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NEWPORT BEACH

City Council Staff Report

August 25, 2020
Agenda Item No. 17

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2020-76: Appeal of Planning Commission's Decision of an AT&T Small Cell Installation (PA2019-111)

ABSTRACT:

This item is an appeal of the Planning Commission's decision on July 9, 2020, to approve a minor use permit and a coastal development permit allowing the installation of a small cell wireless facility on a City-owned streetlight pole on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection (Attachment A). For City Council's consideration is to determine whether to uphold or deny the Planning Commission's decision.

RECOMMENDATION:

- a) Conduct a de novo public hearing;
- b) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the State CEQA (California Environmental Quality Act) Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption under Section 15300.2 do not apply; and
- c) Adopt Resolution No. 2020-76, *A Resolution of the City Council of Newport Beach, California, Upholding the Decision of the Planning Commission Approving Minor Use Permit No. UP2019-030 and Coastal Development Permit No. CD2020-052 for a Small Cell Facility Located Within the Public Right-of-Way on City Streetlight No. SCL0796, at the Northwestern Corner of Balboa Boulevard and 30th Street (PA2019-111)*, and denying the appeal.

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FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Small Cell Wireless Overview

For a brief overview of small cell wireless facilities and the City's Master License Agreement (MLA) with New Cingular Wireless PCS, LLC, please reference Attachment C.

Project Setting and Description

The proposed project is located on Streetlight No. SLC0796, which is owned by the City of Newport Beach. City Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large landscaped parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development. All surrounding land uses are residential and vary in density from two- to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry). As the streetlight is located within the public right-of-way, the site is not designated by the General Plan Land Use Element and, therefore, is not located within a zoning district.

New Cingular Wireless, LLC d/b/a AT&T Mobility c/o Ericsson, Inc. (Applicant) seeks approval of a minor use permit and a coastal development permit to allow the installation of telecommunications equipment for a small cell wireless facility on the City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches; and (3) Establishment of new below-grade support equipment adjacent to the streetlight. The proposed facility is classified as a stealth facility under Newport Beach Municipal Code (NBMC) Section 20.49.030(N) and the project is designed to be as visually inconspicuous as possible with all equipment and antennas screened and is consistent with the conceptual designs included in the MLA. Project renderings follow on the next page as Figure 1.

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Figure 1, Existing photograph (left) with proposed rendering (right) showing the replaced streetlight pole, antenna, equipment shroud, and below-grade equipment handholes.

In pursuing this location, the Applicant considered five other nearby sites. This detailed analysis is reflected in the Planning Commission staff report, which is attached. Ultimately, the proposed location was selected by the Applicant as it has the necessary utility connections readily available, is feasible from a signal propagation perspective, is free of obstructions, and has a good line of sight to meet coverage objectives. It was also determined to be the least impactful as the unusually large parkway for the area provides a softening mechanism to best blend the facility.

Construction of the proposed project will take approximately 30 days. All construction will be done in a manner that minimizes impact to residents and/or businesses in the area. Maintenance of the unmanned facility is not expected to create any congestion, and maintenance activity is expected to be minimal. AT&T will be responsible for maintenance of the telecom facility including, but not limited to, any missing, discolored or damaged screening, promptly removing all graffiti, and keeping the facility clean and free of litter. Monitoring is typically done remotely and, if necessary, a site visit to change any radio equipment will be coordinated with the City, as appropriate.

Project Background

On April 16, 2020, the Zoning Administrator conducted a public hearing and approved the Applicant's request. During the meeting, three members of the public spoke in opposition to the Minor Use Permit expressing concerns regarding health and general incompatibility with the neighborhood.

One member of the public, Mark Pollock, also spoke in opposition expressing concerns about the validity of the application and insurance requirements being satisfied as part of the MLA. Staff from the City Attorney's Office addressed Mr. Pollock's concerns as outlined in his March 25, 2020, letter at this hearing and noted that staff informed the City Attorney's Office that the insurance requirements were satisfied.

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On April 28, 2020, Mr. Pollock filed an appeal of the decision of the Zoning Administrator for the purpose of bringing the item before the Planning Commission for review. The appeal again expressed concerns regarding proof of adequate insurance, as well as the ability for the Applicant to file an application under the MLA. It is notable that the appeal did not focus on the specific location or design of the proposed project, but rather it focused on the compliance with the MLA.

The project was scheduled for a de novo public hearing by the Planning Commission for June 4, 2020 but was continued to allow staff additional time to review the project. Of concern was whether the project also required a coastal development permit.

Upon finding that a coastal development permit should be required, staff prepared a revised public hearing notice including the Coastal Development Permit in accordance with NBMC Chapters 20.62 and 21.62. On July 9, 2020, the Planning Commission conducted a noticed public hearing and, following receipt of public comments and deliberation, voted unanimously to adopt Resolution No. PC2020-018 approving the project, which includes the written findings for the action (Attachment D).

The staff report and meeting minutes are attached to this report for review, Attachment F and G respectfully.

On July 15, 2020, Mr. Pollock ("appellant") filed an appeal of the decision of the Planning Commission for the purpose of bringing the item before the City Council for review. The appeal again expresses concerns regarding proof of adequate insurance, as well as the ability for the Applicant to file an application under the MLA. The complete appeal application and its expanded brief have been attached as Attachment E.

Based on NBMC Subsections 20.64.030©(3) and 21.64.030(C)(3) (Conduct of Hearing), a public hearing on an appealed matter is conducted "de novo," meaning that it is a new hearing. The City Council is not bound by the prior decision of the Planning Commission.

Basis of Appeal

The appellant represents an anonymous Newport Beach resident. It should be noted staff received no written opposition to the project during Planning Commission review and the appellant was the only member of the public who spoke in opposition to the project at the public hearing. Based on the application to appeal the project, the appellant's primary concerns are discussed below:

- 1) Licensee under MLA is not Applicant for permit and AT&T is not the licensee.

Staff response: An MLA for use of City-owned streetlights for telecommunications facilities was executed by and between the City and New Cingular Wireless PCS, LLC, dated February 12, 2019. New Cingular Wireless PCS, LLC (Licensee) is a Delaware limited liability company that is registered to do business in the State of California, and whose Manager is AT&T Mobility Corporation.

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Additionally, AT&T Mobility Corporation recorded a Fictitious Business Name Statement to do business as "AT&T Mobility" on November 21, 2016, as Instrument No. 20166459312 in the Official Records of Orange County, California. The City holds sufficient documentation showing the Licensee under the MLA is the same entity represented as the Applicant under this permit application.

2) No proof of insurance under the MLA.

Staff response: The City is in possession of certificates of insurance listing New Cingular Wireless PCS, LLC as the insured, with scopes of coverage and policy limits that comply with the insurance requirements in the MLA. The certificates filed with the City include a current policy period as of the date of this report and have been reviewed and approved by the City's Risk Manager.

3) Permit granted to entity without MLA in violation of Title 20.49.080.

Staff response: As described above, the Licensee has provided appropriate documentation and proof of insurance and has a valid MLA. Upon approval of a use permit for a specific site, the City will process an amendment to the MLA licensing use of that particular City-owned streetlight. The amendment will be noticed to City Council pursuant to City Council Policy L-23 (The Siting of Wireless Telecommunications Equipment on City-Owned Property) prior to being executed, pursuant to NBMC Section 20.49.080 (Agreement for Use of City-Owned or City-Held Trust Property).

Summary

The appeal filed by Mr. Pollock focuses on alleged underlying issues with the City Council-authorized MLA, the authorized representatives who may pursue the sites, and insurance requirements. Nothing in the appeal discusses specific issues with the proposed location of this project and its appropriateness.

The streetlight serves as a part of the City's existing streetlight inventory. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. Maintaining the same luminaire height as the existing streetlight pole will help to ensure visual continuity on the streetscape corridor with respect to light standard design. The larger landscaped parkway with several palm trees serves to soften the facility's appearance and provides a mechanism of blending consistent with NBMC Chapters 20.49 and 21.49. The proposed location was ultimately found to best meet the Applicant's objectives and appears to be the best location among the alternative sites examined, in staff's opinion.

Staff believes the project meets all findings required under Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) and that there are no underlying issues with the MLA. As such, staff recommends approval of the project thereby upholding the Planning Commission's July 9, 2020 decision.

Alternatives

The City Council may choose to modify or deny the project. If denied, staff will return at the next City Council meeting with a resolution of denial.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities, where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another, where only minor modifications are made in the exterior of the structure.

In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.

The exceptions to the Class 3 categorical exemption under Section 15300.2 do not apply. This project does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

NOTICING:

Notice of this hearing was published in the *Daily Pilot*, mailed to all owners of property and residential occupants within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways), including the Applicant and appellant, and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

Attachment A – Vicinity Map

Attachment B – Draft Resolution for Approval

Attachment C – Brief Overview of Small Cell Facilities and the MLA

Attachment D – Planning Commission Resolution No. PC2020-018 adopted July 9, 2020

Attachment E – Appellant's Appeal Application received July 15, 2020

Attachment F – Planning Commission Staff Report from July 9, 2020

Attachment G – Planning Commission Meeting Minutes from July 9, 2020

Attachment H – Project Renderings and Plans