

RESOLUTION NUMBER R-305788

DATE OF FINAL PASSAGE APRIL 26, 2010

RESOLUTION DENYING THE APPEAL AND GRANTING
PLANNED DEVELOPMENT PERMIT NO. 590331
VERIZON REGENTS PROJECT.

WHEREAS, UC MARKETPLACE PARTNERSHIP, Owner and VERIZON WIRELESS, Permittee, filed an application with the City of San Diego for a Planned Development Permit to operate and maintain a Wireless Communication Facility consisting of a 42-foot tall antenna structure known as the Verizon Regents project, located at 3290 Governor Drive in the CN-1-2 zone of the University Community Plan, and legally described as Lot 1 of Regents Road Commercial Center in the City of San Diego, County of San Diego, State of California, according to Map Thereof No. 4973, filed in the Office of the County Recorder of San Diego County, May 8, 1962; and

WHEREAS, UC MARKETPLACE PARTNERSHIP, Owner and VERIZON WIRELESS, Permittee, modified the application for a Planned Development Permit to operate and maintain the Wireless Communication Facility as a 47-foot high monopine; and

WHEREAS, on February 11, 2010, the Planning Commission of the City of San Diego considered PDP No. 590331 for a 47-foot high monopine and pursuant to Resolution No. 4567-PC, voted to approve the permit; and

WHEREAS, on February 22, 2010, David Broide 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 April 26, 2010, testimony having been heard, evidence having been submitted and the City Council having fully considered the matter and being fully advised concerning the same;

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Planned Development Permit No. 590331:

PLANNED DEVELOPMENT PERMIT - SDMC SECTION 126.0604

1. The proposed development will not adversely affect the applicable land use plan. The existing wireless facility is to be concealed with camouflage and additional trees to minimize the visual impact of the existing facility and to blend with the surrounding landscaping. The General Plan, Section A.15 of the urban design portion states that the visual impact of wireless facilities be minimized. Given the existing structure, architectural concealment would not be easily achieved and would be obtrusive by not maintaining the existing architectural character of the shopping center. One of the permit conditions requires additional trees to screen the existing monopole, along with requiring that landscape screening be maintained in a green and growing condition. The requirement of an architectural feature would cause structural and tenant impacts. Maintaining the monopole is aesthetically pleasing and respectful of the neighborhood context given its current height and the shopping center design.

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] emissions to the extent that such facilities comply with the Federal Communication Commission's [FCC] standards for such emissions." The project would be consistent with the FCC's regulations for wireless facilities. To ensure that the FCC standards are being met, a condition has been added to the permit that requires Verizon Wireless to submit a RF study to demonstrate compliance with the applicable FCC regulations.

3. The proposed development will comply with the regulations of the Land Development Code. The existing structure exceeds the permitted 30-foot height, but is not being increased in height, which keeps the monopole in closer compliance with existing height regulations than the proposed monopine and reduces the impact that an increased height could have on the surrounding properties.

4. The proposed development, when considered as a whole, will be beneficial to the community. The wireless communication services provided by Verizon have been

beneficial to the community. The monopole remaining in its current condition will maintain the existing level of service that the community has without an increase in overall height.


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 existing monopole deviates from the zone's 30-foot height limit by 12 feet; however, no further increase in height is proposed. The height deviation allows the existing level of wireless service to be maintained. The equipment shelter, which is 360 square feet, where 250 square feet is permitted, is located behind the shopping center and is not visible from adjacent properties or the public right-of-way. The facility as proposed will utilize the smallest, least visually intrusive antennas, antenna components, and other necessary equipment. With mitigating landscaping, this will be the best possible solution for the site.

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

BE IT FURTHER RESOLVED, that the appeal by David Broide is denied, and that the Council of the City of San Diego approves Verizon's continued use of the existing monopole, rather than installing a new monopine, and that PDP No. 590331 is granted to UC MARKETPLACE PARTNERSHIP, Owner, and VERIZON WIRELESS, Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Keith Bauerle
Deputy City Attorney

KB:hm
06/08/10
07/14/10 COR.COPY
09/16/10 REV.COPY
09/21/10 COR.COPY
Or.Dept:DSD
R-2010-822
MMS#12090

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 23428092

PLANNED DEVELOPMENT PERMIT [PDP] NO. 590331
VERIZON – REGENTS
PROJECT NO. 134881
CITY COUNCIL

This Planned Development Permit No. 590331 is granted by the City Council of the City of San Diego to UC Marketplace Partnership, Owner and Verizon Wireless, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 141.0420 and 126.0604. The project is located at 3358 Governor Drive in the CN-1-2 zone of the University Community Plan. The project site is legally described as Lot 1 of Regents Road Commercial Center in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 4973, filed in the Office of the County Recorder of San Diego County, May 8, 1962.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee for a wireless communication facility, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 26, 2010, on file in the Development Services Department.

The project shall include:

- a. An existing 42-foot high monopole, supporting 30 (thirty) directional antennas, a roof-mounted microwave dish antenna, and associated equipment located at the base of the pole within a 370 square foot fenced enclosure and a 360 square foot shelter. The 42-foot high monopole deviates from the 30 foot height limit permitted in this zone and is permitted with this PDP. The monopole design deviates from the Wireless Communication Facility (LDC 141.0420) Design Requirements and is permitted with this PDP by painting the monopole a matte gray color and adding additional landscape material. The 360 square foot shelter deviates from the 250 square feet allowed by the WCF regulations and is permitted with this PDP;

- b. Landscaping (planting, irrigation and landscape related improvements) as illustrated on Exhibit A and identified in this permit; and
- c. Accessory improvements determined by the Development Services Department to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. As this property contains a WCF with an expired permit, upon approval of this PDP, immediate steps must be taken to bring this site into compliance. Timelines for each of the performance conditions enumerated below have been established to ensure timely completion of the specific improvements. Failure to comply with these deadlines will result in referral of the project to Neighborhood Code Compliance, which will result in enforcement action including penalties and/or fines.
2. This Planned Development Permit and corresponding use of this site shall expire on April 26, 2020. Upon expiration of this Permit, the facilities and improvements described herein shall be removed from this site and the property shall be restored to its original condition preceding approval of this Permit and previous communication antenna permits unless the applicant of record files a new application for a facility which will be subject to compliance with all regulations in effect at the time.
3. No later than ninety (90) days prior to the expiration of this permit, the Owner/Permittee may submit a new permit application to the Development Services Department for consideration with review and a decision by the appropriate decision maker at that time. Failure to submit prior to the deadline will be cause for compliance, which may include penalties and fines.
4. Under no circumstances does approval of this permit authorize Verizon Wireless or their tenants or subsequent wireless communication providers to utilize this site for wireless communication purposes beyond the permit expiration date. Implicit use of this permit beyond the effective date of this permit is prohibited.
5. Within 90 days of approval of this permit:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
6. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the Development Services Department.

7. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
8. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
9. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
10. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.
11. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

LANDSCAPE REQUIREMENTS:

13. The Owner/Permittee shall maintain all existing landscape in a disease, weed and litter free condition at all times. Severe pruning or “topping” of trees is not permitted. The trees shall be maintained in a safe manner to allow trees to continue growing to mature height and spread.

14. Within 90 days of permit recordation, the Owner/Permittee shall submit landscape construction documents, consistent with the City’s Project Submittal Requirements to the Development Services Department for review and approval. Plans shall be in substantial conformance to the Exhibit “A” Landscape Development Plans on file with the Development Services Department; however the plans shall be revised to incorporate the following modifications as required by the City Council:

- a. The three trees shown on Exhibit “A” adjacent to the originally proposed monopine shall be relocated to the rear property line along with two additional trees.
- b. All trees shall be minimum 36-inch box size.
- c. A total of nine (9) trees shall be planted and the species shall consist of palm, acacia, sycamore, and/or eucalyptus (no pine trees).
- d. Trees on Exhibit “A” proposed in the parking lot and entry to the shopping center shall remain as proposed with no changes.

15. Within 120 days of permit recordation, all landscape improvements shown on revised Exhibit “A” and approved Landscape Construction Documents shall be installed and a final planning/landscape inspection shall be obtained. Failure to comply with this timeline shall result in fines and penalties administered by the Neighborhood Code Compliance section of the Development Services Department.

16. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is pruned or removed or damaged during the life of this permit, the Permittee or Subsequent Owner is responsible to repair and/or replace any landscape in kind and equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage.

17. Any plant material required by this permit that dies, is “topped,” or improperly pruned during the life of this permit shall be replaced within 30 calendar days of plant death with the same size and species of plant material shown on Exhibit “A” or this permit. Required shrubs that die or are improperly maintained 3 years or more after installation shall be replaced with 15 gallon size, and required trees that die, are “topped,” or improperly pruned 3 years or more after the date of this permit shall be replaced with 60-inch box size material. The Development Services Department may authorize adjustment of the size and quantity of replacement material where material replacement would occur in inaccessible areas or where the existing plant being replaced is larger than a 15 gallon shrub or 60-inch box tree.

18. The Owner/Permittee shall conduct annual inspections to determine and verify, in writing, to the Development Services Department that all of the landscape material associated with the WCF is maintained in a healthy green and growing condition. The annual inspections shall be conducted and the report to the Development Services Department shall be prepared by a Certified Arborist. The annual inspection reports shall become part of the project file. The Owner/Permittee shall submit the annual inspection reports to the Development Services Department for review between April 1st and April 30th of each year during the life of this permit. Any required landscape material not performing as specified in this permit shall be replaced per Conditions 16 and 17 within 30 days of notification.

19. An account (Internal Order Number 23428092) shall remain open during the life of this permit. The Owner/Permittee shall maintain a minimum balance of \$500 at all times in the account. The account shall be utilized for permit monitoring to ensure that the existing monopole is painted and maintained appropriately, and that the required landscape material grows in a healthy condition, per the terms of this permit. Project Number 134881 shall remain open in Development Services' Project Tracking System to provide a system for tracking the submittal of annual inspections and the issuance of invoices and statements.

PLANNING/DESIGN REQUIREMENTS:

20. Within 90 days of permit recordation, the Permittee shall provide certification providing evidence that the cumulative measurements of radio frequency power densities for all antennas installed on the premises and adjacent property comply with federal standards.

21. All equipment, including transformers, emergency generators and air conditioners shall be designed and operated consistent with the City noise ordinance. Ventilation openings shall be baffled and directed away from residential areas. Vibration resonance of operating equipment in the equipment enclosures shall be eliminated.

22. The applicant of record is responsible for notifying the city prior to the sale or takeover of this site to any other provider.

23. This wireless communication facility shall be removed or replaced if it is determined that the facility or components of the facility are obsolete.

24. Within 90 days of permit recordation, photos shall be submitted to the Development Services Department indicating that the monopole has been painted matte gray, to the satisfaction of the Development Services Department.

25. Within 120 days of permit recordation, final planning and inspection sign-off shall be obtained. Failure to comply with this timeline shall result in fines and penalties administered by the Neighborhood Code Compliance section of the Development Services Department.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within

ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code §66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on April 26, 2010 by
Resolution No. 305788.

AUTHENTICATED BY THE DEVELOPMENT SERVICES DEPARTMENT

Alex Hempton, AICP
Associate Planner

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

Verizon Wireless
Permittee

By _____
Leslie Vartanian
Senior Development Manager

UC Marketplace Partnership
Owner

By _____
Owner Name:
Owner Title:

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**