



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 3

Section Name: {{section.name}}

Account Number:

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TO: Sustainability and Infrastructure Commission

FROM: Brad Underwood

PREPARED BY: Public Works Department

MEETING DATE: December 13, 2023

SUBJECT:

Wireless Permit Approval at 16 Baldwin (Permit# WC-2023-000201) - Appeal

RECOMMENDATION:

Hold a public hearing to consider an appeal from residents within 500 feet of the proposed site of a wireless permit application that was approved by the Director of Public Works.

BACKGROUND:

On July 11, 2023, the City of San Mateo ("City") staff received a Wireless Facilities Communications Permit Application ("Application") from Crown Castle, working on behalf of Verizon for the installation of wireless communication facilities on within the public right-of-way (Attachment 3). The location of the proposed wireless communications facility is in the Central Business District at the southeast corner of the El Camino Real and Baldwin Avenue intersection on an existing metal streetlight pole (City ID# 2805) within the public sidewalk. Attachment 1 shows the proposed facility's location and photo simulation renderings.

As required by the San Mateo Municipal Code ("SMMC") Chapter 17.10, "Wireless Communications Facilities in the Public Right-of-Way", Crown Castle must meet all requirements and design standards as outlined in SMMC Sections 17.10.040 and 17.10.050. This includes, but is not limited to, a full permit application form and providing mailed notices to nearby residents within a 500-foot radius of the proposed project site of the proposed wireless small cell facility. Based on the review of all the submitted documents, staff determined that the application and proposed installation meet the required conditions of approval as outlined in SMMC Chapter 17.10.

After its review, the City conditionally approved the Application on November 9, 2023. As required by the SMMC Section 17.10.070, a decision notice was posted on November 9, 2023 on the City's Small Cell Infrastructure website. The notice advised residents of the Director of Public Works' ("Director") decision and allowed a 5-day appeal period.

Approval Authority

The Director's decision to approve this Wireless Facilities Communications permit application and the criteria the Sustainability and Infrastructure Commission ("Commission") must evaluate in its determination of whether to grant or deny any appeal is based on SMMC Section 17.10.070(b)(1-4), which states in pertinent part:

Required Findings for Approval. The approval authority may approve or conditionally approve an application for a wireless permit submitted under this chapter when the approval authority finds all the following:

1. The applicant and the proposed wireless facility comply with all applicable requirements of this Chapter and the

City Design Standards and Application Requirements (“Design Standards”); and

2. The application is deemed complete by the Director; and
3. The proposed wireless facility complies with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation, the California Building Standards Code or any local building codes; the Americans with Disabilities Act, and all applicable health and safety requirements, including Public Utilities Commission General Order 95, (and as these rules may be amended or superseded); General Plan and any applicable specific plan; the San Mateo Municipal Code; and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project; and
4. The applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions.

Appeal to Wireless Permit

Pursuant to SMMC Section 17.10.070(g), the appellant on appeal has the burden of proof for establishing the basis for seeking the reversal of the permit approval.

On November 14, 2023, the City received an appeal from Lindsay Raike on behalf of Michael Hamilton (“Appellant”), which included six items as basis for the appeal (“Basis Items”) (Attachment 2). However, Basis Items Number 2 and 4 cannot be considered within the scope of the appeal since they relate to radio frequency (“RF”) emissions and/or are legally not required.

The Federal Communications Commission (“FCC”) does not allow appeals when based solely on the environmental effects from RF emissions that are compliant with applicable FCC regulations and guidelines. Here, Basis Item No. 2 presents concerns over cancer, hearing, and respiration in relation to RF emissions. Basis Item No. 4 suggests the FCC does not have effective RF emissions regulations. This is incorrect. The case cited did not strike down the current FCC RF emissions regulations, and these regulations remain in effect.

Therefore, the appropriate scope of appeal is as follows:

Basis 1: Site location too close to a school

~~**Basis 2:** Health Concerns for cancer, hearing, and respiration~~

Basis 3: Site location should not be in residential or school

~~**Basis 4:** Federal Laws and FCC orders citing case law.~~

Basis 5: Proof of coverage and capacity deficiencies

Basis 6: Property values

Basis 7: Public nuisance

Basis 8: Fire hazard

Pursuant to SMMC Section 17.10.070(g), the Commission shall hold a public hearing to consider and act on the appeal de novo and in accordance with the required findings by issuing a decision at the hearing.

Staff Review

Staff reviewed the wireless permit application for conformance to SMMC Section 17.10.070(b)(1-4).

Regarding **Basis 1, site location too close to a school**, the Design Standards do not consider proximity to schools as a review criterion. The Design Standards list the order of preference for zoning districts in the Site Location section; however, schools are not explicitly listed. The school referenced in the appeal is Episcopal Day School of St. Matthew which is located in the Central Business District zoning which is the fourth highest preferred zoning. While Alternate Poles

No. 21, 22, and 23 are considered acceptable locations, the proposed location is the farthest from any building in addition to being in the more preferred Central Business District zoning district.

Regarding **Basis 3, site location in residential or school zones**, the Design Standards list the order of preference for zoning districts in the Site Location section; however, pursuant to 47 U.S.C 332(c)(7)(B) the City shall not outright prohibit nor have the effect of prohibiting, by way of restrictive regulations, the ability to provide service. The proposed location is within the Central Business District zoning which is the fourth highest preferred zoning.

Regarding **Basis 5, proof of coverage and capacity deficiencies**, the City cannot effectively prohibit a provider from providing services or from closing gaps in its own coverage by regulating site selection pursuant to FCC order 18-133 and SMMC Section 17.10.010(b)(1).

Regarding **Basis 6, property values**, the City's Design Standards do not consider property values when reviewing wireless permit applications. Property values are speculative in nature, can be affected by a multitude of different reasons, and would be impractical for staff to assess.

Regarding **Basis 7, public nuisance**, the City's Design Standards do not consider public nuisance when reviewing wireless permit applications. Pursuant to 47 U.S.C 332(c)(7)(B) the City shall not outright prohibit nor have the effect of prohibiting, by way of restrictive regulations, the ability to provide service.

Regarding **Basis 8, fire hazard**, the City's Design Standards do not consider fire hazards when reviewing wireless permit applications. Wireless facilities must comply with California Public Utilities Commission ("CPUC") regulations for utilities which include fire safety regulations within the CPUC's General Order No. 95.

Based on the review of the Crown Castle application and the above, staff believes Crown Castle has met the requirements of the Municipal Code and Design Standards. Based on the above, **staff recommends the Commission deny the appeal.**

BUDGET IMPACT:

The public hearing to consider resident appeals does not have a direct impact on the City's Budget other than costs associated with staff time which are paid for by the permit applicant.

ENVIRONMENTAL DETERMINATION:

This appeal is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. (CEQA Guidelines Section 15378(b)(5).)

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

Att 1 – Location Map and Simulations

Att 2 – Appeal Applications

Att 3 – Wireless Permit Application Files

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