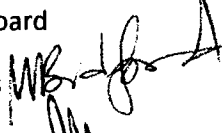





MONTGOMERY COUNTY DEPARTMENT OF PARKS
THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB Agenda Item #7
March 13, 2014

MEMORANDUM

TO: Montgomery County Planning Board
VIA: Mary Bradford, Director of Parks 
John Nissel, Deputy Director of Parks 
FROM: Michelle Grace, Acting-Park Property Manager
James Poore, Division Chief, Facilities Management

SUBJECT: Updated Procedures for Telecommunications on Park Property-MONTGOMERY PARKS

Recommendation:

Review and provide approval for adopting the Montgomery Park Department's administrative procedures for telecommunications facilities on Park property (currently titled Administrative Procedures for Telecommunications Facilities on Park Property), including the recommended title change to Telecommunication Facility Siting Procedures and Policy and Lease Application Documents, which include the application for lease agreement and the lease flow chart.

Key changes in the proposed revisions are:

- Coordination with the Montgomery County Transmission Facility Coordinating Group (TFCG).
- A park construction permit is not applied for until all levels of approvals are obtained.
- A lease is not executed in advance of the approvals; instead a Letter of Intent (LOI) is provided.

On December 12, 2013, the Montgomery County Planning Board (MCPB) provided guidance on whether to adopt the draft telecommunication siting procedure to impact the Montgomery Parks only or to develop and adopt a full M-NCPPC policy, by coordinating the drafting with Prince George's County Department of Parks and Recreation. The direction provided is to pursue the adoption of the draft telecommunication siting procedure for Montgomery Parks, and share the adopted policy with Prince George's Parks and Recreation so that a separate document can be ultimately established and contain much of the same as it pertains to Prince George's.

Background: In response to the County's request for a policy and lease agreement for siting telecommunications facilities on M-NCPPC property in 1997, the MCPB approved the current Park policy and administrative process for consideration of requests from the telecommunications industry to install telecommunication towers on Park property. Since then, while demands for connectivity to offer high-speed and additional capacity for delivery of advanced 4G wireless services to County residents have dramatically changed and requests for use of Park property accelerated, the Department of Parks

policies have not been updated since their initial approval. The demand for new wireless communications site options in Parks has accelerated by two and a half times (250%) in 2013 alone. The Department of Parks received 15 requests for siting towers since April 2013, which require our collective staff review and feedback. Most of these requests require timely response, with accurate feedback after visiting the site with the carriers, their consultants, and staff from both Parks and Planning Departments.

Park Property Management within the Department of Parks is charged with the oversight of leased Park property, which includes: lease administration services such as drafting, negotiating and processing of leases, rent collection, and enforcement. In private third-party leasing, rent is determined based on actual current fair market data.

Currently six wireless carriers maintain lease agreements for telecommunication facilities on Park property: three cell towers are located in Wheaton Regional Park Maintenance Yard, Blair Local Park, and Trolley Museum and three carriers are collocated on two of these three towers. With the exception of two, the remaining lease agreements have been in place for over 10 years, and the agreements are simply outdated. Older leases will be phased out as terms expire. There are potentially three new tower applications in process, with more possible.

In addition to six wireless carriers, two private fiber optic networks are located in underground vaults and run in a linear format on Park property. The placement of underground telecommunications equipment is not subject to the same regulatory guidelines, but is treated similarly in the M-NCPPC review process.

New Telecommunications Facility Siting Procedures and Documents (for Montgomery Parks only) included in this recommendation are:

1. Updated M-NCPPC- Montgomery Parks **Administrative Procedures and Policy**
2. Telecommunications Facility Lease Agreement **Flow Chart**
3. **Application** for Telecommunications Facility Lease Agreement

The draft documents prepared for the MCPB's consideration have been reviewed by staff from the Montgomery County Department of Parks and the Montgomery County Planning Department.

The Department of Parks considers applications for telecommunication facility lease agreements independent of other reviews and approvals (see flow chart).

Discussion: The revisions will include the following (see flow chart):

1. Conduct joint site visit with applicant and staff from Park and Planning Departments, provide preliminary feedback.
2. Receipt of complete Application for Telecommunications Facility Lease Agreement, and non-refundable \$1,500 application fee.
3. Conduct joint community meeting (applicant and M-NCPPC).
4. Conduct facility site location request hearing by Montgomery County Planning Board.
5. Issue LOI, if approved.
6. Execute Lease, if approvals, including request for special exception.
7. Receipt of complete Park Construction Permit Application.

In June 1997, the Montgomery County Planning Board (MCPB) approved the Administrative Procedures for Telecommunication Facilities on Park Property to facilitate current industry and public agency practices, which are now outdated. Along with changes to the regulatory guidance by the Federal Communications Commission (FCC), revisions to both the administrative procedures and the associated documents are necessary. The MCPB approval of the updated Administrative Procedures for Telecommunication Facilities on Park Property is recommended.

The draft Park policy and administrative procedures are updated to include recent changes in regulatory guidelines, terminology, and minor clarifications. Leases for telecommunications facilities on Park property are not executed until the applicant obtains all County and M-NCPPC approvals and permits. The flow chart outlines the updated process for consideration of a telecommunications facility on Park property. Applicants would submit an application for telecommunications facility lease agreement, which includes a non-refundable \$1,500 fee.

Once adopted, updates to the individual documents above will be made from time to time in keeping with changes in technology and regulatory guidelines.

Much of the above addresses applications for new wireless telecommunications facilities, but carriers seeking collocation on existing structures are not subject to a special exception. In the case of a collocation, the approval process overall may be shorter than those associated with new facilities, however the same Department of Parks' administrative siting procedures, and review will occur.

Additional Background: The Telecommunications Act of 1996, as amended is administered by the FCC, and provides for the regulatory oversight of telecommunications facilities. Recent national regulatory changes include:

- On November 18, 2009, the FCC issued a declaratory ruling, which sets a timeframe of 150 days for the review of siting applications (new towers/facilities) and 90 days for the review of collocation applications (adding a carrier to an existing facility). Up to this point, the review process for siting new facilities in the Park lands included the TFCG review and approval; the Park's review and approval as property owner; and a request for a special exception review by MCPB; and approval by the Board of Appeals (BOA). The November 2009 declaratory ruling imposes limits on the timeframe for the BOA review of a siting application to 150 days. Until the November 2009 declaratory ruling, the application for a special exception was sent to the M-NCPPC for review. With the new timeframe limit of 150 days, the MCPB is essentially removed from the review process, and the MCPB will only hear the application when the Montgomery Parks presents a site location hearing request.
- On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act) became law. Section 6409(a) of the Tax Act provides 'that a state or local government may not deny, and shall approve any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided that' (the collocation) 'does not substantially change the physical dimensions of the tower or base station.'

- On September 26, 2013, the FCC issued the Notice of Proposed Rulemaking on local wireless siting, and provided for a 60-day comment period so that the FCC can understand how these changes affect localities such as the M-NCPPC. The FCC already defines when local governments must respond to siting applications, and the proposed rulemaking may have significant impacts on the protection of natural, environmental, and historic resources. In summary, the proposed rulemaking:
 - May impact many local ordinances (which hold basic assumptions that locality can grant a permit that limits the size of wireless facilities).
 - Threatens local authority's ability to prevent harm to environmentally sensitive areas, as well as historically significant areas.
 - Will encourage the telecommunications industry to make a significant effort to limit local authority's oversight powers.

The Property Management office is monitoring the FCC developments so that adjustments to procedures can be made going forward.

Attachments:

1. Updated M-NCPPC –Montgomery Parks- **Administrative Procedures and Policy**
2. Telecommunications Facility Lease Agreement **Flow Chart**
3. **Application for Telecommunications Facility Lease Agreement**