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September 24, 2018

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Robert Carroll, Chair
Land Use Committee *Robert Carroll*

SUBJECT: **CONDITIONAL PERMIT FOR SPRINT WIRELESS
TELECOMMUNICATION FACILITY AT 3740 LOWER
HONOAPIILANI ROAD (LAHAINA) (LU-67)**

The Land Use Committee is in receipt of County Communication 18-314, from the Planning Director, transmitting a request from Sprint Wireless for a ten-year Conditional Permit to allow for the installation of a wireless telecommunication facility at 3740 Lower Honoapiilani Road, Lahaina, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 4-3-006:004.

According to the Department's transmittal letter, which was received by the Council on August 30, 2018, and referred to the Land Use Committee at the Council meeting of September 7, 2018:

The application is subject to Federal Communications Commission (FCC) regulations.

More specifically, Section 704(a) of the Telecommunications Act of 1996 (TCA) added Section 332(c)(7) to the Communications Act of 1934, as amended. Section 332(c)(7) aims to reduce what was perceived as local zoning impediments to the installation of facilities for wireless communications. The provision is an attempt to facilitate national growth of wireless telephone service and to maintain local control over siting of towers.

Subsequently, the FCC issued the *2009 Shot Clock Order*, to better define what constitutes a “*preemptively reasonable period of time*,” beyond which inaction on a personal wireless service facility siting application would be deemed a “*failure to act*.” For a new tower, 150 days is deemed reasonable, and for an application for collocation on an existing tower, 90 days would be considered reasonable. The “Shot Clock” begins on the date of application; however, it stops once the Department sends a written notification that the application is incomplete. It begins again when the Applicant submits all requested information, and the Department has ten (10) days to notify the Applicant in writing if the application is still incomplete.

Failure to meet the deadlines outlined above (“*failure to act*”) provides an Applicant with the opportunity to seek injunctive relief, but it does not grant outright approval of the application.

The subject application was deemed complete on May 11, 2018. The 150-day Short Clock expires on October 8, 2018.

I currently intend to schedule this application for discussion at the earliest available Committee meeting date, on October 3, 2018 (posting deadline of September 27, 2018). *If* the Committee makes a recommendation at that meeting, a committee report could be posted on a Council meeting agenda as early as October 19, 2018, and if the Council passes the proposed bill at that meeting, the bill could be scheduled for second and final reading on November 2, 2018.

These dates would not allow for passage on two required readings by the Council by the stated “Shot Clock” deadline of October 8, 2018, nor is there a vehicle to obtain passage by the stated deadline following normal committee procedures.

At this time, it appears the only means to act on the application by the October 8, 2018 deadline would be to post the proposed bill on the October 5, 2018 Council meeting agenda to be considered for filing, with or without the benefit of Committee discussion on October 3, since filing (or rejection of the application) would only require a single Council meeting. That alternative would not appear to promote the intent of the Shot Clock Order or allow the Committee its customary option of considering the possibility of

Patrick K. Wong
September 24, 2018
Page 3

recommending passage of a proposed bill, with or without revisions, but it would allow the applicant to resubmit its application and presumably start the clock anew. Hopefully, a future submittal would be received with sufficient time for the Committee to schedule the matter and the Council to act within the time frames provided.

May I please request your guidance on this matter. It may be helpful to hear back from you whether the applicant intends to seek injunctive relief if the Council cannot meet the October 5, 2018 deadline.

Because of the time sensitivity of this matter, I would appreciate receiving a response by **Thursday, September 27, 2018**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Carla Nakata at ext. 7659, or Rayna Yap at ext. 8007).

lu:ltr:067acc01:cmn

cc: David Galazin, Deputy Corporation Counsel
Michele McLean, Planning Director
Rich Conte, Sprint Wireless