

RESOLUTION NUMBER R-303561

DATE OF FINAL PASSAGE APRIL 14, 2008

WHEREAS, Verizon Wireless [VAW], LLC dba Verizon Wireless, Owner/American Tower Corporation, Permittee, filed an application with the City of San Diego for a conditional use permit/planned development permit to construct a wireless communication facility to be known as the American Tower - 30th Place project, located at 797 1/3 30th Place, and legally described as Lot 2 of Hilltop Subdivision in the City of San Diego, according to map thereof No. 5357, filed in the Office of the County Recorder of San Diego County, March 6, 1964, in the Southeastern San Diego Community Plan area, in the MF-3000 zone; and

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit [CUP] No. 296127/Planned Development Permit [PDP] No. 453612, and pursuant to Resolution No. 4280-PC voted to deny the Permit; and

WHEREAS, Robert Jystad, Channel Law Group, LLP, on behalf of applicant, American Tower Corporation, appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on January 7, 2008, testimony was heard, and the item was continued for further review; and

WHEREAS, the matter was set for public hearing on April 14, 2008, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 296127/Planned Development Permit No. 453612:

A. **CONDITIONAL USE PERMIT – SAN DIEGO MUNICIPAL CODE [SDMC]**
SECTION 126.0305

1. **The proposed development will not adversely affect the applicable land use plan.** This facility was originally approved by the City Council on November 20, 1984. The Conditional Use Permit [CUP] included a 20-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a twenty year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Neither the City of San Diego General Plan nor the Southeastern San Diego Community Plan addresses wireless communication facilities as a specific land use.

2.. **The proposed development will not be detrimental to the public health, safety, and welfare.** The Telecommunication Act of 1996 preempts local governments from regulating the “placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency [RF] emission to the extent that such facilities comply with the Federal Communication Commission’s [FCC] standards for such emissions.” If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP/PDP.

3.. **The proposed development will comply to the maximum extent feasible with the regulations of the Land Development Code.** This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20-year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City imposed a twenty year time limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect. The project exists as it did after initial construction and American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is.

Since 2000, the City has had a Communication Antenna ordinance that requires architectural or environmental integration with the project site. Pursuant to the San Diego Land Development Code, wireless communication facilities are permitted in all zones citywide with

the appropriate permits. Wireless communication facilities are separately regulated uses, which have limitations or require compliance with conditions in order to minimize potential impacts. The intent of the regulations is to camouflage facilities from public view. In this case, the monopole is the tallest structure in and around the area in which it is located and as such, it has an incongruous effect on the community's landscape. It is not camouflaged from public view nor is it architecturally integrated into the architectural or environmental setting. It is situated prominently along Highway-94, which serves as a major east-west transportation corridor and it poses an unsightly visual impact for commuters that utilize this corridor as well as for residents of the surrounding communities.

Section 141.0405 of the Land Development Code differentiates between minor and major telecommunication facilities. Minor telecommunication facilities include those that are concealed from public view or integrated into the architecture or surrounding environment through architectural enhancement (enhancements that complement the scale, texture, color and style) unique design solutions, or accessory use structures. Major telecommunication facilities are antenna facilities that do not meet the criteria for minor telecommunication facilities or they are located in residential zones containing residential uses. Similar to minor facilities, they also need to be designed to be minimally visible through the use of architecture, landscape architecture and siting solutions. The 30th Place project does not conform to this code requirement due to its height, design, color and the visual clutter it creates. As it exists, it is a significant visual impact along Highway-94, which serves as a major transportation corridor through the city. Many commuters pass through this section of the city on a daily basis and are subjected to the unsightliness associated with this project.

Therefore, the project does not comply to the maximum extent feasible with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location. A wireless communication facility at this location is an appropriate use subject to compliance with the ordinances and policies that regulate these types of facilities.

B. PLANNED DEVELOPMENT PERMIT – SDMC SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. This facility was originally approved by the City Council on November 20, 1984. The CUP included a 20 year expiration. At the time of approval, the City did not have applicable regulations for these types of facilities so the City Council imposed a twenty year limit in order to re-evaluate the project in light of new regulations and or policies that may be in effect, The project exists as it did after initial construction and the new owner, American Tower Corporation is now seeking to obtain another CUP to maintain the facility as is. Neither the City of San Diego General Plan nor the Southeastern San Diego Community Plan addresses wireless communication facilities as a specific land use.

2. The proposed development will not be detrimental to the public health, safety, and welfare. The Telecommunication Act of 1996 preempts local governments from regulating the "placement, construction and modification of wireless communication facilities on the basis of the environmental effects of Radio Frequency [RF] emission to the extent that such facilities

comply with the Federal Communication Commission's [FCC] standards for such emissions." If the decision maker approves the existing facility, a condition will be included within the permit to require American Tower to perform a cumulative model RF test and submit the finding in a report to the City of San Diego within ninety days of approval of the CUP.

3. The proposed development will comply with the applicable regulations of the Land Development Code. The monopole complies with all the development regulations of the MF-3000 zone except for the height limit of 30 feet. The monopole is 130 feet tall and is situated at a high point prominently alongside of Highway-94. Development in the area is low in scale and primarily residential in nature with commercial uses further away from the freeway. The existing tower exceeds the MF-3000 zone height limit by 100 feet. Deviations to the development regulations require a Planned Development Permit, which is a mechanism to encourage imaginative and innovative planning and to assure that the project achieves the purpose and intent of the applicable land use plan and that it would be preferable to what would be achieved by strict conformance with the regulations.

This project was originally constructed in the mid-1980's when Pac-Tel Mobile (now Verizon) was only one of two wireless carriers in San Diego. Their network was being established with tower structures and branched out to building collocations later. Typically, carriers initially built tall facilities, later filling in their networks with lower sights. Verizon signed the contract (CUP 84-0469) acknowledging the 20-year time limit on the facility. In order to maintain a facility at this site, a new application in compliance with the current regulations and policies would be required.

4. **The proposed development, when considered as a whole, will be beneficial to the community.** The monopole serves Verizon subscribers in the surrounding communities, as well as commuters passing through the area and as such, is a beneficial service. Conversely, the significant visual impacts that the pole creates are detrimental to the surrounding communities as well as to the City of San Diego. The pole sits on a hill at an elevation of 170 feet. The pole is 130 feet tall. Just .24 miles to the west, the elevation drops 30 feet. Approximately .19 miles to the east, the elevation drops 30 feet and .29 miles to the southeast, the elevation drops a dramatic 95 feet. The monopole is a negative visual community landmark that can be seen from miles away. The original design of this tower was developed twenty years ago when the technology was at its infancy. The CUP was conditioned to expire in twenty years and the owner and operator of the facility, Verizon and American Tower Corporation had the responsibility of making preparations within their network to comply with any new regulations or policies in effect, which would have included a required reduction in height as well as adjustments to other existing facilities and development of new facilities.

5. **Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The applicant, American Tower Corporation, is requesting to deviate from the RS-1-7 height limitation of 30 feet. The existing tower is 130 feet tall and can be viewed from miles away. It sits on an elevated hill within the Southeastern San Diego community, prominently along side of Highway-94 and is a significant visual impact within San Diego. The project, as it exists, does not result in a visually desirable project. If redesigned to comply with the 30 foot height limit,

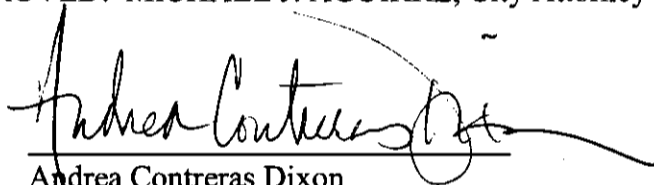
Verizon services to the community and passing commuters would be significantly reduced. However, Verizon has the responsibility of exploring available alternatives that would address legal requirements as well as reduce the negative impact on their existing network. Section 141.0405 of the Land Development Code requires telecommunication facilities to integrate into the landscape in which they are proposed. If this facility were to be redesigned to comply with this section of the Code, a reasonable height deviation may be considered. The existing tower does not result in an acceptable project.

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

BE IT FURTHER RESOLVED, that the appeal of Robert Jystad, Channel Law Group, LLP, on behalf of applicant, American Tower Corporation, is denied; the decision of the Planning Commission is sustained; and Conditional Use Permit No. 296127/Planned Development Permit No. 453612 is denied.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Andrea Contreras Dixon
Deputy City Attorney

ACD:pev

04/29/08

Or.Dept:Clerk

R-2008-906

MMS #5311

I:\Civil\FORM FILLS; RESO_ORD FORMS\PERMITS\Permit Resolution 09-20-05.doc