



MEMORANDUM

TO: CHAIRMAN & MEMBERS OF THE PLANNING COMMISSION
FROM: NICOLE JULES, DEPUTY DIRECTOR OF PUBLIC WORKS *ng*
ARA MIHRANIAN, DIRECTOR OF COMMUNITY DEVELOPMENT *Ara*
DATE: AUGUST 22, 2017
SUBJECT: CONTINUATION REQUEST FOR THE PUBLIC HEARING FOR PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY ASG 64. PROJECT LOCATION – SOUTH OF 3344 PALOS VERDES DRIVE WEST (APPLICANT – CROWN CASTLE)

Project Manager: Charles Eder, Associate Engineer *CE*

RECOMMENDATION

Continue the public hearing for the proposed Wireless Telecommunications Facility - ASG 64 to September 12, 2017.

BACKGROUND & DISCUSSION

Chapter 12.18 of the Rancho Palos Verdes Municipal Code (RPVMC) states that the Planning Commission is to review certain wireless telecommunication facilities proposed in the public right-of-way based on, among other things, design assessment and location. Prior to conducting the public hearing, the applicant is required to install, for at least 30 days, a temporary mock-up of the proposed facility to allow the decision makers, Staff, and the public to assess the proposal.

On July 18, 2017, the Applicant (Crown Castle) received a Public Works Encroachment Permit to install a temporary mock-up of a proposed wireless telecommunications facility. The temporary mock-up was installed on July 28, 2017. On July 18, 2017, a notice was sent to property owners within a 500-foot radius announcing the installation of the mock-up.

On July 31, 2017, a public notice was published in the *Peninsula News* announcing that a public hearing on the proposed facility is scheduled to occur on Tuesday, August 22, 2017. Similarly, public notice letters were mailed to property owners within a 500' radius of the proposed site inviting public comments on the proposed facility.

On July 25, 2017, the Planning Commission opened the public hearing for ASG No. 10 and 33. Based on the breadth and scope of the public testimony at that meeting and the Commission's direction for additional information on these two applications, both Staff and the Applicant are in agreement that the public hearing should be continued, without discussion, to assemble the information needed to allow Staff to complete the analysis of the proposed facility. Therefore, Staff

recommends continuing the public hearing, without discussion, to September 12, 2017.

In addition, Staff has hired a contract planner to manage the processing and analysis of these applications in accordance to Title 12.18 of the RPVMC. Further, the City has retained an independent RF expert who will conduct site specific reading and RF analyses, and will be present at the September 12th meeting.

The temporary mock-up installation will remain in place during the deliberations with the Planning Commission, and the City Council's consideration if appealed. City Staff will collect and manage all public comments in advance of the September 12, 2017 Planning Commission meeting.

Processing Shot Clock

Pursuant to Federal Telecommunications Act of 1996, a decision on the project application must be made within 150 calendar days from application submittal. According to the City's files, the shot clock for ASG 64 expires on September 4, 2017. However, the Applicant has agreed to stop (toll) the shot clock during this period until September 30, 2017, which is the final date to render a decision on the subject application. The City received the tolling agreement in writing, in a letter dated August 16, 2017 (see attachment).

CONCLUSION

Based on the aforementioned information, Staff recommends that the Planning Commission continue the public hearing for the proposed Wireless Telecommunications Facility No. ASG 64 to September 12, 2017.

ATTACHMENTS

- Crown Castle Tolling Letter dated August 16, 2017



Crown Castle
200 Spectrum Center Drive
Suite 1700
Irvine, CA 92618

August 16, 2017

Mr. Ara Mihranian, Director of Community Development
Community Development Department
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

RE: Shot Clock Tolling Agreement and Notice of Shot Clock Expiration Per RPVMC Section 12.18.060 (C)(3) for Crown Castle Wireless Communication Facility Site ASG64 - New Shot Clock Expiration Date: September 30, 2017

Dear Mr. Mihranian:

Crown Castle NG West LLC ("Crown Castle") has agreed to the City of Rancho Palos Verdes' (the "City") request to extend the Shot Clock for this site until September 30, 2017. The purpose of extending the Shot Clock is to allow City Staff additional time to get organized so that more meaningful presentations can be developed to better inform City decision makers.

Under the FCC's Wireless Infrastructure Order (FCC 14-153, October 14, 2014), a local government is required not just to take some action within the application timeframe, but to take a final action on the application within the time period. See *New Cingular Wireless PCS, LLC v. Town of Stoddard*, 2012 U.S. Dist. LEXIS 19453 *13-15 (D.N.H. Feb. 16, 2012). Accordingly, the City must complete all of its review within the Shot Clock period. *Bell Atlantic Mobile of Rochester, L.P. v. Town of Irondequoit*, 2012 U.S. Dist. Lexis 11420 (W.D.N.Y. Jan. 31, 2012). This means that the City must issue all permits required for construction to commence within the applicable Shot Clock time period, absent permitted tolling. Expiration of the FCC Shot Clock time periods means the project is shovel ready, not merely poised for another round of bureaucratic inertia such as an encroachment permit or appeals processes or negotiation of a franchise or other similar agreement.

Further, pursuant to California Government Code section 65964.1, an application for a new wireless facility "shall be deemed approved" if: (a) the city --including a charter city -- or county fails to approve or disapprove the application within the time periods established in the Shot Clock Order and (b) all public notices regarding the application have been provided. (Gov. Code, § 65964.1, subd. (a).) Section 65964.1 also contains an express legislative finding that wireless telecommunications facilities are a matter of statewide concern, not a "municipal affair" as that term is used in section 5 of Article XI of the California Constitution. (id., § 65964.1, subd. (c).)

In consideration of Crown Castle's agreement to Toll the Shot Clock, the City has agreed that:

- 1) This document satisfies Crown Castle's noticing requirement of Shot Clock expiration per RPVMC Section 12.18.060 (C)(3).
- 2) The City will attest to and not challenge that Crown Castle's application is compliant with any and all Shot Clock requirements (federal, state and local) as of the date of this Tolling Agreement and Notice of Shot Clock Expiration.
- 3) That the Shot Clock for this site will expire on: **September 30, 2017**, unless mutually extended in a written agreement by the Parties. Any and all applicable statutes of limitation will commence from the date of the Shot Clock's expiration.

Aaron Snyder
CROWN CASTLE NG WEST LLC

Ara Mihranian
CITY OF RANCHO PALOS VERDES