



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 4

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 1001 Bermuda Drive (Permit# WC-2023-000206) - Appeal

RECOMMENDATION:

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

BACKGROUND:

On July 20, 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 an existing metal streetlight pole within the public right-of-way (Attachment 3). The location of the proposed wireless communications facility is in the Fiesta Gardens neighborhood at the north side of the intersection of Bermuda Drive and Sullivan Street on an existing metal streetlight pole (City ID# 3009) 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 October 27, 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 allows 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 one appeal from Krzysztof Pawlik (“Appellant”), which included eight items as basis for the appeal (“Basis Items”) (Attachment 2). However, Basis Items Number 2, 3, 4, 5, 7, and 8 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 suggests the FCC does not have effective RF emissions regulations beyond 6,000 MHz. This is incorrect. The permitted facility’s frequency of 28,000 MHz is regulated by the Code of Federal Regulations, 47 CFR 1.1310.

Secondly, Basis Item No. 3, 4, 5, and 8 are solely based on RF emissions which cannot be considered for appeal.

Thirdly, Basis Item No. 7 cannot be considered by the Commission since National Environmental Policy Act (“NEPA”) review is not required for the City’s permit review. The City follows California Environmental Quality Act (“CEQA”) standards, under which this permit application is categorically exempt Class 1.

Therefore, the appropriate scope of appeal is as follows:

Basis 1: No resident requests

Basis 6: Aesthetics and visual nuisance

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 with SMMC Section 17.10.070(b)(1-4).

Regarding **Basis 1, no resident requests**, the SMMC and Design Standards do not consider whether residents request additional services when reviewing a service provider’s wireless permit applications. Therefore, resident requests are not

required or considered in the application process. Here, Crown Castle has determined an application for a small cell installation is necessary. The City cannot prohibit or effectively prohibit services from a service provider when the service provider chooses to close significant gaps in its service coverage.

Regarding **Basis 6, aesthetics and visual nuisance**, the project design was reviewed in compliance with the City's Design Standards with exception to Design Standard No. 14 "Shrouding" where the conditionally approved design does not have a shroud. Staff determined that a shroud on City-owned metal streetlight poles would be visually more intrusive due to the added bulk and size.

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

STAFF CONTACT

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