

RESOLUTION NUMBER R-295751

ADOPTED ON NOVEMBER 19, 2001

WHEREAS, John T. Gray, Owner, and AT&T Wireless Services, Permittee, filed an application with the City of San Diego for a permit to install and operate a wireless communication facility on a site known as the Gray Residence [the Project], located at 13003 Avenida Grande, and legally described as Lot No. 29, Penasquitos View Subdivision, Map No. 6654, in the Rancho Penasquitos Community Plan area, in the RS-1-7 zone (previously referred to as the R1-5,000); and

WHEREAS, on February 1, 2001, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] Permit No. 99-0464-54, and pursuant to Resolution No. 3082-PC voted to deny the Project; and

WHEREAS, AT&T Wireless Services appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, on May 1, 2001, a motion to approve the Project failed to receive five affirmative votes; no substitute motion was made which caused the Planning Commission's decision to remain in effect; and

WHEREAS, on September 18, 2001, the City Council considered and approved a motion to waive the permanent rules of the Council and a motion for reconsideration of the denial of the appeal, thereby suspending the denial of the Project; and

WHEREAS, on October 9, 2001, and November 6, 2001, the matter was set for public hearing for reconsideration of the Project, testimony having been heard, evidence having been

submitted and the City Council having fully considered the matter and being fully advised concerning the same; and

WHEREAS, on November 19, 2001, the City Council voted to deny the Project, thereby permanently setting aside the results of the City Council action of May 1, 2001; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to CUP No. 99-0464-54:

**CONDITIONAL USE PERMIT FINDINGS:**

**A. The proposed development will adversely affect the applicable Land Use Plan.**

The Rancho Penasquitos Community Plan [Community Plan] designates this site for low-density residential development. The Community Plan does not specifically address communication facilities, however, the Residential Element states definite policies that conflict with the proposed project being located on a hillside within a single-family neighborhood. Specifically, the policy goals seek to create identifiable neighborhoods with an emphasis on the preservation of single-family, open space, hillside, and canyon areas. Further, the Community Plan states that residential development should be based on the capacity of the land for development consistent with the objective of preserving the character of the hillside and canyon areas. The proposed facility will compromise the integrity of the land use plan by the development of nonresidential structures on a hillside adjacent to open space, located within a low-density residential zone.

Therefore, the proposed development would adversely effect the Rancho Penasquitos Community Plan.

**B. The proposed development will be detrimental to the public health, safety, and welfare.**

The project proposes the construction and operation of a wireless communication facility consisting of six directional antennas on four, 16-foot-high poles and a 200-square-foot equipment storage area. The project requests deviations from the underlying zone to encroach into the side and rear yard setbacks. The proximity of the equipment and the antennas with the adjacent property is close enough that adverse noise impacts may exist. The telecommunication facility will require scheduled maintenance and periodic repairs. The noise generated by maintenance crews and their vehicles will negatively impact the neighborhood by way of an increase in noise. Currently there is a GTE monopole which is visible in the Penasquitos View

neighborhood. The addition of another communication facility in the neighborhood will negatively impact the visual character of the low density residential neighborhood, thereby contributing to visual blight.

**C. The proposed development will not comply to the maximum extent feasible with the regulations of the Land Development Code.**

The proposed development does not comply, to the maximum extent possible, with all applicable regulations for the Land Development Code, including Communication Antenna Regulations and Conditional Use Permits. The project requests a deviation to the side and rear yard setbacks. Deviations to minimum development standards should not be used as the basis for mitigating visual impacts when alternative nonresidentially zoned properties in the vicinity could be developed with a similar facility that would not require deviations to the underlying zone regulations.

Additionally, the City of San Diego Communication Regulations intend that the design of telecommunication facilities provide for integration into the surrounding area. The project has not been designed and sited to integrate with the residential neighborhood. The facility is proposed to be located on an existing slope and would be visible from the adjacent properties and the freeway right-of-way at the bottom of the hill. The proposed antenna mounts of 16-foot-high poles with one and two antennas each would be incompatible with the residential development of the neighborhood and the adjacent vegetated slopes and open space. Additionally, the bulk and scale of the proposed equipment enclosure proposed on the slope effectively precludes the possibility of any meaningful integration into the site. Therefore, the proposed development would not comply to the maximum extent feasible to the applicable regulations of the Municipal Code.

**D. The proposed use is not appropriate at the proposed location.**

The project site is located at 13003 Avenida Grande in the Rancho Penasquitos Community Plan area. The site is designated for low density residential development and zoned RS-1-7. The property is currently developed with a single-family home and surrounded on the west, north, and south by similar, one and two-story single-family development. The proposed facility would adversely effect the residential nature of the neighborhood based on the inability to integrate the facility with the surrounding neighborhood. Additionally, the applicant failed to fully explore and justify the availability of preferred, nonresidential sites in the vicinity.

Several alternative sites that are nonresidentially zoned or have existing facilities could be utilized rather than infiltrating the residential neighborhoods of the Rancho Penasquitos community. AT&T was asked to provide information regarding the feasibility of locating the telecommunication facility at one of these alternate sites, including the Nokia building, Canyon Hills Park, and more recently, the CalTrans right-of-way. However, AT&T's response to this request was inadequate and insufficient to ascertain a reasonable conclusion regarding the viability of preferred alternative project sites. Furthermore, AT&T's engineer testified at the public hearing that AT&T Wireless currently has coverage in the I-15 corridor near Rancho

Penasquitos Boulevard and that the proposed facility at the Gray residence was merely necessary to improve the network's capacity. AT&T's engineer also testified that the network's capacity is sufficient until the end of 2002 in this area. The Council finds that the impacts to the Rancho Penasquitos community balanced against the applicant's need for the facility warrant denial of the application.

The subject property, also known as the Gray Residence, is located within a subdivision that is encumbered with Conditions, Covenants, and Restrictions [CC&Rs]. The CC&Rs are a contractual agreement between the homeowners that restrict certain activities and structures within the neighborhood. In the case of the Penasquitos View subdivision, the CC&Rs specifically restrict the installation of antennas and nonresidential structures unless specifically authorized by the Homeowners Association. The City of San Diego recognizes that the CC&Rs do not preempt the City's zoning authority. However, the City Council has determined that the CC&Rs may be considered when exercising its discretion to grant or deny a conditionally permitted use. In this instance, the Homeowners Association overwhelmingly denied the citing of the proposed facility.

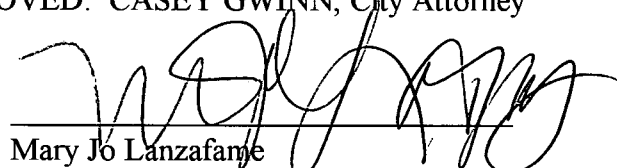
Therefore, based on the availability of preferred alternative sites, AT&T's unsubstantiated dismissal of the preferred alternatives, the restrictions posed by the CC&Rs, and the goals of the Community Plan, the proposed development is not considered appropriate at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that the appeal of AT&T Wireless Services is denied; the decision of the Planning Commission is sustained; and Conditional Use Permit No. 99-0464-54 is denied.

APPROVED: CASEY GWINN, City Attorney

By

  
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Mary Jo Lanzafame  
Deputy City Attorney

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