

Ross, Rebecca

From: Flynn, Joan
Sent: Friday, April 24, 2009 1:26 PM
To: Ross, Rebecca
Subject: Fw: Surf City Pipeline: Comment on an Agenda Item (notification)

Joan L. Flynn, CMC
Huntington Beach City Clerk

From: Surf City Pipeline <noreply@user.govoutreach.com>
To: CITY COUNCIL; agendaalerts@surfcity-hb.org
Sent: Wed Apr 22 17:05:32 2009
Subject: Surf City Pipeline: Comment on an Agenda Item (notification)

Request # 673 from the Government Outreach System has been assigned to Johanna Stephenson.

Request type: Question

Request area: City Council - Comment on Agenda Items

Citizen name: Jeff Windle

Description: From: ffwinman@aol.com [mailto:ffwinman@aol.com]
Sent: Wednesday, April 22, 2009 8:40 AM
To: CITY COUNCIL
Subject: Fwd: cell phone tower

Dear Mayor and City Council Members,

I would like to know who made the decision to install a Cell Tower at Harbour View Elementary School. Was an Environmental Impact Study done? There are a lot of parents concerned about the health of their children and are asking legitimate questions. I would hope if the City Council made the decision to let a private for Profit Company install this equipment, that you did some research. I've attached some links that raise legitimate concerns about long term exposure to Non Ionizing Radiation and the effects on children in the most important developmental stages of their lives. In a world that children are exposed to so many things that can have a negative impact on their lives. I would hope, that schools are still one place that they can count on to be safe.

Thank You,

Jeff Windle

<http://www.epa.gov/radtown/wireless-tech.html>

<http://deainfo.nci.nih.gov/advisory/pcp/pcp0109/summary.pdf>

http://www.buergerwelle.de/pdf/critics_fight_to_restrict_cell_towers.htm

Item #1
4-27-09
City Council
Special
Meeting

http://www.pps.k12.or.us/news-c/faq/cell_phone.php
<http://www.gilroydispatch.com/printer/article.asp?c=61540>

Expected Close Date: 04/23/2009

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

Ross, Rebecca

From: Flynn, Joan
Sent: Friday, April 24, 2009 1:25 PM
To: Ross, Rebecca
Subject: Fw: Surf City Pipeline: Comment on an Agenda Item (notification)

Joan L. Flynn, CMC
Huntington Beach City Clerk

From: Surf City Pipeline <noreply@user.govoutreach.com>
To: CITY COUNCIL; agendaalerts@surfcity-hb.org
Sent: Fri Apr 24 13:23:03 2009
Subject: Surf City Pipeline: Comment on an Agenda Item (notification)

Request # 693 from the Government Outreach System has been assigned to Johanna Stephenson.

Request type: Comment

Request area: City Council - Comment on Agenda Items

Citizen name: Nolann Blokdyk

Description: From: Nolann19@aol.com <Nolann19@aol.com>
To: CITY COUNCIL
Sent: Fri Apr 24 12:52:11 2009
Subject: Cell Tower near Harbour View School

Good Afternoon,

As I am sure you have all become aware there is great concern about the cell tower being built by T-Mobile that is within feet of Harbour View Elementary School.

At the Town Hall meeting last night parents and concerned community members provided Keith Bohr and the representative from T-Mobile with plenty of information as to why this project should have never began, and should not continue.

I am asking you to make a conscientious vote on Monday at the emergency meeting. Our future - our children - are counting on you.

Sincerely,

Nolann Blokdyk
Parent of 3 Harbour View students

Expected Close Date: 04/27/2009

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

*Item #1
4-27-09
City Council*

Special Meeting.

Ross, Rebecca

From: Flynn, Joan
Sent: Friday, April 24, 2009 1:33 PM
To: Ross, Rebecca
Subject: Fw: Surf City Pipeline: Comment on an Agenda Item (notification)

Joan L. Flynn, CMC
Huntington Beach City Clerk

From: Surf City Pipeline <noreply@user.govoutreach.com>
To: CITY COUNCIL; agendaalerts@surfcity-hb.org
Sent: Fri Apr 24 13:28:23 2009
Subject: Surf City Pipeline: Comment on an Agenda Item (notification)

Request # 694 from the Government Outreach System has been assigned to Johanna Stephenson.

Request type: Comment
Request area: City Council - Comment on Agenda Items
Citizen name: Charlene Bauer

Description: From: ralph <rbauer1022@verizon.net>
To: CITY COUNCIL
Sent: Fri Apr 24 12:48:43 2009
Subject: tower

The cable tower in Harbour View park is commercial and costly an may have required a Measure C vote. Your vote was taken on a concent calendar without discussion or informing the surrounding area including the Harbour View School.
Charlene Bauer

Expected Close Date: 04/27/2009

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

Item #1
4.27-09
City Council Special Meeting.

Ross, Rebecca

From: Flynn, Joan
Sent: Friday, April 24, 2009 2:09 PM
To: Ross, Rebecca
Subject: Fw: Surf City Pipeline: Comment on an Agenda Item (notification)

Joan L. Flynn, CMC
Huntington Beach City Clerk

From: Surf City Pipeline <noreply@user.govoutreach.com>
To: CITY COUNCIL; agendaalerts@surfcity-hb.org
Sent: Fri Apr 24 14:05:39 2009
Subject: Surf City Pipeline: Comment on an Agenda Item (notification)

Request # 695 from the Government Outreach System has been assigned to Johanna Stephenson.

Request type: Comment

Request area: City Council - Comment on Agenda Items

Citizen name: Bruce Fieser

Description: Mr. Rieser phoned in his concern about the cell tower being installed at Harbour View Park. He does not understand why the city allowed this to go next to a park and grade school. Why was there no notification to residents? He wants to go on record as being opposed to the cell tower.

Expected Close Date: 04/27/2009

[Click here to access the request](#)

Note: This message is for notification purposes only. Please do not reply to this email. Email replies are not monitored and will be ignored.

Item #1
4-27-09
City Council
Special Meeting

Ross, Rebecca

From: Stephenson, Johanna
Sent: Friday, April 24, 2009 2:16 PM
To: Wilson, Fred; Hall, Bob; Emery, Paul; CITY COUNCIL
Cc: Ross, Rebecca
Subject: FW: DOCS1-#1008410-v2-
Letter__Mayor_Bohr__re__Wireless_Communication_Facility_in_Harbor_View_Park
Attachments: DOCS1-#1008410-v2-
Letter__Mayor_Bohr__re__Wireless_Communication_Facility_in_Harbor_View_Park.pdf

I will print copies for Council and Fred. Bob or Paul just let me know if you would like a copy too.

Johanna Stephenson | Admin. Assistant City Administration | City of Huntington Beach | O:714.536-5575 |
F:714.533.5233 | johanna.stephenson@surfcity-hb.org

From: Munoz, Patrick [mailto:pmunoz@rutan.com]
Sent: Friday, April 24, 2009 2:13 PM
To: Stephenson, Johanna
Cc: Worthington, Glen
Subject: DOCS1-#1008410-v2-Letter__Mayor_Bohr__re__Wireless_Communication_Facility_in_Harbor_View_Park

Dear Johanna, thank you for agreeing to distribute the attached correspondence to the Council and City Administrator. A hard copy will follow by mail. Please confirm your receipt of this email. Thank you. Patrick Munoz

Item #1
4.27.09
City Council
Special Meeting

April 24, 2009

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Mayor Keith Bohr
Council Member Joe Carchio
2000 Main Street
Huntington Beach, CA 92648

Re: Wireless Communication Facility in Harbor View Park

Dear Mayor Bohr and Council Member Carchio:

On behalf of our clients, we thank you for attending yesterday evening's community meeting regarding the proposed installation of a 55-foot-tall cell phone tower (the "T-Mobile tower") mere steps from Harbor View School. We are very pleased with your decision to set a special meeting Monday, April 25th, to allow the City Council to reconsider the T-Mobile tower project, as well as your commitment to advocate the view unanimously expressed by the community. We are providing this letter to assist you in advocating our clients' position, and to advise the Council that it has both the opportunity and legal justification to terminate the Site License Agreement (the "License") between the City and Omnipoint Communications, Inc., a T-Mobile subsidiary (hereafter "T-Mobile"), and to void Wireless Permit No. 07-042 (the "Wireless Permit").

T-Mobile's License states: "Licensee [T-Mobile] shall, at Licensee's sole cost and expense, *comply with all statutes, ordinances, regulations, and requirements* of all governmental entities, including federal and state and county and municipal, required by Licensee's use and occupancy of the Property." (License, § 10.04, emphasis added.) As set forth in detail below, the Wireless Permit issued to T-Mobile does not comply with the City's Wireless Communications Facilities ordinance (the "Wireless Ordinance"). Additionally, T-Mobile has not complied with the California Environmental Quality Act ("CEQA") and the California Coastal Act. As a result of these defects, T-Mobile has not complied with all statutes, ordinances, etc. required for its proposed use and occupancy of the tower site. Consequently, the City may terminate the License for cause, since T-Mobile is in default under License section 10.04. (See License, § 6.02(a).)

The City's Wireless Ordinance sets forth a precise framework for the approval of a wireless communication facility. The City, and consequently T-Mobile, failed to comply with various mandatory provisions of that ordinance as noted below:

Mayor Keith Bohr
Council Member Joe Carchio
April 24, 2009
Page 2

- Zoning Code section 230.96(F)(9) states that "Any wireless communication facility to be placed over, within, on, or beneath City property shall obtain a *lease or franchise* from the City *prior to applying for a Wireless Permit* and an administrative or conditional use permit." (Emphasis added.) In violation of the Wireless Ordinance, T-Mobile obtained a license, not a lease or franchise for the placement of the tower on City property. Additionally, in violation of the Wireless Ordinance, T-Mobile applied for its Wireless Permit in August 2007, nearly a year and a half before it obtained its License, rather than doing so after a lease or franchise is obtained as required by the City's Zoning Code.
- Zoning Code section 230.96(E)(2) requires a conditional use permit ("CUP") if either: (1) a wireless communication facility exceeds the "maximum building height permitted within the zoning district" or (2) is "[v]isible from beyond the boundaries of the site at eye level." The "Maximum Height of Structures" in the OS-PR zone is clearly listed as 45 feet (Zoning Code, § 213.08) and hence the proposed 55-foot-tall tower requires a CUP. Staff incorrectly indicated last evening that Zoning Code section 230.72, which provides a 10-foot *exception* to the maximum permitted height for transmission antennae, obviated the need for a CUP. This is wrong for two reasons. First, the exception which allows an additional 10 feet does not obviate the fact a CUP is required for any structure exceeding the stated maximum height of 45 feet. In addition, it does not obviate the fact a CUP is needed because the T-Mobile tower will be visible at eye level beyond the park site—namely a few feet away at the Harbour View Elementary School. In violation of the Wireless Ordinance, T-Mobile failed to obtain a CUP.
- Zoning Code section 230.96(E)(3) requires design review for any wireless communication facility located in the OS-PR zone or within 300 feet of a residential district if a CUP is required. The exception to the CUP requirement listed in Zoning Code section 230.96(E)(3) is inapposite because, as stated in the foregoing bullet point, the T-Mobile tower requires a CUP. Thus, in violation of the Wireless Ordinance, T-Mobile failed to obtain design review.
- The Zoning Code, independent of the Wireless Ordinance, states that discretionary review shall be required by the Design Review Board of all projects within the OS-PR zone or within 500 feet of a PS district. (Zoning Code, § 213.10.) The T-Mobile tower meets both criteria. In violation of the OS-PR zoning, T-Mobile failed to obtain this required design review.
- CEQA requires environmental review of all discretionary projects. CEQA defines a project to include "the issuance to a person of a lease, *permit, license*, certificate, or

Mayor Keith Bohr
Council Member Joe Carchio
April 24, 2009
Page 3

other entitlement for use by one or more public agencies." (Pub. Resources Code, § 21065(c), emphasis added.) In dereliction of CEQA, no environmental review was performed with respect to either the License or the Wireless Permit. In addition, CEQA review would be required in connection with both the CUP and Design Review required for this project. The only reference to environmental review with respect to the T-Mobile tower is found in the City staff report accompanying the License. Staff incorrectly stated "Not applicable" under the heading "Environmental Status." When a project fails to comply with CEQA, a peremptory writ of mandate will issue mandating that the public agency's "decision be voided." (*Id.*, § 21168.9(a)(1).) In violation of CEQA, the City, and consequently T-Mobile, failed to conduct any environmental review of this project.

Lastly, T-Mobile failed to comply with the conditions imposed in its own Wireless Permit. Attachment No. 1 to the August 2007 Wireless Permit states: "Wireless Permit No. 07-042 shall become ***null and void*** unless exercised within one year of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning Department a minimum 30 days prior to the expiration date." (Emphasis added.) We are unaware of any such request or extension, and our review of the City's file did not reveal the existence of such an extension. T-Mobile did not obtain a license to use the Harbor View Park site until January 20, 2009—one year and five months after obtaining its Wireless Permit, and did not commence construction until several months following that date. Consequently, T-Mobile's Wireless Permit was neither timely exercised nor extended, and hence is null and void.¹ Accordingly, T-Mobile is constructing a wireless communications facility in violation of Zoning Code section 230.96(D)'s wireless permit requirement.

Each of the foregoing failures, individually and collectively, is sufficient grounds to terminate the License. Furthermore, each of the foregoing failures, individually and collectively, precludes the construction and operation of the T-Mobile tower until such time as T-Mobile complies with ***all*** applicable ordinances and statutes.

We urge you to consider this letter in closed session and to discuss its contents with the City Attorney. We are confident that you will find sufficient legal grounds to terminate T-Mobile's License and to void its Wireless Permit (or determine that it already is void). We are hopeful that you and the other members of the City Council vote to do so. If not, it is our intention to immediately seek a writ of mandate to compel the City and T-Mobile to comply with the above-noted legal requirements. As part of such relief, we will seek to recover attorneys' fees as allowed by various applicable statutes.

¹ The brief "tolling" period created by the City's moratorium on this subject does not change this conclusion.

Mayor Keith Bohr
Council Member Joe Carchio
April 24, 2009
Page 4

If you have any questions, please do not hesitate to contact me at your convenience.

Sincerely,

RUTAN & TUCKER, LLP

A handwritten signature in black ink, appearing to read "A. Muñoz", written in a cursive style.

A. Patrick Muñoz

APM:gdw

cc: City Council
City Administrator
Clients