

Prine, Laura

From: Momsen, Richarda D.
Sent: Thursday, May 31, 2007 9:10 AM
To: Byrd, Susannah M
Cc: Lopez, Irma; Prine, Laura
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Sure.

From: Byrd, Susannah M
Sent: Thursday, May 31, 2007 9:10 AM
To: Momsen, Richarda D.
Cc: Gutierrez, Miriam J
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Thanks Richarda. Can you include the same backup but add this email to the front of the backup?
Susie

From: Momsen, Richarda D.
Sent: Thursday, May 31, 2007 9:02 AM
To: Byrd, Susannah M
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Rep. Byrd,

Good morning. We'll place the item on the June 4th agenda.

Richarda

From: Byrd, Susannah M
Sent: Thursday, May 31, 2007 8:59 AM
To: Mayor and Council and Staff; Momsen, Richarda D.
Cc: dcrowder@elpasotimes.com; Frank Ainsa (fain@acaciapark.com); jsrutledge@earthlink.net; Gutierrez, Miriam J
Subject: FW: Regular Agenda for City Council Meeting of May 29, 2007

Dear Mayor and Council:

Frank Ainsa, who represents Team Mobile and has been my contact on the dispute that I have with Team Mobile regarding the cell tower at 2219 Piedras, requested that we revisit the issue regarding the complaint to the cell tower so as to allow him to give Team Mobile's perspective on the issue.

In Wednesday's article Team Mobile asserted that they were not contacted about the issue. In fact, I emailed Mr. Ainsa last Thursday (see email below), emailed him again on Friday with a copy of the letter and had my office call on Friday to verify that they had received the information that I emailed. His assistant told Judy that Mr. Ainsa had received the email but that he was in depositions so she was not sure what his response would be. When he was not at Council on Tuesday, I assumed that Team Mobile had decided not to respond. Mr. Ainsa called me on Tuesday afternoon and indicated that he had been in depositions and had not had a chance to check his email until Tuesday. At that time, he requested that we not send off the letter and that I give him a chance to speak with Council regarding Team Mobile's position on this issue.

5/31/2007

It was my intention to give Team Mobile a chance to address this issue at council which is why we were so diligent in alerting Mr. Ainsa to the posted item. Because this somehow did not reach him, I will put this item on the agenda for Tuesday so that you can hear from Team Mobile.

I would still ask for your support on this issue.

Sincerely,

Susie Byrd

From: Byrd, Susannah M
Sent: Thursday, May 24, 2007 2:13 PM
To: Frank Ainsa (fain@acaciapark.com)
Subject: FW: Regular Agenda for City Council Meeting of May 29, 2007

Frank:

I just wanted to give you the heads up that I have posted this item regarding the Piedras cell tower for Tuesday's agenda (see posted item below). I will also email you the letter and the backup that I am including as part of the agenda. I can include your response to my concerns in the backup if you would like. Please let me know as I will be assembling the backup tomorrow morning.

I am asking for the mayor and council's blessing for the letter. If they disagree with me, I will just send the letter as a city representative, rather than having the mayor's signature on it.

Let me know if you have any questions.

Thanks
Susie

From: Gutierrez, Miriam J
Sent: Thu 5/24/2007 11:03 AM
To: City Clerk
Cc: McNabb, Charlie; Mayor and Council and Staff
Subject: Regular Agenda for City Council Meeting of May 29, 2007

Representative Susie Byrd is authorizing placement of the following item for Regular Agenda for City Council meeting of May 29, 2007.

Discussion and action to file a complaint with the Federal Communications Commission against Team Mobile for their failure to comply with the Nationwide Programmatic Agreement for Review of Effects on Historic Properties in the installation of a cell tower located at 2219 Piedras Street by City Representative Susie Byrd, 915-541-4996

(back-up forthcoming)

Judy Gutierrez
Assistant to Rep. Susie Byrd
District #2
915-541-4996
FAX: 541-4348

JOHN COOK
MAYOR

JOYCE WILSON
CITY MANAGER



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, JR., DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

12F

MEMORANDUM

TO: Mayor and Council
CC:
FROM: Susie Byrd, City Representative, District #2
DATE: May 24, 2007
RE: Complaint to the FCC re: a cell tower in my district

I would like your support in sending this letter of complaint to the Federal Communications Commission regarding a cell tower that was constructed in my district. The letter of complaint and the backup contains the pertinent information.

If you have any questions, please contact me.

Thank you for your consideration.

Sincerely,

Susie Byrd

May 9, 2007

Mr. Dan Abeyta
Assistant Deputy Chief
Spectrum and Competition Policy Division
Wireless Telecommunications Bureau
445 12th Street SW
Washington, DC 20554

Dear Mr. Abeyta:

We have been advised by a Mr. Frank Stillwell that we should write you regarding a concern that we have about a cell tower recently constructed in El Paso, Texas at 2219 Piedras.

A cell tower was built by Team Mobile within 340 feet and within the Area of Potential Effects (APE) of the Manhattan Heights Historic District. After reviewing the documents submitted to the State Historic Preservation Office (SHPO), it is our contention that Team Mobile failed to meet the standards outlined in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission. Further, Team Mobile provided information that we contend was inaccurate and misleading in their communication with SHPO, the City and the public. Team Mobile's failure to provide accurate information resulted in an inadequate review of the application by the public and the Texas Historical Commission of the cell tower's impact on the historic district.

We ask that the FCC investigate and take appropriate action against Team Mobile for their failure to adequately comply with the provisions in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties and for providing inaccurate information to SHPO.

For your review and consideration, we have enclosed a copy of the Team Mobile's NT Submission Packet and other relevant documents.

Here is a summary of our concerns:

INACCURATE INFORMATION

In the submission packet submitted to THC on July 11, 2006, Team Mobile describes the tower as a 75 foot tower. Team Mobile had submitted a building permit application with the City for the same location on June 27, 2006. In the application to the City, they described the proposed tower as a 90 foot tower. The tower was constructed as a 90 foot tower. (After the inconsistency was discovered, Team Mobile lowered the tower height to 75 feet, however, this failed to mitigate adverse effects on the historic district.)

In Attachment 10 of their submission to SHPO, Team Mobile describes the effects on identified properties. The historic district is eligible for historic preservation based upon

its architecture, landscape architecture and community planning. Team Mobile indicates in this attachment that “the installation of the tower will not diminish the district’s integrity, nor will it alter any of the characteristics of the district that make it eligible for inclusion on the National Register.” Team Mobile uses the following assertions to support this finding of no adverse effects:

- **FROM THE SUBMISSION PACKET.** “No significant elements of the district were observed within 1,000 feet of the proposed tower location.”
 - **OUR CONTENTION.** In fact, the whole neighborhood has been designated historic as all homes in the area are representative of the significant features that made the area eligible for historic preservation designation including architecture, landscape architecture and community planning. The whole northern portion of the district can be viewed within 1,000 feet of the proposed tower location.
- **FROM THE SUBMISSION PACKET.** “The upper portion of the tower will be in view from some points in the northern part of the district, however, the terrain slopes down to the south and east from the proposed tower location and the tower will not be visible in most areas of the district.”
 - **OUR CONTENTION.** The tower can be seen from all parts of the district. The terrain, in fact, adds to the visibility of the tower from the district.
- **FROM THE SUBMISSION PACKET.** “The tower will be set back sufficiently from North Piedras Street that it will not be directly be in the view corridor along the street.”
 - **OUR CONTENTION.** The tower is only set back 15 feet from the property line. The tower is in direct line of site along the view corridor of the street. In fact, the tower can be seen from the bottom of the district along the view corridor of the street.

It is our contention that the assertions made to defend its finding of no adverse effects are either inaccurate or misleading. Had the public had adequate opportunity to review these assertions, we could have worked with SHPO to mitigate the adverse impacts the tower has on the historic district.

INADEQUATE PUBLIC REVIEW

Per the Nationwide Programmatic Agreement, **ON OR BEFORE** the date the applicant submits the Submission Packet to SHPO, they must notify the public either through a public notification provisions of the relevant zoning or local historic preservation process OR by publication in a local newspaper. In their submission to SHPO, Team Mobile in attachment 5 says they will meet this standard “during the application and review process for the City of El Paso zoning permit.” Before the date of submission to SHPO on May 24, 2006, the City of El Paso verified to Team Mobile that they had the proper zoning on the property to construct the tower as proposed. Because of this, Team Mobile knew that they would **not have to go through a public hearing** to change the zoning of the property. Team Mobile knew they would not have to go through a public hearing process for zoning, but they still indicated to SHPO that that is how the public would be involved in reviewing the affects on the Historic District. They provided false information to

SHPO that led SHPO to believe that Team Mobile was complying with the public involvement criteria requirement.

AFTER the submission of the packet to SHPO on July 20, 2006, Team Mobile advertised the tower in the newspaper. However, they gave a deadline of July 28 for responding to the notification, allowing only 8 days for public comment on the proposed tower. Because they published this notice **AFTER** submission, the publication does not comply with the provisions in the Agreement.

Per their obligation under the Agreement, Team Mobile did write a letter on July 10 to the City of El Paso inviting them to be a consulting party. However, even though they knew that the Manhattan Heights Historic District was within the APE of the tower and one day later sent a letter to SHPO stating this, they failed to disclose this to the City of El Paso in their letter. The City did not have adequate information or notice to allow them to become a consulting party.

The cell tower has had a negative impact on the historic district. Many neighbors have called to complain that they believe it negatively impacts the quality of life and the character of the neighborhood. We have tried to work with Team Mobile to get them to do what they should have done in the first place: actively engage the public to minimize the tower's impact on the historic district. Because Team Mobile has refused to do this, we have decided to contact the FCC.

It is our contention that Team Mobile has not met their obligations under the Agreement, and they have provided inaccurate information to SHPO that did not allow for proper review of the effects on the historic district.

In another instance where the Historic District was within the APE of a proposed cell tower, the public and the City were given adequate notice under the provisions in the Agreement. Because the public had adequate notice and the correct information regarding the proposal, the public and the City were able to influence the design of the cell tower, ultimately resulting in a tower with significantly less adverse effects on the historic district than the one described in this letter.

We ask that the FCC investigate and take appropriate action against Team Mobile for their failure to adequately comply with the law and for providing false and misleading information to SHPO and the public. Team Mobile could mitigate the negative impact to the district by camouflaging the tower as other cell tower providers who have built towers in or near the historic district have done.

Thank you for your consideration.

John Cook
Mayor
City of El Paso