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6 **CITY OF LONG BEACH**
7 **ADMINISTRATIVE APPEAL HEARING**
8 **PER LONG BEACH MUNICIPAL CODE CHAPTER 15.34.030.L**

9 VICKIE A. WILSON,)	HEARING OFFICER’S FINDINGS AND
10 Appellant,)	RECOMMENDATION
11 vs.)	
12 CITY OF LONG BEACH,)	
13 Respondent/Permitting)	
14 Authority)	
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15 LOS ANGELES SMSA LIMITED)	
16 PARTNERSHIP, d/b/a VERIZON)	
17 WIRELESS,)	
18 Real Party in Interest /)	
19 Permit Applicant)	

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21 **I. INTRODUCTION**

22 This appeal came on regularly for hearing before Administrative Hearing Officer
23 Jonathan C. Navarro on November 18, 2020 at 10:00 AM via WebEx virtual hearing. The
24 WebEx hearing was administered by Daniel Ramirez with the Public Works Department
25 (“PWD”) for the City of Long Beach. The Appellant, Vickie A. Wilson (“Appellant”) appeared
26 *pro se*. The City of Long Beach (“City” or “Respondent”) appeared and was represented by Erin
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1 Weesner-McKinley, Esq. with the Office of the City Attorney for the City of Long Beach.
2 Applicant Los Angeles SMSA Limited Partnership, D/B/A Verizon Wireless (“Verizon” or
3 “Applicant”) appeared and was represented mainly by Daisy Uy Kimpang. The following also
4 appeared for the Applicant: Barbara Breeden, Bill Hammett, Angela Maddingly, Elizabeth
5 Nygard, Esperanza Benitez, Gary Kraus, Korina Arvizu, and Mario De La Mora. The PWD for
6 the City of Long Beach was represented by Joshua Hickman and Pablo Leon.
7

8 The following member(s) of the public also appeared: Todd Van Dorn¹ (residence
9 address - 3936 E. Wilton St, Long Beach, CA 90804); and Margaret Poyer (residence address –
10 351 Carroll Park East, Long Beach, CA 90814).
11

12 **II. STATEMENT OF FACTS**

13 The facts in this matter are not in dispute. On or around February 7, 2020, Verizon
14 submitted an application (“Application”) for a permit to the City for the installation of a “small
15 cell” wireless telecommunications facility (“WTF”) in the public right-of-way. (Respondent’s
16 Group Exhibit, pages 6-15). The Application process is governed by Chapter 15.34 of the Long
17 Beach Municipal Code (“LBMC”) that includes requirements and applicable standards for WTFs
18 in the public right-of-way to ensure that the proposed WTF complies with said requirements and
19 standards. WTF means equipment installed for the purpose of providing wireless transmission
20 of voice, data, images, or other information including but not limited to, cellular telephone
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24 ¹ Todd Van Dorn signed the appeal letter dated September 28, 2020 and requested on the record
25 during the hearing to be named an Appellant in the appeal. However, LBMC §15.34.030.L
26 provides that any person owning or residing at property that is *adjacent* to or *across* the street
27 to the location of a proposed Tier B Wireless Telecommunications Facility, may appeal an
28 approval or denial of an application for a Tier B Wireless Right-of-Way Facility Permit.
Therefore, pursuant to LBMC §15.34.030.L and due to the location of Mr. Van Dorn’s residence
(Southwest corner of Termino Avenue and E. Wilton St.), Mr. Van Dorn may not be a proper
appellant in this appeal.

1 service, personal communications services, and paging services, consisting of equipment,
2 antennas, and network components such as towers, utility poles, transmitters, base stations,
3 conduits, pull boxes, electrical meters, and emergency power systems. WTF does not include
4 radio or television broadcast facilities, nor radio communications systems for government or
5 emergency services agencies. LBMC 15.34.020.EE. "Public right-of-way" means any public
6 highway, street, alley, sidewalk, parkway, parking lot, and all extensions or additions thereto
7 which is either owned, operated, or controlled by the City, or is subject to an easement or
8 dedication to the City, or is a privately-owned area within City's jurisdiction which is not yet
9 dedicated, but is designated as a proposed public right-of-way on a tentative subdivision map
10 approved by the City. LBMC 15.34.020.S.
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13 The Application sought a permit for the installation of a proposed WTF in the public
14 right-of-way adjacent to the property located at 1614 Termino Avenue, which is in a residential
15 zoning district. The proposed WTF will be integrated into a new light pole that will replace the
16 existing light pole at the site that is designated as "CA002_LBC_LNGBCH-059" in the
17 Application ("Site"). The existing light pole is located on the Southeast corner of Termino
18 Avenue and E. Wilton Street and faces E. Wilton Street. (*See* Respondent's Gr. Ex., p.242). The
19 existing light pole is twenty-five (25) feet and six (6) inches high (without luminaire).
20 (Respondent's Gr. Ex., pp. 212-213). The replacement light pole would be twenty-six (26) feet
21 high (without luminaire). (*Id.*). Three integrated antennas will be placed at the top of the pole,
22 with the bottom of the antennas twenty-one (21) feet eight (8) inches from the ground.
23 (Respondent's Gr. Ex, pp. 203, 212-213). Three (3) pull boxes for fiber and power will be placed
24 in the parkway next to the pole with all associated cables routed inside the pole. (*Id.*).
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1 Upon three (3) subsequent rounds of reviews and plan revisions—the latest being August
2 24, 2020—the City approved the Application on August 31, 2020. (See approval stamp on
3 Respondent’s Gr. Ex., pp. 204-236). Thereafter, pursuant to LBMC 15.34.030.K., a notice of the
4 approval was mailed out on September 22, 2020, and a posted notice was placed on the pole
5 adjacent to Appellant’s home and on the Site on September 22, 2020. (See Respondent’s Gr. Ex.,
6 pp. 240-244 [proof of mailing]; Respondent’s Gr. Ex., pp. 245-247 [proofs of posting]). Said
7 posted notice triggered the commencement of the 10-day appeal period under LBMC
8 15.34.030.L. The deadline for filing an appeal was October 6, 2020. Appellant filed the Appeal
9 on September 28, 2020. (See Respondent’s Gr. Ex., pp. 1-5).
10

11 **III. LEGAL AUTHORITY FOR APPEAL**

12 LBMC 15.34.030.L. (Appeal of Tier B Wireless Right-of-Way Facility Permit)
13 provides ...
14

- 15 1. Appeal Allowed. The applicant for a Tier B Wireless Right of Way Facility
16 Permit, and/or any person owning or residing at property that is adjacent to
17 or across the street to the location of a proposed Tier B Wireless
18 Telecommunications Facility, may appeal an approval or denial of an
19 application for a Tier B Wireless Right-of-Way Facility Permit. An appeal
20 must be in writing and must be submitted to the City Clerk within ten (10)
21 business days of the date the notice was mailed and posted as required under
22 Subsection 15.34.030.K.2, above.
- 23 2. Public Hearing Required. If an appeal is timely submitted, an independent
24 hearing officer selected by the City shall hold a public hearing. The City
25 Clerk shall set a date for the hearing that is at least fifteen (15) business
26 days, but no more than sixty (60) business days, after the City Clerk's receipt
27 of the appeal, unless the applicant and any person submitting an appeal agree
28 to a later hearing date.
3. Notice of Public Hearing Date. At least ten (10) business days before the
public hearing, the City Clerk shall notify in writing any person submitting
an appeal, the applicant, and any City department that reviewed the
application of the date set for the public hearing. The City Clerk shall follow
its regular procedures for notifying the general public of the hearing.

- 1 4. Public Hearing Record. The public hearing record shall include:
- 2 a. The application and the Department of Public Works' approval of the
- 3 application;
- 4 b. Any written determination from the Department of Public Works;
- 5 c. Any further written evidence from any City departments submitted either
- 6 prior to or during the hearing;
- 7 d. Any written submissions from the applicant, any person submitting an
- 8 appeal, or any other interested person submitted either prior to or during
- 9 the hearing; and
- 10 e. Any oral testimony from any City departments, the applicant, any person
- 11 submitting a protest, or any interested person taken during the hearing.
- 12 5. Hearing Officer Determination. The Hearing Officer shall issue a written
- 13 resolution containing its determination within fourteen (14) business days
- 14 following the close of evidence at the conclusion of the public hearing on
- 15 the appeal. The resolution shall include a summary of the evidence and the
- 16 ultimate determination whether to grant, grant with modifications, or deny
- 17 the appeal.
- 18 6. Notice of Determination on Appeal.
- 19 a. The City Clerk shall promptly mail a notice of a determination on an
- 20 appeal to both the applicant, to any neighborhood association identified by
- 21 the Department of Development Services for any neighborhood within three
- 22 hundred (300) feet of the approved wireless telecommunications facility, and
- 23 to any person who either filed a protest, submitted evidence, or appeared at
- 24 the hearing, and whose name and address are known to the Department of
- 25 Public Works.

26 **IV. LEGISLATIVE BACKGROUND FOR WIRELESS TELECOMMUNICATIONS**

27 **FACILITIES**

28 **1. Federal and State Laws and Regulations**

In 1996, Congress conducted a major overhaul of the telecommunications law in almost 62 years in the Telecommunications Act of 1996 ("Act"). The goal of this new law is to let

1 anyone enter any communications business—to let any communications business compete in any
2 market against any other. The Federal Communications Commission (“FCC”) was then tasked
3 to create fair rules for this new era of competition. The advent of the newest generation of
4 wireless broadband technology known as “5G” requires the installation of thousands of “small
5 cell” wireless facilities. These facilities have become subject to a wide variety of local
6 regulations. *City of Portland v. United States* (9th Cir. 2020) No. 18-72689, p. 29. The
7 Federal Communications Commission (FCC) in 2018 therefore promulgated orders relating to
8 the installation and management of small cell facilities, including the manner in which local
9 governments can regulate them. *Id.* Sections 253(a) and 332(c)(7) of the Act provided FCC with
10 the statutory authority for limiting local regulation on the deployment of [5G] technology that
11 reflects congressional intent in 1996 to expand deployment of wireless services. *Id.* at p. 30.

14 These limitations provide that local government regulations:

- 15 a. shall not unreasonably discriminate among providers of functionally equivalent
16 services, 47 U.S.C. § 332(c)(7)(B)(i)(I);
- 17 b. shall not prohibit or have the effect of prohibiting the provision of personal
18 wireless services, 47 U.S.C. § 332(c)(7)(B)(i)(II);
- 19 c. a local government ... shall act on any request for authorization to place,
20 construct, or modify personal wireless service facilities within a reasonable period
21 of time after the request is duly filed with such government². 47 U.S.C. §
22 332(c)(7)(B)(ii).

26 ² The FCC has specifically shortened the shot clock for approving/denying applications for installation
27 of WTFs on existing infrastructure (i.e., collocation) from 90 to 60 days and from 150 to 90 days for all
28 other collocation applications. *Accelerating Wireless Broadband Deployment by Removing
Barriers to Infrastructure Inv.*, 33 FCC Rcd. 9088 (2018), ¶¶ 104–05, ¶ 132, ¶ 136.

1 d. No State or local government or instrumentality thereof may regulate the
2 placement, construction, and modification of personal wireless service facilities
3 on the basis of the environmental effects of radio frequency emissions to the
4 extent that such facilities comply with the Commission's regulations concerning
5 such emissions. 47 U.S.C. § 332(c)(7)(B)(iv).
6

7 Those provisions authorize the FCC to preempt any state and local requirements that “prohibit or
8 have the effect of prohibiting” any entity from providing telecommunications services. *Id.* *See*
9 *also* 47 U.S.C. § 253(a), (d). Consequently, the FCC promulgated orders limiting local
10 governments in regulating the deployment of 5G technology in order to remove the barriers to
11 entry for businesses to compete in the telecommunications market.
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13 California case law and statutory authorities provide additional regulatory guidance for
14 installation of WTFs. Wireless providers are granted a statewide franchise to engage in the
15 telecommunications business. Pub. Util. Code § 7901; *see also T-Mobile West LLC v. City and*
16 *County of San Francisco* (2019) 6 Cal.5th 1107, 1117). In *T-Mobile*, the California Supreme
17 Court held that while the California legislature did not intend to deprive local governments of
18 the ability to impose aesthetic regulations and public safety issues, local agencies must
19 nonetheless respect that statewide franchise when making decisions on proposed facilities. *Id.*
20 Further, California Public Utilities Commission (“PUC” or “Commission”) reserves the right to
21 preempt local decisions about specific sites “when there is a clear conflict with the
22 Commission’s goals and/or statewide interests.” (PUC, General order No. 159-A (1996) p. 3
23 (General Order 159A), available at < <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/611.PDF>>)
24 Generally, the PUC will step in if statewide goals such as “high quality, reliable and widespread
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1 cellular services to state residents” are threatened. (*T-Mobile West, supra*, 6 Cal.5th at 1124,
2 citing General Order 159A, at p. 3.).

3 **2. The City’s Telecom Ordinance**

4 On May 1, 2018, the City adopted LBMC §15.34, Wireless Telecommunications
5 Facilities in the Public Rights-Of-Way (“Telecom Ordinance). The Telecom Ordinance governs
6 the installation of WTFs within the jurisdiction of the City of Long Beach, and the City’s scope
7 of regulatory authority for the installation of WTFs is limited to this ordinance. The Telecom
8 Ordinance provides for the requirements and standards for WTFs in the public right-of-way.
9 These include comprehensive permit requirements and standards (LBMC 15.34.030.B),
10 application process requirements (application, review, and approval) (LBMC 15.34.030.D),
11 conditions of approval (LBMC 15.34.030.F), notice following approval (LBMC 15.34.030.K),
12 and the appeal process of a Tier B³ WTF permit (LBMC 15.34.030.L). The Telecom Ordinance
13 also provides for, among others, compliance and modifications, of WTFs after installation
14 (LBMC 15.34.030.N; LBMC 15.34.030.S).

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17 **V. STATEMENT OF ISSUES OF APPEAL BEFORE THE HEARING OFFICER**

18 By letter dated September 28, 2020, Appellant stated her objections regarding two issues.
19 More specifically, Appellant stated that as a homeowner located within feet of the proposed
20 WTF, she is concerned about its potential health effects (be that now or in the future). Appellant
21 added that she has tried to research the impact on people living next to a WTF, and it appears
22 more studies are needed to rule out any possible side effects. While there are no hard and fast
23 rules, Appellant stated however that she came upon several studies that suggest living within 500
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27 ³ “Tier B Wireless Telecommunications Facility” means a wireless telecommunications facility
28 where the proposed location for the facility is in a Planning Protected Location, Coastal Zone
Protected Location, or Zoning Protected Location.

1 feet of a WTF can be harmful to one's health, and that there is a big difference in walking by a
2 WTF daily as opposed to living within feet of a WTF. With her grandchildren who also live with
3 her, Appellant's main concern is their well-being. Furthermore, Appellant raised the possible
4 effects on her property's value as a result of the proposed WTF. Appellant also requested the
5 City to relocate the location of the proposed WTF.
6

7 Upon receipt of Appellant's letter, the Long Beach City Clerk's office then scheduled a
8 formal hearing with regard to Appellant's objections.

9 **VI. SUMMARY OF RELEVANT EVIDENCE INTRODUCED BY PARTIES**

10 **1. Appellant's Evidence**

11 During the WebEx virtual hearing on November 18, 2020, this hearing officer explained
12 to all the participants the guidelines for the hearing. These include examination of witnesses and
13 presentation of evidence. It was stated on the record that the hearing officer received the City's
14 submission package⁴ in advance of the hearing both in hardcopy and electronic format. The
15 hardcopy was received at this hearing officer's business address and included a Proof of Service
16 indicating that the hardcopy was sent to said business address and to Appellant's address on
17 record. The package also included a Proof of Service that the electronic copy was transmitted to
18 the email addresses of the hearing officer, the Appellant, and the Applicant's representatives.
19

20 During the hearing, all parties acknowledged receipt of the City's submission package.
21

22 In addition to the September 28, 2020 letter from Appellant, Appellant provided an
23 additional statement on the record that was read during the hearing. In her statement, Appellant
24 reaffirmed her concerns of the health risks associated with WTFs, and cited statements and
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28 ⁴ The City's submission package included a copy of Appellants' letter dated September 28, 2020.

1 studies by the FCC, American Cancer Society, and International Commission on Non-Ionizing
2 Radiation Protection (ICNIRP).

3 **2. The City's (and Applicant's) Evidence**

4 In advance of the formal hearing, the City submitted the following evidence
5 (Respondent's Group Exhibit) in support of its opposition to the appeal:
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- 7 • September 28, 2020 Appeal Letter to the City of Long Beach from Vickie Wilson
8 (Respondent's Group Exhibit Pages 1-5)
- 9 • Verizon's February 7, 2020 City of Long Beach Application (Respondent's Group
10 Exhibit Pages 6-15)
- 11 • Verizon Master License Agreement (MLA) (which includes Verizon's
12 maintenance obligations) (Respondent's Group Exhibit Pages 16-110)
- 13 • Small Cell Noise Study (Respondent's Group Exhibit Pages 111-120)
- 14 • Coverage Map - Verizon (Respondent's Group Exhibit Page 121)
- 15 • Structural Analysis (Respondent's Group Exhibit Pages 122-201)
- 16 • Radio Frequency Electromagnetic Fields Exposure Analysis Letter dated June 5,
17 2020 (Respondent's Group Exhibit Pages 202-203)
- 18 • August 31, 2020 - Approved Application (Respondent's Group Exhibit Pages
19 204-236)
- 20 • Tier B Justification (Respondent's Group Exhibit Pages 237-239)
- 21 • Mailing and Posting Notification (Respondent's Group Exhibit Pages 240-247)
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25 The Applicant also conducted a presentation during the hearing that discussed the (1)
26 increasing need for better wireless infrastructure in the City of Long Beach, (2) photo depictions
27 of the existing light pole and proposed WTF, (3) alternative locations for the proposed WTF that
28

1 were evaluated by Applicant, and (4) health and safety key facts regarding wireless RF
2 technology.

3 Upon conclusion of Applicant’s presentation, no additional evidence was submitted by
4 the City or Applicant during the hearing, and this hearing officer then closed the evidentiary
5 portion of the appeal.
6

7 **VII. DISCUSSION**

8 **1. Health Concerns**

9 Appellant’s main issue addressed on her appeal letter appear relates generally to “health
10 concerns.” (Respondent’s Gr. Ex., pp. 1-5). More specifically, the references cited by Appellant
11 discuss the alleged impact of radio frequency emissions on human health. However, Appellant’s
12 references actually state that current research does not conclusively establish a link between RF
13 radiation and its negative impact on human health. (*See Appellant’s statement during hearing*):
14

- 15 • *“It is generally agreed that further research is needed to determine the*
16 *generality of such effect and their possible relevance, if any, to human*
17 *health. In the meantime, standards-setting organizations and government*
18 *agencies continue to monitor the latest experimental findings to confirm*
19 *their validity and determine whether changes in safety limits are needed to*
20 *protect human health.”*
- 21 • *“RF waves don’t have enough energy to damage DNA directly. Because of*
22 *this, it’s not clear how RF radiation might be able to cause cancer. Some*
23 *studies have found possible increased rates of certain types of tumors in*
24 *lab animals exposed to RF radiation, but overall, the results of these types*
25 *of studies have not (again, have not) provided clear answers so far.”*
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- 1 • *“Currently no scientific evidence establishes a causal link between*
- 2 *wireless device use and cancer or other illnesses.”*
- 3 • *“A 2019 review of two studies by the International Commission on Non-*
- 4 *Ionizing Radiation Protection (ICNIRP) determined that the limitations of*
- 5 *the studies didn’t allow conclusions to be drawn regarding the ability of*
- 6 *RF energy to cause cancer.”*
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8 Although studies cited by Appellant do not rule out the possibility that RF radiation
9 might somehow negatively impact human health, they also do not conclusively support
10 Appellant’s argument that RF radiation has a deleterious effect on human health.

11 Furthermore, the City’s regulatory authority in this regard is limited and preempted by
12 federal law. 47 U.S.C. § 332(c)(7)(B)(iv) (“No State or local government or instrumentality
13 thereof may regulate the placement, construction, and modification of personal wireless service
14 facilities on the basis of the environmental effects of radio frequency emissions to the extent that
15 such facilities comply with the [FCC]’s regulations concerning such emissions.) The Applicant’s
16 submission of a Wireless Radio Frequency Compliance Evaluation report demonstrating that the
17 emissions from the proposed WTF is within general population and occupational limits
18 established by the FCC for radio frequency emissions complies with FCC regulations.
19 (Respondent’s Gr. Ex., pp. 202-203). There is, therefore, no basis to deny the approved permit
20 for the proposed WTF on the basis of “health concerns.”

24 **2. Property Values**

25 Appellant’s next argument hinges on “property value decrease.” (See Respondent’s Gr.
26 Ex., p. 1). However, Appellant submitted no evidentiary support on the impact of WTFs on
27 residential property values, or more specifically, the impact on the value of her residential
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1 property. Notwithstanding the lack of evidentiary support for Appellant’s argument with regard
2 to “property value decrease,” the Telecom Ordinance is silent with regard to property values and
3 does not factor this criterion in evaluating WTF installations. LBMC 15.34.030. Consequently,
4 the Telecom Ordinance does not vest in this hearing officer the authority to consider property
5 values in determining whether to deny or uphold the approved permit.
6

7 **VIII. RECOMMENDATION**

8 Appellant is a credible witnesses. This hearing officer has no reason to doubt the
9 veracity and sincerity of Appellant’s statements in either her appeal letter or during the formal
10 hearing. However, inasmuch as Appellant’s concerns and grievances warrant serious
11 consideration, Appellant has otherwise offered no legal basis or relevant evidence in support of
12 her appeal. In contrast, the City submitted a comprehensive package in opposition to the appeal
13 that included its brief and supporting legal authorities and relevant evidence. The City’s
14 evidence included all the materials and documentation that the Applicant submitted to the City
15 as part of the application process. After three (3) rounds of reviews and plan revisions, the City
16 determined that the Applicant’s proposed WTF met all the applicable requirements and
17 standards set forth in the LBMC 15.34, and approved the permit application accordingly. As
18 stated above, this hearing officer is bound by the provisions of the LBMC 15.34, and cannot
19 look elsewhere in making its determination. Accordingly, this hearing officer has found
20 nothing on the record to determine that the Applicant’s permit for the proposed WTF was
21 granted in violation of LBMC 15.34.
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