

201
2/2
only

RESOLUTION NUMBER R-304624

DATE OF FINAL PASSAGE FEBRUARY 2, 2009

A RESOLUTION DENYING THE APPEAL AND DENYING
CONDITIONAL USE PERMIT NO. 296155/PLANNED
DEVELOPMENT PERMIT NO. 296156 –
AMERICAN TOWER – AVIATION, PROJECT NO. 92076.

WHEREAS, City of San Diego, Owner and American Tower Corporation, Permittee filed an application with the City of San Diego for a conditional use permit/planned development permit for an existing wireless communication facility consisting of a 130 feet high monopole and a 550 square foot equipment building, known as the American Tower-Aviation project, on portions of a .51-acre site, located at 6770 Aviation Drive, and legally described as that portion of Lot 162, Encima De San Diego, in the City of San Diego, County of San Diego, State of California, according to map thereof No. 1546, filed in the Office of the County Recorder of said County of San Diego, in the Skyline Paradise Hills Community plan area in the RS-1-7 zone, which has a 30 foot maximum height limit; and

WHEREAS, on June 28, 2007, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 296155/Planned Development Permit No. 296156 and continued the project until August 9, 2007 to obtain additional information; and

WHEREAS, on August 9, 2007, the matter was continued until September 20, 2007 to obtain additional information; and

WHEREAS, on September 20, 2007, the matter was continued until January 24, 2008 in order to allow time for development of a master plan that would minimize visual blight; and

WHEREAS, on January 24, 2008, the matter was continued until May 8, 2008 in order to give American Tower an opportunity to redesign the project in compliance with the regulations; and

WHEREAS, on May 8, 2008, the matter was continued until July 10, 2008 in order to allow time for American Tower to redesign the project and route the revised design through the community planning group; and

WHEREAS, on July 10, 2008, the matter was continued until September 11, 2008 in order to allow time for proposed redesigns to be reviewed by the Skyline-Paradise Hills Community Planning Group; and

WHEREAS, the Skyline-Paradise Hills Community Planning Group voted 8-1 to recommend denial of the proposed design, which was of a 140 foot monopine; and

WHEREAS, on September 11, 2008, the Planning Commission of the City of San Diego adjourned the meeting due to a Brown Act violation and the American Tower Aviation project was re-noticed for the October 9, 2008 Planning Commission agenda; and

WHEREAS, on October 9, 2008, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 296155/Planned Development Permit No. 296156, and at which time Permittee offered to install a faux tree on the following conditions: no reduction in the height of the tower, no term placed on the Conditional Use Permit, and no changes would be made until the City's took the same action on its adjacent tower; pursuant to Resolution No. 4400-PC voted to deny the Permits; and

WHEREAS, Robert Jystad, Channel Law Group on behalf of American Tower Corporation appealed the Planning Commission's 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 February 2, 2009, at which time Permittee offered to install a faux tree on the following conditions: no reduction in the height of the tower, no term placed on the Conditional Use Permit, and no changes would be made until the City's took the same action on its adjacent tower; 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. 296155/Planned Development Permit No. 296156:

**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 twenty 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.

Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses Wireless Facilities. The intent is to minimize the visual impact of wireless facilities. The General Plan states that wireless facilities should be concealed in existing structures when possible, or otherwise use camouflage and screening techniques to hide or blend the facilities into the surrounding area.

The General Plan states that facilities should be designed to be “aesthetically pleasing and respectful to the neighborhood context.” This is a hilltop location with surrounding residential development that have views that are impacted by the monopole. Maintaining the monopole at this location in its current configuration does not result in a more desirable project. The Southeastern San Diego Community Plan does not specifically address 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 RF emissions to the extent that such facilities comply with the FCC standards for such emissions.” If the project had been approved, a condition would be added to the permit requiring Verizon Wireless to submit an RF study to demonstrate compliance with the applicable FCC regulations prior to building permit issuance.

3. The proposed development does not comply to the maximum extent feasible with the regulations of the Land Development Code. 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 situated prominently on a residential hilltop within the community of Skyline. The tower poses an unsightly visual impact that can be seen from the surrounding residential communities and major thoroughfares.

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 Aviation project does not conform to this code requirement. As it exists, the tower is a significant visual impact to the surrounding residential communities. Furthermore, the RS-1-7 zone allows a maximum height limit of thirty feet. This tower is 130 feet tall; 100 feet taller than what is permitted in the zone. This is an incredibly intrusive structure in the Skyline Paradise Hills – Valencia Park neighborhood and any attempts that have thus far been attempted only make the facility more conspicuous.

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

4. **The proposed use is not appropriate at the proposed location.** A wireless communication facility at this location may be an appropriate use, in this location, however, if the facility does not comply with current regulations or policy, then it is not an appropriate use. Due to the fact that the existing facility does not comply with current regulations and policies, this finding cannot be affirmed. A facility that better integrates into the property and takes into consideration the surroundings including the prominent hilltop location and the proximity to the existing residential uses that exist around the facility would be more appropriately located on this property.

**B. PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE
[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 twenty-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.

Section A.15 of the Urban Design section of the City of San Diego's General Plan addresses Wireless Facilities. The intent is to minimize the visual impact of wireless facilities. The General Plan states that wireless facilities should be concealed in existing structures when possible, or otherwise use camouflage and screening techniques to hide or blend the facilities into the surrounding area.

The General Plan states that facilities should be designed to be "aesthetically pleasing and respectful to the neighborhood context." This is a hilltop location with surrounding residential development that have views that are impacted by the monopole. Maintaining the monopole at this location in its current configuration does not result in a more desirable project. The Southeastern San Diego Community Plan does not specifically address 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 RF emissions to the extent that such facilities comply with the FCC standards for such emissions." If the project had been approved, a condition would be added to the permit requiring Verizon Wireless to submit an RF study to demonstrate compliance with the applicable FCC regulations prior to building permit issuance.

3. **The proposed development will not comply with the applicable regulations of the Land Development Code.** 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 situated prominently on a residential hill top within the community of Skyline. The tower poses an unsightly visual impact that can be seen from the surrounding residential communities and major thoroughfares.

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 Aviation project does not conform to this code requirement. As it exists, the tower is a significant visual impact to the surrounding residential communities. Furthermore, the RS-1-7 zone allows a maximum height limit of thirty feet. This tower is 130 feet tall; 100 feet taller than what is permitted in the zone. This is an incredibly intrusive structure in the Skyline Paradise Hills – Valencia Park neighborhood and any attempts that have thus far been attempted only make the facility more conspicuous.

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

4. The proposed development, when considered as a whole, will not 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 hilltop at an approximate elevation of 480 feet. The pole is 130 feet tall. The surrounding community is developed at lower elevations on and around this hill top. There are three tower structures altogether at this site. Nextel is replacing their 90 foot tall pole with a faux tree and the other monopole belongs to the City. The City's 115 foot tall monopole will remain on this site as it is a part of the backbone of the City's emergency communications. The original design of this tower was developed twenty years ago when the technology was at its infancy. It served its purpose to initiate the development of wireless networks. The CUP was conditioned to expire in twenty years and as 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 may have included a required reduction in height and utilizing the most current design technology available.

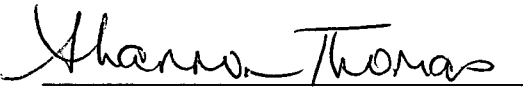
5. Any proposed deviations pursuant to Section 126.0602(b)(1) are not appropriate for this location and will not result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The applicant, American Tower Corporation, is requesting to deviate by 100 feet from the RS-7 height limitation of thirty feet. The existing tower is 130 feet tall and can be

viewed from miles away. It sits prominently on a residential hill top within the Skyline Paradise Hills – Valencia Park community 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 thirty foot height limit, Verizon services to the community and passing commuters would be significantly reduced, however wireless communications are not being prohibited in this community, however any proposals would have to comply with current regulations and policies. 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. Given the availability of current design technology, American Tower has not submitted any acceptable designs for consideration. Neither the existing tower nor any of the proposed designs 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 on behalf of American Tower Corporation is granted; the decision of the Planning Commission is sustained; and Conditional Use Permit No. 296155/Planned Development Permit No. 296156 is denied.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Shannon Thomas
Deputy City Attorney

ST:hm
02/17/09
Or.Dept:CityClerk
R-2009-881
MMS#6945