

RESOLUTION NO. 19-0067

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL DENYING A TELECOM PERMIT (TCP#18-06) FOR THE CONSTRUCTION AND OPERATION OF A WIRELESS TELECOMMUNICATIONS FACILITY PROPOSED TO BE LOCATED AT HIGHLAND AVENUE AND 19TH STREET (MBCH06)

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 a telecommunications facility at Highland Avenue and 19th Street (the "Facility"). At the time the application was submitted, Municipal Code Chapter 13.02 regulated telecommunication facilities such as the Facility. Thus, the application was processed under Chapter 13.02. The Facility is a "non-standard facility," as defined in Municipal Code Section 13.02.030.

SECTION 2. Pursuant to Municipal Code Section 13.02.030(D), "non-standard facilities," are reviewed by the Director of Community Development. Her decision may be reviewed by the City Council either upon a review request by a Councilmember or an appeal. The Director approved the application on April 3, 2019. On April 16, 2019, a Councilmember requested that the Director's decision be reviewed by the City Council.

SECTION 3. On June 18, 2019, the City Council conducted a public meeting to consider the application. The Council considered all evidence, both written and oral, presented during the public meeting. The Applicant's representatives spoke in favor of the application. Neighbors of the proposed location spoke in opposition to the application and the installation of telecommunications facilities at the proposed location. 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 4. The record of the public meetings indicates the following:

A. This Facility is proposed in a densely populated residential community, comprised of primarily single family and two family residences with limited sidewalk space.

B. For the purposes of this application, 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:

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

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

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

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

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

C. 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.

D. A number of residents in close proximity to the proposed site submitted evidence opposing the location of the facility. They testified that the proposed antenna would directly obstruct views and that adjacent property was already overburdened with existing public utility facilities in near proximity. Furthermore, they stated that, per the Applicant's Alternative Site Analysis, this location was chosen due to the underdeveloped residence immediately southeast of the proposed facility.

SECTION 5. Based upon substantial evidence in the record, including the evidence presented at the public meeting, the staff report and presentation, the attachments to the staff report, and all testimony at the public meeting, the City Council hereby finds:

A. This Highland Avenue and 19th Street Facility is proposed in a densely populated residential community with limited sidewalk space. Due to its close proximity to residences, the pole-mounted antenna would substantially interfere with the use of adjacent residences. In addition, the adjacent property is already overburdened with existing public utility facilities.

B. The City suggested that the Applicant identify one of the analyzed alternative locations that is not beset with as much existing public utility facilities. For example, a commercial property is only three blocks away. Because this alternative location is only three blocks away and at a similar elevation, it could service the intended area while avoiding adverse impacts to the residential neighborhood. The Applicant failed to submit evidence that this alternative would be infeasible. Further, there was no evidence presented that any of the proposed alternatives would be infeasible.

C. Denial of the Facility, to allow the Applicant and City staff time to determine whether re-location to an alternative site is feasible, 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 other facilities in the area, and, as of the date of this Resolution, the City has approved 15 of these facilities. No substantial evidence was provided to demonstrate that (a) this particular facility, at the proposed location, is necessary, or (b) an alternative location on Highland Avenue is infeasible or ineffective.

D. The bases for this denial would apply to any Applicant proposing a similar facility in this location. At the public meeting, the City Council and residents expressed concerns that other cell providers would also require similar facilities in this residential community, which would exacerbate the negative impacts. When feasible and effective, the City encourages wireless providers to first explore locations on a commercial property or in a commercial area. By denying the Facility as proposed, the City intends to help facilitate efforts by the Applicant, along with other cellular providers, to improve service in this area without significantly adverse impacts to the neighborhood.

E. The denial does not preclude the Applicant from proposing an alternate location for the facility. Rather, as discussed above, the City has encouraged the Applicant to explore an alternative location for the Facility, and continues to do so. To this end, the City Council has previously directed staff to work with the Applicant to explore the possibility of siting this facility at an alternative site along Highland Avenue. In the event that re-location is either infeasible or ineffective, the Applicant is encouraged to propose an alternate location or design that would achieve the desired service coverage.

F. The City has approved 15 other wireless facilities proposed by the Applicant. The 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 meeting that there are feasible alternatives that were not previously considered and that would be less intrusive.

G. Based on the current wireless service coverage existing in the area, and due to the approval of a total of 15 new facilities between 2017 and the present enhancing the Applicant's service coverage in the area, denial of the proposed 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.

H. The Facility, as proposed at this location, has the potential to result in significant adverse impacts that have not been adequately mitigated. These potential impacts result from the proximity of the facility to residential uses and the failure to adequately analyze other less impactful alternative locations and designs to provide service to the areas. The Applicant has not provided sufficient information to demonstrate that there is no potential for such impacts to occur. Further, the increased burden of public utility facilities on the adjacent residence, based on the photo simulations, and testimony at the public meeting, constitute

substantial evidence of potential adverse impacts resulting from the proposed Facility.

SECTION 6. Based upon the foregoing, the City Council denies the application, without prejudice.

SECTION 7. The City Council's decision is based upon each independent and separate ground stated herein.

SECTION 8. 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 9. The City Council hereby invites and encourages the Applicant to re-apply and consider a better location.

SECTION 10. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED July 16, 2019.

AYES:
NOES:
ABSENT:
ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk