

From: [REDACTED]
To: [Ann Ritzma](#); [Al Roysse](#); [Christine Krolik](#); [Marie Chuang](#); [Sophie Cole](#); [Larry May](#)
Cc: [Wireless Comments](#); [Christopher Diaz](#); [Lisa Natusch](#)
Subject: PLEASE READ - Public comment for special meeting of Town Council on 5/20/21 at 5PM - Due to Brown Act Violations of required notice, please terminate this meeting. Please enter these into the public record
Date: Thursday, May 20, 2021 4:34:42 PM
Attachments: [2021_05_20 Letter to City Council.pdf](#)
Importance: High

Mayor & Town Council,

I object to the process the town is proposing to review and approve the 13 applications that were submitted by Crown Castle on behalf of Verizon. Here are my specific objections to the proposed process and my requests. Please enter this email into the public record:

1. This meeting is in violation of the Brown Act and should be terminated immediately and re-scheduled. The Town has failed to provide sufficient notice to the public. The town is required by law to post notice of this meeting on the Town's "Public Notice" web page: <https://www.hillsborough.net/290/Public-Notices>. The page contains no such notice. Please terminate this meeting and reschedule.
2. The settlement agreement the Town entered with Crown Castle is not lawful and the Town's numerous Brown Act violations make this application review process null and void.
3. All proposed tower applications violate current municipal code and wireless design standards, and any approval of these applications will be evidence of a "pre agreement" to approve unlawfully granted legislative concessions to Crown Castle .
4. The review process should not begin since the applications are still incomplete. No current application documents the proposed tower's setback from residential structures. Nor is there any calculation or attestation that the proposed location meets the setback requirements in our municipal code.
5. Once the applications are complete and the setback distance for the proposed location is documented, the town must verify and provide the calculations and supporting data as a part of the City Manager's written findings. At this point neither the applicant nor the town are documenting or certifying that the proposed towers comply to the minimum setbacks in our code. Any process to review of the applications must include due diligence for setbacks.
6. With regards to the tower at H27M3 (and all proposed towers on Town-owned land):
 - a. These towers are not subject to Telecommunications Act of 1996 and California Public Utilities Code section 7901. As such the town has the responsibility to follow section 15.32 of the municipal code. There are no federally mandated timelines so due diligence in the review of these application is both permissible, need not be rushed, and is required under our code. Please see the attached letter from my attorney William Parkin on this subject.
 - b. HMC section 15.32.070(D) states that "The city council shall adopt design and development standards for WCFs, consistent with the requirements of this section." The City Council has adopted Resolution 19-03 to implement Policy 19-01 for this section. It has been asserted that this resolution does not apply to the Town-owned properties. However, the resolution does not explicitly exclude Town-owned properties. Moreover, if the resolution does not apply, then the Council is violating

HMC section 15.32.070(D) for failure to adopt design standards that apply to Town property.

- c. I object to the town making a legislative concession on the review and approval process to Crown Castle in the settlement agreement. The town had no right to assert that they would bypass 15.32.080 and 15.32.090 at the time of the settlement since no applications had been submitted at that time. The fact that the Town changed the review and approval process as a part of the settlement before applications were submitted is further evidence of the Town's Brown Act violations.
 - d. I object to the City managers decision to circumvent her duties under 15.32.080. For the proposed towers on town-owned land (and all towers):
 - i. The City Manager must abide by 15.32.080.D and "shall make written findings referencing substantial evidence in the town's written administrative record in support of the action. The applicant and each owner of real property who was entitled to notice of the application as provided in Section 15.32.060.B. shall receive a copy of the town's written decision and findings with respect to the decision. Such copy shall also plainly state the process and deadline for filing an appeal to the city council."
 - ii. There is no effective prohibition argument for town-owned land as such the city mangers assertion that she must pass the application for H27M3, H12M3, H02M3 to the Town Council is flawed and unlawful. She may not pass on her duties for these towers because the tower applications on Town-owned land can never satisfy the requirements for her referral to Town Council under 15.32.080.D which states that she must make:
 - "a finding that the applicant has demonstrated that the refusal to grant such an exception and approve the application would prohibit or have the effect of prohibiting the provision of personal wireless services within the meaning of 47 U.S.C. section 332(c)(7), or finds that the town authority to deny the application is otherwise preempted or prohibited by state or federal law." Since the Town Is not bound by the FCC order the litmus test of Effective Prohibition (EP) cannot even be performed since EP doe not apply to Town-owned land so the city manager must do perform her duties under 15.32.080
 - iii. I object to the fact that the Town Council, and City Manager, by not following 15.32.080 have effectively and unlawfully removed the citizen's right to appeal under 15.32.090. Please compel the City Manager to complete her duties, provide written findings to each property owner and restore the citizens' right to appeal as required under 15.32.090 of the municipal code.
 - e. The H27M3 site is an active American Bald Eagle habitat and nesting site. Pursuant to CEQA a full environmental impact analysis and report must be performed as part of the review process. The town has the right, duty and authority to mandate this on town-owned land. Failure to do so could result in irreparable environmental harm.
6. Please adopt the following proposed schedule which provides sufficient time for the City Manager and Town Council to fulfil their duties as well as provide time for appeal as required by law:
- Public hearings

- May 24th – steel poles
 - May 27th – steel poles/wood poles
 - May 31 – Poles on Town-owned property
 - WCAC issue recommendation to City Manager – June 3
 - City Manager issue written decision and notice – June 10
 - Deadline to file appeal to City Council – June 17
 - Town issue public notice of Council hearing – June 18
 - Council conduct public hearing on the full application(s) – June 25
 - Council issue written decision – June 30
8. Please re-convene the WCAC to review these applications and make their meeting minutes public to foster transparency both to the Town Council as well as the public.
 9. As requested in several past meetings please elevate the WCAC to a formal committee reporting to the Town Council so they may hold public reviews of these applications like the ADRB does for other building permits. We heard during the recent election campaign from 3 council members that all said they wanted to reset the wireless committee to improved transparency and public trust. Why has there been no movement on this? Please abide by your campaign promises, reset the WCAC, elevate it to a formal committee reporting to Town Council and have that new forum review these applications.
 10. The town has authority to require setbacks from homes on town-owned property that are excess of those minimums required or right-of-way applications. I oppose the Crown Castle plan for H27M3 since it places a tower much too close to our homes. Towns like Los Altos Hills have 200 foot setback requirements from homes. Hillsborough can, and should, require stronger setbacks. A plan recently presented by a Hillsborough resident who is an expert in cellular technology and equipment adapted the Crown Castle plan and placed towers 150' away from homes. As a part of the review process for towers on Town-owned land please include a review of alternative sites since the Town can alleviate the burden of these towers on the nearby residents by keeping them away from homes.

I appreciate your consideration of the above objections to and suggestions for the wireless application review process.

Thank you,
John Lavrich

May 20, 2021

VIA EMAIL

The Honorable Alvin L. Royse and City Council
Town of Hillsborough
1600 Floribunda Avenue
Hillsborough, CA 94010

Re: Crown Castle's 13 Wireless Communications Applications

Dear Mayor Royse and City Council:

This law firm represents John Lavrich and Josh Burns regarding the above referenced applications.

Our clients object to the Town's approach and consideration of the three Wireless Communication Facilities (WCF) that are proposed on Town-owned property. First and foremost, Crown Castle's assertions that the any denial by the Town of its WCF Application for tower H27M3 violates the Telecommunications Act of 1996 and California Public Utilities Code section 7901 are not only overblown, but are wrong with respect to facilities proposed on the Town's own property. The Town's control over its own property is the same as a private landowner's rights with respect to WCF. No resident in Hillsborough can be forced to accept WCF on his or her own property to facilitate Crown Castle's commercial endeavors. Likewise, the Town is not preempted from prohibiting WCF on its own property. (See for example, *Calguns Foundation, Inc. v. County of San Mateo* (2013) 218 Cal.App. 661.) Indeed, the Town has to grant a lease or license to the Crown Castle to operate WCFs on its own property. No federal or state law can usurp the Town's interest in its property. Therefore, we urge the Town to deny any application for WCF on its own property. The Town has an unfettered right to deny such applications.

Second, our clients are concerned that the Town will not carefully review the WCF on its own property pursuant to the Town Code and Town policy. It is noteworthy that the WCF on the Town's own property are not exempt from HMC Chapter 15.32. The only exemption for Town-owned property is found in HMC section 15.32.130, which states that "WCFs installed or operated at the direction of the town for the sole use of the town, regardless of where located in the town, shall be exempt from this chapter, but as a matter of policy, shall be designed and located consistent with the design requirements of this chapter." If the Code intended to apply to commercial WCF such as those proposed by Crown Castle, then this exemption would say so under basic principles of statutory construction: *expressio unius est exclusio alterius*, meaning when one or more things of a class are expressly mentioned others of the same class are

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excluded. And even these exempt city facilities have to be consistent with the design requirements of Chapter 15.32.

Third, HMC section 15.32.070(D) states that “The city council shall adopt design and development standards for WCFs, consistent with the requirements of this section.” The City Council has adopted Resolution 19-03 to implement Policy 19-01 for this section. It has been asserted that this resolution does not apply to the Town-owned properties. However, the resolution does not explicitly exclude Town-owned properties. Moreover, if the resolution does not apply, then the Council is violating HMC section 15.32.070(D) for failure to adopt design standards that apply to Town property.

Finally, pursuant to the California Public Records Act, we are requesting copies of any agreement with Crown Castle, including but not limited to any lease or license agreement, with respect to the WCF on the Town-owned properties, including but not limited to any agreement for the proposed tower at H27M3. If you have them in electronic form, you can provide them via email at wparkin@wittwerparkin.com.

Thank you for your attention and consideration.

Very truly yours,
WITTMER PARKIN LLP



William P. Parkin

cc: clients

Christopher Diaz, Esq. (via email at Christopher.Diaz@bbklaw.com)
Ann Ritzma, City Manager (via email at aritzma@hillsborough.net)

From: [Rich Lane](#)
To: [Wireless Comments](#)
Subject: Crown Castle applications
Date: Thursday, May 20, 2021 4:36:57 PM

Gentlemen:

I oppose the Crown Castle plan because it places towers much too close to our homes. Towns like Los Altos Hills have 200 foot setback requirements from homes. Hillsborough can, and should, require stronger setbacks. A plan recently presented by a Hillsborough resident who is an expert in cellular technology and equipment adapted the Crown Castle plan and placed towers 150' away from homes. This is the type of plan Hillsborough City Council should be embracing.

In particular, I oppose Application H07m2, falsely identified as "Across from 2812 Easton Dr." If you take a look, you will see that 2812 Easton Dr. is around the corner from the actual site, which is on the parking strip in front of 2821 Easton. Furthermore, 2812 Easton is in Burlingame. To suggest that this site should be acceptable because it is across from some address in Burlingame is disingenuous. The fact is that this location is squarely in front of 2821 Easton and apparently 50 feet from the residence there. I estimate the proposed site to be 100 feet from my residence (2813 Easton).

In addition, inside my residence at 2813 Easton, I already receive 4G/LTE service of excellent quality from Verizon itself, so the intrusive WCF adds nothing to my service.

I am opposed to this meeting because the applications were incomplete: 1. No set back information was provided. Calculations based on Google Maps show 20ft to nearest residential dwelling and will fail the average setback of houses in 500ft radius; 2. No clear definition of 'concealed' was provided; 3. Neither the Town nor Crown Castle has provided any written evidence in the applications of an effective prohibition. Merely stating it in the application does not make the statement true.

There is PLENTY of time for the City Manager to do her job and render a decision on each of the applications AND to ensure there is an appeals process.

Dr. Richard Lane

[REDACTED]
Hillsborough, CA 94010

Preferred Phone:

[REDACTED] Cell and Personal Phone

206 339 5201 Internet Fax

[REDACTED] Residence

Permanent email address:

[REDACTED]
(Please note: it is NOT [REDACTED])