

RESOLUTION NO. 17-0146

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT AND COASTAL DEVELOPMENT PERMIT CA-16-42 FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS FACILITY PROPOSED TO BE LOCATED AT OCEAN DRIVE AND 18TH STREET

THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

SECTION 1. Pursuant to Manhattan Beach Municipal Code ("Municipal Code") Section 13.02.030, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (Applicant) submitted an application for the subject telecommunications facility at Ocean Drive and 18th Street (Ocean Drive Facility). Concurrently, the Applicant submitted 15 other applications for wireless telecommunications facilities at other locations in the City of Manhattan Beach. Pursuant to Local Coastal Program (LCP) Chapter A.96, applications for a Coastal Development Permit within the Coastal Zone Appealable Area require a public hearing before the City Council.

SECTION 2. On November 16, 2017, the City Council conducted a public hearing to consider the application. The Council considered all evidence, both written and oral, presented during the public hearing. The Applicant's representatives spoke in favor of the application. City residents spoke in opposition to the application and submitted documentary evidence, including photographs, to support their opposition. After providing an opportunity to all interested parties to speak, the Mayor provided an opportunity for rebuttal to the Applicant. The Applicant's representatives responded to questions posed by the public and by Councilmembers.

SECTION 3. The record of the public hearing indicates the following:

A. The Ocean Drive Facility is proposed in a residential district, comprised of primarily single family residences in a densely populated area.

B. Municipal Code Chapter 13.02.030 regulates the issuance of telecommunications permits in the public right-of-way. Pursuant to Municipal Code Section 13.02.100, the City can deny a telecommunications permit if it makes the following findings:

That installation of the facility will have significant negative impacts to the extent that it substantially interferes with the use of other properties;

That a feasible alternative non-residential site is available for the proposed facility;

That denial of the proposed facility will not result in a competitive disadvantage to the applicant;

That the denial does not discriminate against the applicant in favor of similarly situated competitors; and

That the denial shall not preclude the applicant from proposing an alternate location for the facility.

C. The Ocean Drive Facility is proposed to be located in the City's Coastal Zone. Accordingly, a Coastal Development Permit (CDP) is required. Pursuant to LCP Section A.96.150 (A), the following findings are required to approve a CDP:

That the project, as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program; and

If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976.

D. Pursuant to Section 332(c)(7) of the federal Telecommunications Act, local governments retain their authority over decisions regarding the placement, construction, and modification of personal wireless service facilities. A local government's decision to deny a request to place or construct personal wireless service facilities must be in writing and supported by substantial evidence contained in a written record.

E. A number of residents in close proximity to the proposed site submitted evidence opposing the location of the facility. They showed photographs showing the congested array of equipment at the proposed site and testified that additional equipment in this location would degrade scenic views and streetscape aesthetics due to the congestion. Residents in the area have expended significant amounts of money to facilitate the undergrounding of utility wires, and the additional equipment would counteract these improvements.

SECTION 4. Based upon substantial evidence in the record, including the evidence presented at the public hearing, the staff report and presentation, the attachments to the staff report, and all testimony at the public hearing, the City Council hereby finds:

A. This Ocean Drive Facility is proposed in a location that is currently overburdened by right-of-way and overhead infrastructure, including, but not limited to, cabinets on and along Ocean Drive and the public walkstreet of 18th Street in the immediate vicinity. Approval of the Ocean Drive Facility at this proposed location would densify the hardware—an antenna and a ground-mounted cabinet—in this small space, resulting in a conspicuous and pronounced aesthetic impact. These impacts would be a detriment to residents

of the neighborhood and to visiting beachgoers who enjoy the attractiveness of this small-town beachfront community.

B. The City suggested that the Applicant re-locate the Ocean Drive Facility to an alternative location of the right-of-way with the same general vicinity. According to the Applicant, the Ocean Facility must be sited in the proposed general area because the hilly topography prevents oDAS antennas further east from servicing this area to the west. Nonetheless, there are alternative sites in the right-of-way near this vicinity that would not result in a cluster of cabinets and other infrastructure in a small conspicuous area. Evidence was presented that additional equipment at the proposed location would exacerbate this congestion and cause significant aesthetic impacts, and that residents have expended significant amounts of money to facilitate the undergrounding of existing utility wires to improve the aesthetics in this area. At the public hearing, the Applicant did not provide information on each alternative site that it previously considered. Accordingly, the Applicant and the City are exploring these alternative locations that were not previously considered and identified at the public hearing.

C. Denial of the Ocean Drive Facility, to allow the Applicant and City staff time to identify alternative sites for this facility, would not result in a competitive disadvantage because other providers have not yet established telecommunications facilities in this area of the City. Further, the Applicant proposed the Ocean Drive Facility along with 15 other wireless facilities and the City Council approved eight of these facilities, which will help serve the western section of the City. No substantial evidence was provided to demonstrate that this particular Ocean Drive Facility is necessary to fill a significant gap in wireless coverage.

D. The same reasons for this denial would apply to any applicant proposing a facility at this overburdened site. At the public hearing, the City Council and residents expressed concerns that other cell providers would require similar facilities in the area, which would further impact the negative aesthetics of clustered infrastructure. By denying the Ocean Drive Facility as proposed, the City intends to help facilitate that the Applicant, along with other cellular providers, can improve service in this area without significantly impacting aesthetics.

E. This denial does not preclude the Applicant from proposing an alternate location for this facility. Rather, as noted above, the City has encouraged the Applicant to propose an alternate location, or an alternative design, for this facility. The City desires improved service throughout its boundaries. Accordingly, the City Council has directed City staff to work with the Applicant to identify alternatives that would improve service in the least intrusive manner.

F. The City Council has concurrently approved up to eight other wireless facilities. Applicant has failed to establish that this particular facility, in the proposed location, is needed to fill any significant gap in wireless coverage. Further, the Applicant also failed to establish that it is the least intrusive means in

light of evidence at the public hearing that there are feasible alternatives that were not previously considered and that would be less aesthetically intrusive.

G. The project, as described in the application and accompanying materials, does not conform to the certified Manhattan Beach Local Coastal Program. The purposes of the Residential Districts are to isolate residential uses from incompatible commercial and industrial uses and facilities, to ensure adequate light and open space for each residence, and to encourage reduced visual bulk. The Ocean Drive Facility, as proposed, would not conform to the purposes or vision for the residential neighborhood because it would result in negative aesthetic impacts to residents and would increase the concentrated bulk of infrastructure in one place.

H. The project is not located between the first public road and the sea and, therefore, the finding regarding conformity with the public access and recreation policies is not applicable.

I. Based on the current wireless service coverage existing in the area, and due to the approval of up to eight new wireless facilities enhancing the Applicant's service coverage in the area, denial of this one facility would neither have the effect of prohibiting provision of personal wireless service nor prevent the Applicant from filling any significant gap in service coverage.

J. The Ocean Drive Facility, as proposed, has the potential to result in significant adverse impacts in the areas of land use and aesthetics that have not been adequately mitigated. These potential impacts result from the proximity of the facility to residential uses, the failure to adequately analyze other less impactful alternative locations and designs to provide service to the areas, and the Applicant has not provided sufficient information to demonstrate that there is no potential for such impacts to occur. Further, impacts to views from private residences, based on the photo simulations, other photographic evidence, and testimony at the public hearings, constitute substantial evidence of potential aesthetic and land use impacts resulting from the Ocean Drive Facility.

SECTION 5. Based upon the foregoing, the City Council denies the application, without prejudice.

SECTION 6. The City Council's decision is based upon each independent and separate ground stated herein.

SECTION 7. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Applicant and any other persons or entities requesting notice of the decision.

SECTION 8. The City Council hereby invites and encourages the Applicant to re-apply and consider a better location.

SECTION 9. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED and ADOPTED December 5, 2017.

AYES:
NOES:
ABSENT:
ABSTAIN:

AMY HOWORTH
Mayor

ATTEST:

LIZA TAMURA
City Clerk