm in Salt Lake City. I have spoken to him and he is willing to assist you on this matter. I have taken the liberty of sending him copies of all of our correspondence. He can be reached by phone at 801-583-3773 (W). Any correspondence to him should be to his residence at 7263 S. 1710 E., SLC, UT 84121. He is well versed in the NESC, NEC, and as stated served as Chief Electrical Engineer for me at the City of Murray just after the time frame that we reached our arrangement on your property.

I hope that this letter will help you in your discussions with the City Power Department. I hope that the Department will honor the spirit of the "partnership" we reached on your property. It would seem that the City got what they needed in 1980 and now it is the time for you to receive what you need to complete the development. I hope that the desire to make this thing work will prevail.

Sincerely,


Jon C. Young
Director of Utilities

UY95-050

BR 7569PG1592



MURRAY CITY POWER

John Mohlman
General Manager

March 24, 1986

Mr. Sam D. Whitmore
212 East 7660 South
Midvale, Utah 84047

Re: Whitmore-Woodward Property on 300 West

Dear Mr. Whitmore:

I want to thank you for the opportunity to meet with you and Mr. Woodward at your property on 300 West Street. I found the neutral for the distribution line to have ground clearances ranging from 24'3" to 27'0". The phase conductors have 33' of ground clearance. The National Electric Safety Code requires 8' of clearance to the neutral and 15' for phase conductors. As long as the proposed building does not exceed the 17' height, there should not be a problem in obtaining the required clearances.

Other than clearances to the building, there are two concerns which I still have. They are:


- 1) Construction of the building under the energized lines. Details of this would need to be resolved prior to construction.
- 2) Location of the building with respect to the underground lines. I will require an inspector from the Power Department to be on site while the foundations are being dug and, depending on the depth of the foundations, may require the foundations to encapsulate the conduits.

Prior to any construction, it will be necessary for the Power Department to review the plans to check height of building and depth of foundations. A statement from Jon Young as to the agreement will be necessary before a final commitment can be made.

Page Two
Mr. Sam D. Whitmore
March 24, 1986

As your plans for the construction become more definite, don't hesitate to contact me for clearance problems and power requirements.

Sincerely,



Charles Crutcher

CC:kr

cc John Mohlman
Pending File

EW 7569 PG 1594

EXHIBIT "B"

Lot 1 through 20, inclusive, WOODWARD INDUSTRIAL PARK, according to the official plat thereof, filed in Book "96-12P" of Plats at Page 400 of the Official Records of the Salt Lake County Recorder.

EK7569PG1595