## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

- TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
- FROM: James W. Campbell, Acting Planning Director
- SUBJECT: Report of actions taken by the Zoning Administrator, Planning Director and/or Planning Department staff for the week ending February 18, 2011

### ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARTMENT STAFF

Item 1: Reliant Land Services, Inc. representing Clearwire US, LLC – Telecom Permit No. TP2010-001 (PA2010-003) 4302 Ford Road

This item was approved on February 17, 2011

Council District 7

On behalf of James W. Campbell, Acting Planning Director:

Patrick J. Alford, Planning Manager

The applicant or any interested party may appeal the decision of the Planning Director to the City Council by a written request to the City Council within 14 days of the action date. A \$4,010.00 filing fee shall accompany any appeal filed. The City Council's action on appeals shall be final.

Email Dana Smith, Assistant City Manager Leonie Mulvihill, Assistant City Attorney David Keely, Public Works Senior Civil Engineer Code Enforcement Division Jon Lewis, Support Services Lt., NBPD



COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION 3300 Newport Boulevard, Building C, Newport Beach, CA 92663 (949) 644-3200 Fax: (949) 644-3229 www.newportbeachca.gov

## PLANNING DIRECTOR ACTION LETTER

APPLICATION:	Telecom Permit No. TP2010-001 (PA2010-003)
APPLICANT:	Reliant Land Services, Inc. representing Clearwire US, LLC
LOCATION:	4302 Ford Road
LEGAL DESCRIPTION:	Parcel 2 as shown in PM_065_04

## PROJECT REQUEST AND DESCRIPTION

**Reliant Land Services, Inc.** has submitted an application on behalf of **Clearwire US, LLC**, requesting a telecom permit to allow the installation of six (6) panel antennas, six (6) parabolic dish antennas, one global positioning system (GPS) antenna, and one ground-mounted equipment cabinet at an existing telecommunications facility site. The panel antennas and parabolic dish antennas will be wall mounted on an existing building and screened from view with new screen walls. The application includes a request to co-locate with three other existing wireless telecommunications facilities on the existing building.

## DIRECTOR'S ACTION: Approved with Conditions – February 17, 2011

In approving this application, the Planning Director analyzed issues regarding compliance with Chapter 15.70 of the Newport Beach Municipal Code. This approval is based on the findings and subject to the following conditions attached to this report.

The Planning Director determined in this case that the proposed wireless telecommunications facility ("telecom facility") meets the provisions of Chapter 15.70 because the new antennas will be located on an existing building, and the antennas and any appurtenant cables will be screened from public view behind a new screen wall designed in a manner consistent with the building's architectural style, and painted to match the existing building. The new installation will be co-located with other existing telecom facilities on the same structure, consistent with the co-location requirements of Chapter 15.70.

## BACKGROUND

The subject property is located within the PF (Public Facilities) Zoning District. The project site is approximately 1.52 acres, and is developed with a building used as a switching center for SBC. The project site is relatively flat, located at the top of a rise and bounded to the north, east, and south by Bonita Canyon Road, MacArthur Boulevard, and Ford Road, respectively. Open space surrounds the property and residential development and a community park are located to the south of the property across Ford Road. The project site is not located within the coastal zone.

Currently, there are three previously-approved telecom facilities operated by different carriers located on the project site: Sprint-Nextel, AT & T, and Metro PCS. Some of the existing antennas operated and maintained by Sprint-Nextel and AT & T are attached to the building in a manner that exceeds the height of the building and are not screened from view. These installations were approved prior to the adoption of the Telecom Ordinance.

## APPEAL PERIOD

The applicant may appeal the decision of the Planning Director, including any denial of the application or any conditions of approval, to the City Council within 14 days of the action date. The City Council's action on appeals shall be final. A \$4,010.00 filing fee shall accompany any appeal filed. For additional information on filing an appeal, contact the City Clerk at 949 644-3005.

On behalf of James W. Campbell, Acting Planning Director

Bv Janet Johnson Brow

Associate Planner

Attachments: Vicinity Map Findings and Conditions of Approval Site Plan & Elevations

## VICINITY MAP



4302 Ford Road

TP2010-001 (PA2010-003)

## FINDINGS AND CONDITIONS OF APPROVAL TP2010-003 (PA2010-001)

## **FINDINGS**

- 1. The telecommunications facility as proposed meets the intent of Chapter 15.70 of the Newport Beach Municipal Code (NBMC), while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic ocean and coastal views, and otherwise mitigating the impacts of such facilities for the following reasons:
  - The proposed telecom facility will not be detrimental to public health or safety because it is required to comply with the applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
  - The proposed telecom facility is co-located with three other existing telecom facilities located on the same building so as to limit the adverse visual effects of proliferation of facilities in the City.

The project site is not located in an area of scenic ocean and coastal views, or in an area designed as a public view corridor by the General Plan. Due to the location of the proposed facility, there is no impact to public views.

- The proposed telecom facility will be co-located on the same building as three other existing telecom facilities so as to mitigate the impacts of the net visual effect of establishing a facility in a new location.
- 2. The telecommunications facility as proposed conforms to the technology, height, location and design standards for the following reasons:
  - The telecom facility approved under this permit utilizes the most efficient available technology in order to reduce the visual impact of the facility to the surrounding area.
  - The antennas for the telecom facility approved by this permit do not exceed the maximum building height limit of 32 feet established by the Zoning Code.
  - The antennas for the telecom facility approved by this permit will be screened from public view behind a new screen wall, designed in a manner consistent with the architectural style, color and materials of the building.
  - The new support equipment cabinet will be ground-mounted within an existing security enclosure where other telecom support equipment cabinets are currently located. The new GPS antenna will be attached to the equipment cabinet at a height not to exceed the top of the security enclosure fence. The

equipment cabinet and GPS antenna are screened from view by the security enclosure fence and the mature landscaping that surrounds the project site.

- 3. The net visual effect of co-locating more than three telecom facilities at a co-location site will be less than establishing a new location for the following reasons:
  - The project site is surrounded by open space that is heavily landscaped with mature tall trees, shrubs and groundcover. The telecom facilities in this location are screened from view by the existing landscaping and are not readily recognizable to the general public.
  - The new panel antennas and parabolic dish antennas will be screened from public view behind new screen walls painted to match the color and design of the existing building. As such, the proposed telecommunications facility will not be visible to the general public.
- 4. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures) because the project involves the installation of new telecom facility equipment on an existing structure.

## **CONDITIONS**

- 1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, and elevations, except as noted in the following conditions.
- 2. Anything not specifically approved by this Telecom Permit is not permitted and must be addressed in a separate and subsequent Telecom Permit review.
- 3. A total of six (6) panel antennas and six (6) parabolic dish antennas may be wallmounted on the existing building at a height not to exceed 32 feet. All new panel antennas and parabolic dish antennas and any appurtenant cables shall be screened behind new screen walls. The screen walls shall match the existing building in a manner consistent with the building's architectural style, color and materials.
- 4. The GPS antenna and one equipment cabinet may be located behind the existing chain link fence enclosure. The GPS antenna shall be attached to the equipment cabinet in a manner so as not to exceed the top of the chain link fence.
- 5. The telecom facility approved by this permit shall comply with all applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- 6. Any future facilities proposed by other carriers to be located within 1,000 feet from the subject property shall be approved to co-locate at the same site by the property owner or authorized agent, unless otherwise approved by the Planning Director.

- 7. The telecom facility shall comply with all regulations and requirements of the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code. All required permits shall be obtained prior to commencement of the construction.
- 8. Prior to the issuance of any building, mechanical and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. <u>A copy of this approval letter shall be incorporated into the drawings approved for the issuance of permits.</u>
- 9. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g. a telephone number) shall be provided on the warning signs or plates to arrange for access to the roof top area. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.
- 10. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning and similar information plates. <u>A</u> detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
- 11. The facility shall transmit and receive in the BRS 1, 2, E, R and H Blocks (2496 to 2502 MHz, 2602 to 2614 MHz, and 2618 to 2673.5 MHz). Any change or alteration to the frequency range shall require the prior review and approval of the Planning Director.
- 12. The applicant recognizes that the frequencies used by the cellular facility located at **4302 Ford Road** are extremely close to the frequencies used by the City of Newport Beach for public safety. This proximity will require extraordinary "comprehensive advanced planning and frequency coordination" engineering measures to prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC).
- 13. The applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
- 14. Within 30 days after installation of the telecom facility, a radio frequency (RF) compliance and radiation report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the facility is operating at the approved frequency and complies with FCC standards for radiation. If the report shows that the facility does not so comply, the use of the facility shall be suspended until the facility is modified to comply and a new report has been submitted confirming such compliance.

- 15. Prior to issuance of building permits, a deposit of \$1,000 shall be paid to the City of Newport Beach. This deposit is required by the Planning Division to ensure preparation and submittal of the RF Compliance and Radiation Report, referenced in the above Condition. The deposit will be used to defray any and all fees associated with review of the report by an independent technical consultant, pursuant to Section 15.70.070 B-10 of the Telecom Ordinance. Any unused deposit fees will be refunded to the applicant upon determination of compliance with the approved frequency and FCC standards.
- 16. The applicant shall provide a "single point of contact" in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number and e-mail address of that person shall be provided to the Planning Division and Newport Beach Police Department's Support Services Commander prior to activation of the facility.
- 17. Should interference with the City's Public Safety radio equipment occur, use of the facility shall be suspended until the radio frequency is corrected and verification of the compliance is reported.
- 18. The applicant shall ensure that lessee or other users shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.
- 19. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the applicant, current property owner or leasing agent.
- 20. The telecom facility approved by the permit shall comply with any easements, covenants, conditions or restrictions on the underlying real property upon which the facility is located.
- 21. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with this condition.
- 22. The operator of the telecom facility shall maintain the facility in a manner consistent with the original approval of the facility.
- 23. The City reserves the right and jurisdiction to review and modify any telecom permit approved pursuant to Chapter 15.70 of the Newport Beach Municipal Code, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape or number of antennas; change the facility's color or materials or location on the site; or increase the signal output

above the maximum permissible exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified telecom permit prior to implementing any change.

- 24. This telecom permit may be modified or revoked by the City Council should they determine that the facility or operator has violated any law regulating the telecom facility or has failed to comply with the requirements of Chapter 15.70 of the NBMC, or this telecom permit.
- 25. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Director by certified mail no less than 30 days prior to such action. The operator or property owner shall have 90 days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.
- 26. This approval shall expire unless exercised within 24 months from the date of approval.
- 27. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Clearwire Telecom Permit including, but not limited to, the Telecom Permit No. TP2010-001 (PA2010-003). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

#### PROPRIETARY INFORMATION

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CARRIER SERVICES IS STRICTLY PROHIBITED.

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4302 FORD RD NEWPORT BEACH, CA 92660

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