

**Minutes**  
**Special Meeting - 8/30/2010**  
**City Council/Redevelopment Agency/Public Financing Authority**  
**City of Huntington Beach**

Monday, August 30, 2010  
5:00 PM - Council Chambers  
Civic Center, 2000 Main Street  
Huntington Beach, California 92648

**An audio and video recording of this meeting  
is on file in the Office of the City Clerk and is archived at  
[www.surfcity-hb.org/government/agendas/](http://www.surfcity-hb.org/government/agendas/)**

CALL TO ORDER - 5:02 PM

ROLL CALL

Present: Carchio, Coerper, Hardy, Green, Bohr, Dwyer, and Hansen  
Absent: None

**ANNOUNCEMENT OF LATE COMMUNICATIONS PERTAINING TO SPECIAL MEETING  
ITEM(S)**

Pursuant to the Brown "Open Meetings" Act, City Clerk Joan Flynn announced late communications received by her office following distribution of the Council agenda packet:

PowerPoint communications submitted for Public Hearing Item Nos. 1 & 2 by the Building and Planning Department, dated August 30, 2010, entitled *Wireless Permit Nos. 2007-41 & 2007-42, Bolsa View Park and Harbour View Park Wireless Communication Facilities*.

Communications submitted by Lori Burrett (2), David Parikh, Heather Jordan, the Sterbentz and Brooks Families, and Ana Youngsma for Public Hearing Item Nos. 1 & 2 regarding permits for wireless communication facilities at Bolsa View Park and Harbour View Park.

Communications submitted for Public Hearing Item Nos. 1 & 2 by John J. Flynn III of Nossaman LLP, dated August 30, 2010, titled *T-Mobile's City-Approved Permits and Site License Agreements (Harbour View and Bolsa View Parks)* and submitting the Supplemental Declaration of Daniel Wang and the Declaration of Mark McDiarmid.

**COMMUNICATIONS RECEIVED DURING THE MEETING (Wireless Permits/Harbour View and Bolsa View Parks)**

Communication submitted by Patrick Munoz, Rutan & Tucker, undated and entitled Additional Findings for Revocation: Wireless Permit 2007-042.

PowerPoint communication submitted by John Flynn, Nossaman LLP entitled *August 30, 2010 Special Meeting of the Huntington Beach City Council re Approved, Issued and Council-*

*Reaffirmed Wireless and Building Permits.*

Slide presentation submitted by Lori Burrett undated, entitled *Let's use this as an opportunity for change.*

Slide presentation submitted by Annalisa Phantumabamrung undated, entitled *The Placement of the Cell Tower Will Affect Neighborhood Values.*

Communication received from Peggy Tracy dated August 30, 2010 entitled *Revoke Permits.*

Communication received from John Flynn, Nossaman LLP dated August 27, 2010 re: T-Mobile's City-Approved Permits and Site License Agreements (Harbour View and Bolsa View Parks)

PLEDGE OF ALLEGIANCE - Led by Councilmember Hansen

INVOCATION - Provided by Mayor Green

In permitting a nonsectarian invocation, the City does not intend to proselytize or advance any faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.

Mayor Green asked for a motion to go into Closed Session.

A motion was made by Bohr, second Hardy to recess to Closed Session for approximately 15-30 minutes. The motion carried by the following roll call vote:

AYES: Carchio, Coerper, Hardy, Green, Bohr, Dwyer, and Hansen  
NOES: None

RECONVENE CITY COUNCIL/REDEVELOPMENT AGENCY/PUBLIC FINANCING AUTHORITY MEETING – 5:47 PM (Due to technical difficulties, the video stream resumes activity while the staff report is in process)

PUBLIC HEARING

1. Revoked Wireless Permit No. 2007-042 and related administrative approval for a wireless communications facility located at 16600 Saybrook Lane (Harbour View Park)
2. Revoked Wireless Permit No. 2007-041 and related administrative approval for a wireless communications facility located at 5741 Brighton Drive (Bolsa View Park)

Jason Kelley, Associate Planner, provided a brief PowerPoint presentation entitled *Wireless Permit Nos. 2007-041 and 2007-42 - Bolsa View Park and Harbour View Park Wireless Communications Facilities*, that included the following topic slides: Council Consideration, Project Description, Project Location, Project History, and Conclusion.

Mayor Green opened the public hearing.

John Flynn speaking for Nossaman LLP on behalf of the applicant, T-Mobile, provided a PowerPoint that contained information related to the legality of holding a public hearing, the project's history of permits and appeals, commencement of construction, and reaffirmation of permits and approvals. (00:07:38)

Danny Bazerman, T-Mobile, spoke in favor of cell tower construction at both locations and discussed the facts that support the applicant's request in order to provide quality and coverage to the 19,000 phone customers in the noted coverage area. (00:14:42)

Mr. Bazerman and Councilmember Bohr discussed cell site coverage (number of customers, written complaints, and dropped calls).

Daniel Wang, T-Mobile, spoke in support of cell tower construction at both sites and explained information published on propagation and PCC color-schemed maps. He also discussed the number of dropped call, including emergency calls. (00:18:22)

Richard Feld, Attorney, Huntington Harbour Mall, addressed the Mall being considered as a viable alternative site, explaining that there has not been an opportunity to seek input from Mall tenants and surrounding residents. (00:21:39)

Councilmember Carchio and Mr. Feld discussed the verbal contact taken place between T-Mobile and the Mall, and also addressed pending litigation.

Galen T. Pickett, Academic Research Physicist, provided credentials and spoke in opposition to cell tower construction at both sites, describing the presumed physiological effects of children being near a cell tower. (00:25:05)

Lori Burrett, Harbour View parent, provided a PowerPoint presentation and suggested that the wireless communications process be reviewed citywide. She also stated her opinion that telecommunication companies do not have residents' best interests in mind, and discussed updating FCC regulations and safety risks. (00:27:30)

Dr. Richard R. Kenyon offered personal credentials and spoke in support of cell tower placement as permitted. He described having poor phone service in his home, and discussed radiation measured by cube of distance. (00:31:15)

Larry Ito spoke in opposition to the construction of a cell tower in Harbour View Park. (00:33:30)

Peggy Tracy provided a PowerPoint presentation that demonstrated opposition to placing cell towers near residential areas and schools. (00:36:29)

Dianne Larson spoke in opposition to cell tower construction at both Harbour View Park and Bolsa View Park locations. (00:39:52)

Carlos Ressia spoke in opposition to cell tower construction near Harbour View Park. (00:42:54)

Joan Nagle spoke in opposition to cell tower construction at Harbour View Park and Bolsa View Park locations. (00:45:05)

Jeff Busche spoke in opposition to cell tower construction near Harbour View Park. (00:46:55)

Anna Staros spoke in opposition to cell tower construction near Harbour View Park. (00:50:15)

Mary Busche spoke in opposition to cell tower construction near Harbour View Park. (00:51:32)

Sally Stevens spoke in opposition to cell tower construction near Harbour View Park. (00:55:28)

Norm Westwell spoke in opposition to cell tower construction at both the Harbour View Park and Bolsa View Park sites. (00:57:37)

Heather Lenore spoke against placement of cell towers at Harbour View Park and Bolsa View Park, and supported the staff's recommendation to revoke the permits. (01:00:55)

Bobbie Jones spoke in opposition to cell tower construction at Harbor View Park. (01:03:28)

Annalisa Phantumabamrung spoke in opposition to cell tower construction near Branford Drive, and distributed a communication entitled, "*The placement of the cell tower will affect neighborhood values.*" (01:06:46)

Patrick Munoz, Attorneys of Rutan and Tucker, discussed discovery of discrepancies during permit application process. (01:10:26)

John Morrison spoke in opposition to cell tower construction at both Harbour View Park and Bolsa View Park locations. (01:13:54)

Steve Stafford spoke regarding regulation of telecommunications facilities. (01:16:25)

Tim Wuerfel spoke in opposition to cell tower construction at Bolsa View Park. (01:18:36)

Council comments/questions included:

- Relocation to alternative locations?
- How are stop gap findings reported?

A motion was made by Carchio, second Bohr to revoke Wireless Permit Nos. 2007-041 and 2007-042 and administrative approvals, with findings of revocation ***as amended to include Rutan and Tucker Findings for Revocation Nos. 1, 5 and 6.***

- Council comments/questions were continued:
- Additional findings for revocation provided by Rutan and Tucker (staff recommends adding #1, #5, and #6)
  - 1. Contrary to the suggestion in the staff report accompanying these findings, the applicant failed to comply with the conditions imposed on the face of Permit no.

2007-042, and specifically the condition that the rights (purportedly) conferred by said permit be exercised within one year. Specifically the Permits states that it 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. The City Council finds and determines that no written request for an extension was ever granted. Moreover, the Council finds and determines that T-Mobile did not obtain a license to use the Harbor View Park site until January 20, 2009 – one year and five months after issuance of the Permit, and did not commence construction until several months following that date (and that the exercise of the entitlements conveyed by the permit were discontinued for over 2 years). Consequently, the City Council finds and determines that Permit 2007-042 was neither timely exercised nor extended, and hence is null and void. The City Council further finds that the fact the applicant may have been working with City Staff, and negotiating terms for permission to use the property in question is irrelevant to the determination that no request to extend the Permit was made and that no such extension was granted. The situation is no different than if the applicant were trying to negotiate a lease on private property for the installation of the facility in question and failed to come to satisfactory terms prior to the entitlements purportedly conveyed by the Permit having expired. The Council specifically disagrees with and rejects as factually and legally incorrect the statements in the staff report to the effect that: (1) no violation of the Permit's terms occurred or that no conditions of its approval were violated, and (2) the "lengthy discontinuance for over two years" which occurred before the applicant attempted to use the rights purportedly conveyed by the Permit is somehow excused because such delay was due to ongoing negotiations between the applicant and City staff.

- 5. Wireless Permit No. 2007-042 was issued in violation of the City's Municipal Code, and hence was void when issued and/or should be revoked, because 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." In violation of this Ordinance language, T-Mobile obtained a **license**, not a lease or franchise for the placement of the tower on City property; and, T-Mobile applied for its License, rather than doing so after a lease or franchise is obtained as required by the City's Zoning Code. Moreover, City Staff was not authorized to administratively issue the Permit in question without complying with the forgoing provisions of the City's Municipal Code.
- 6. The City Council may not be bound by the above noted errors of City staff in issuing the Permit in violation of the City's laws and Ordinance (despite assertions by T-Mobile that the doctrine of estoppel and similar theories should apply), as the purported injustice done to the applicant (of which the City Council finds none to exist by virtue of the applicant's unclean hands in connection with the application demonstrated by its misrepresentation of facts in its application) is outweighed by the harm to the public that will occur if the Permit is not revoked. Notably, the residents of the community have a protectable property and personal interest in maintaining the character of the area as established by comprehensive and carefully considered

zoning plans in order to promote orderly physical development of the district and the City (See, e.g., *Golden Gate Water Ski Club V. County of Contra Costa* (2008) 165 Cal.App.4<sup>th</sup> 249, 259.)

- Unknown health affects
- Process review for telecommunication permits near parks and schools
- T-Mobile's failure to pay-in-full for the permits
- Total number of customers within the identified area (19,000)
- Total number of dropped emergency calls
- Measure C guidelines and constraints of law
- Federal government regulations
- Unagendized recess to Closed Session
- Three-year lag time
- Viable alternative site
- T-Mobile's response to why the Mall is not an adequate alternative site
- Public opinion
- Why the Seal Beach Naval property does not work
- Number of dropped calls, and how they are measured
- Community Services involvement in tower placement area

The motion carried by the following roll call vote:

AYES: Carchio, Coerper, Hardy, Green, Bohr, and Dwyer  
NOES: Hansen

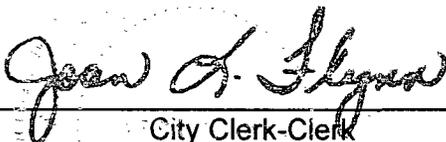
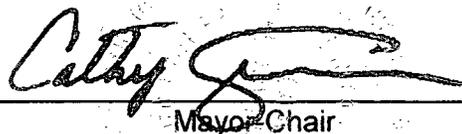
COUNCILMEMBER COMMENTS (Not Agendized) - None.

ADJOURNMENT - The special meeting was adjourned at 8:19 PM to Tuesday, September 7, 2010 at 4:00 PM, Civic Center, 2000 Main Street, Huntington Beach.



City Clerk and ex-officio Clerk of the City Council of the City of Huntington Beach and Clerk of the Redevelopment Agency of the City of Huntington Beach, California

ATTEST:

  
City Clerk-Clerk  
Mayor-Chair