



January 28, 2019

Jennifer K. Clark, AICP
Director
Development & Resources Management Department
2600 Fresno Street, Third Floor
Fresno, CA 93721

Re: Verizon Wireless Application for Conditional Use permit (P18-02742) for a new wireless facility at 75 E Pinedale Ave (APN: 30306210)

Dear Ms. Clark:

We are writing on behalf of our client, Verizon Wireless, to appeal several of the conditions of approval associated with conditional use permit #P18-02742. Many of these conditions are not proportional to the scope of work resulting in onerous and burdensome costs to Verizon Wireless. Please see below for the list of conditions that Verizon Wireless is appealing:

Part A - Items to be Completed

Page 4-5:

Verizon Wireless is appealing the condition that the monopine be built with a 24" diameter. This small size would not structurally support multiple carriers, let alone Verizon. Therefore, future carriers would not be able to co-locate on this proposed tower. Considering that Verizon Wireless would like to build facilities that support potential co-location to reduce the number of towers in the City for better land use efficiency, this condition should be removed.

Also, the relocation of the GPS antenna is required to support the operations of the facility. Therefore, we are appealing this condition.

Regarding the 12' wide sidewalk, we are requesting clarification as this amount would not match the sidewalk of the improved parcel next door.

Landscape Requirements - Page 5:

Verizon Wireless is appealing the frontage and alley improvements. Verizon Wireless is a tenant on the property leasing space for a portion in the back of the property. These improvements are beyond the limited scope of work of this project and will burden Verizon Wireless with additional costs that do not benefit the operations of the proposed wireless facility.



Fence Walls & Landscape Parking - Page 10:

Parking should not be required at all for this project as the wireless facility is unmanned. Therefore, Verizon Wireless is requesting that this condition be removed.

The joint access covenant should also be removed as the two parcels are both owned by the same property owner.

Public Works Conditions of Approvals - Pages 26-27:

Verizon Wireless appeals all comments involving parking requirements and paving the alleyway. As noted above, the facility is an unmanned facility, and therefore, no parking should be required. Also, as previously stated, any proposed work on the alley is beyond the scope of the proposed project and should not be required as a condition of approval.

Impact Fees – Page 28:

Verizon Wireless requests to remove the impact fees since this is an unmanned facility and will not create additional traffic in the area.

Due to all the reasons stated above, Verizon Wireless requests that this project be set on an agenda to be reviewed and heard by the City of Fresno Planning Commission as soon as possible.

Please advise receipt of this formal appeal and if you have any further questions or concerns.

Sincerely,

Casey Ogata-Tran

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September 28, 2018

VIA FEDEX

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City of Fresno
2600 Fresno Street, Third Floor
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Scott Mozier, PE
Director of Public Works
City of Fresno
2600 Fresno Street, Room 4016
Fresno, California 93721

Re: *Verizon Wireless Application for Conditional Use Permit for a new
wireless facility at 75 East Pinedale (APN 303-062-10) (the "Project")*

Dear Ms. Clark and Mr. Mozier:

We are writing on behalf of our client Verizon Wireless to request a waiver of the City's requirement for very costly sidewalk, curb, and gutter improvements that Public Works staff have proposed to require in connection with the Project referenced above. In pre-application meetings and correspondence, City staff urged Verizon Wireless to include sidewalk, curb, and gutter improvements at the front and rear of the property in its plans submitted with a formal application. For the reasons set forth below, Verizon Wireless must respectfully decline this request, and submits the enclosed formal permit application without reference to the staff-proposed infrastructure improvements.

While the City's regulations purport to require these improvements, the requirement is unlawful in this context because the improvements would cost at least \$20,000, and they are not related to any impacts of the Project. For these reasons, we request that Director Mozier grant a waiver or deviation to exempt our client from these infrastructure requirements pursuant to Fresno Municipal Code ("FMC") Section 13-216. As we explain below, imposing such excessive costs on Verizon Wireless would not only be unfair, it would violate both California law and the U.S. Constitution.

**I. Verizon Wireless Qualifies for a Waiver or Deviation Under FMC
Section 13-216.**

The City's code authorizes a "deviation" from street and sidewalk improvements when the Director determines that:

the granting of deviation will not be materially detrimental to the public welfare, safety or convenience, and will not adversely affect the rights of adjacent property owners or occupants or be injurious to property and improvements in the area in which the deviation is requested, and when he finds that the requirements of this article will work unnecessary hardship upon the applicant, and there are exceptional or extraordinary circumstances or conditions applicable to the applicant's property or to the intended use of the property which do not apply generally to other properties in the area.

FMC § 13-216(a).

Here, the required findings can easily be made. The first several non-detriment findings essentially mirror those required to grant a CUP, and would have to be made in the event the City approves the CUP.

The “unnecessary hardship” finding is also straightforward. The Verizon Wireless project consists of an un-staffed communications facility that will occupy a very small portion of the parcel and generate essentially no pedestrian or foot traffic. After construction is complete, it will require service visits only once every month, at most. This means the Project will have no significant impact on the streets or sidewalks, which means that requiring Verizon Wireless to fund these improvements would be not only unfair but – as discussed below – unconstitutional.

The requisite “exceptional or extraordinary circumstances” are also present. The surrounding properties are mostly developed with big-box retailers. Since these uses generate large volumes of traffic, it makes sense to require them to bear some of the resulting costs by improving the sidewalks, curbs, and gutters. As discussed above, however, Verizon Wireless will not generate any such impacts, so there is no justification for making it pay for such infrastructure.

II. A Waiver or Deviation is Required Under State and Federal Law.

A waiver or deviation is also required in order to avoid violating both state law and the U.S. Constitution. This is true because there is no connection between the costly sidewalk work and any impact of the Project. California Government Code Section 65909 requires that conditions on land use permits be “reasonably related” to the impact of the planned project. This provision is very similar to the requirement under the U.S. Constitution that local governments must establish both: (a) an “essential nexus” between a permit condition and the impact of the project (as required by *Nollan v. California Coastal Commission* (1987) 483 U.S. 825); and (b) “rough proportionality” between the magnitude of the exaction and the effects of the proposed development (as required by *Dolan v. City of Tigard* (1994) 512 U.S. 374). Violating these requirements would


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subject the City to liability for a taking without just compensation, costs, and attorneys' fees.

Conclusion

The proposed infrastructure requirements are not related to any impact of the Project. Verizon Wireless meets the requirements for a waiver or deviation under the City's Code. Failure to grant it would violate our client's rights under California Government Code Section 65909 and the U.S. Constitution. We respectfully request that you grant a deviation from the City's requirement for curb, gutter, and sidewalk improvements.

Sincerely,



James A. Heard

Enclosures

cc (via email only, without enclosures):

Douglas T. Sloan, Esq. (City Attorney)
Kira Noquera
Casey Ogata-Tran