

DATE ISSUED: November 5, 2001

REPORT NO. 01-241

ATTENTION: Honorable Mayor and City Council
Docket of November 6, 2001

SUBJECT: **AT&T WIRELESS: THE GRAY RESIDENCE, CONDITIONAL USE PERMIT NO. 99-0464-54**, Council District One. Appeal of the Planning Commission decision to deny the installation of a wireless telecommunication facility located at 13003 Avenida Grande. Council District One, Process Four

REFERENCE: Planning Commission Report No. P-01-019, Planning Commission Agenda of January 25, 2001

OWNER: JOHN T. GRAY AND AE SUK GRAY
APPLICANT: AT&T WIRELESS

SUMMARY

Issues - Should the City Council APPROVE the appeal, thereby, approving the project and REVERSE the decision of the Planning Commission to deny Conditional Use Permit No. 99-0464-54 to install and operate a telecommunication facility?

Manager's Recommendation -

1. **APPROVE** the appeal and APPROVE Conditional Use Permit No. 99-0464-54.
2. **CERTIFY** Environmental Negative Declaration No. 99-0464-54.

Community Planning Group Recommendation - The Rancho Penasquitos Planning Board met on January 3, 2001 and voted 13 to 0, with no abstentions, to recommend the project be denied.

Other Recommendations - None.

Environmental Impact - Environmental Negative Declaration No. 99-0464-54 was prepared for this project in accordance with the California Environmental Quality Act (CEQA).

Fiscal Impact - None.

Code Enforcement Impact - None.

Housing Affordability Impact - None.

BACKGROUND

The project proposes to install and operate a wireless telecommunication facility on a 0.22 acre site located at 13003 Avenida Grande. The Rancho Penasquitos Community Plan designates the site for low density residential land use. The property is zoned RS -1-7 which accommodates single family residential development. The property is developed with a single-family residence and is surrounded by similar single-family development to the north, east and west. The site is adjacent to Open Space to the south and overlooks State Route 15 to the southeast. The rear portion of the site is identified on City Zoning Maps as containing steep hillsides (formerly Hillside Review Overlay), however, analysis of the site has determined that the slopes are comprised of manmade cut/fill material created with the grading and development of the subdivision. These slopes contain no sensitive environmental resources.

The project proposes six, pole-mounted, directional panel antennas on four, sixteen foot high poles and an accessory equipment area(Attachment 2). Two of the antenna poles are located within the side and rear yard setbacks of the property. The application was deemed complete by Development Services in December of 1999 therefore, the project is regulated pursuant to the previous Municipal Code in effect prior to January 1, 2000.

HEARING CHRONOLOGY

On January 25, 2001 the project was before the Planning Commission at a noticed public hearing. Upon hearing public testimony, the Planning Commission approved a motion to continue the item and directed staff to return with a draft resolution to deny the project.

On February 1, 2001, the Planning Commission unanimously voted to deny the project with findings that identified the potential visual, noise, and traffic impacts associated with the facility as the basis for their denial. The Planning Commission did however, certify the accompanying Environmental Negative Declaration. AT&T then filed an appeal of the Planning Commission decision.

On April 3, 2001, the issue came before the City Council at a noticed public hearing. The Council approved a motion to continue the hearing and directed staff to return with a revised resolution to deny the project.

On May 1, 2001, the City Council made a motion to approve the project. However, that motion failed to receive five affirmative votes. City Council did not make a subsequent motion to deny the project therefore, the effect of the Council's action was to leave intact the Planning Commission's February 1, 2001 decision which denied the project.

AT&T subsequently filed a lawsuit against the City in federal court. Upon conducting a mandatory settlement conference before a Federal Magistrate, the City was strongly encouraged to reconsider the project. On September 18, 2001, City Council approved a motion to reconsider the project on October 9, 2001.

On October 9, 2001, the City Council reconsidered the project. Upon hearing public testimony, the Council voted 9-0 to continue the matter to November 6, 2001. As part of that action, City Council gave direction to the applicant to continue to work with Rancho Penasquitos Community Planning Group and explore two alternative project sites described as "the Nokia building" and "Canyon Hills Park." Council additionally directed staff to further explain the use of setback deviations for the proposed antennas and to clarify the status of the Environmental Negative Declaration that was certified by the Planning Commission on February 1, 2001.

DISCUSSION

ALTERNATIVE PROJECT SITES

Residents of Rancho Penasquitos and the Community Planning Board recently brought two new alternative site locations to the attention of the City Council. The sites are described as the Nokia building and Canyon Hills Park. The Council, in part, continued the October 9th hearing to allow AT&T time to explore these alternative sites to determine their viability. Following a review of these sites, AT&T met with representatives of the Rancho Penasquitos Planning Group on October 25th. AT&T Wireless determined that neither of the two alternative sites are technologically feasible due to the integration of two previously separate networks. AT&T Wireless claims that the dynamics of the network have evolved to the point where neither the Nokia nor the Canyon Hills sites meet the company's network objectives for the area. The Nokia Building site would create interference issues north and west of the area; the Canyon Hills site would also create interference problems. AT&T will provide technical experts to discuss the interference issues and answer questions at the November 6, 2001 hearing.

At the October 25th meeting, AT&T also offered the community representatives the following: 1) to have a third party landscape architect design a vegetation plan at the Gray Residence site for additional screening acceptable to the residents; 2) to agree to a CUP condition not to expand the physical footprint of the site; and 3) to eliminate any encroachment into the setback of the Gray residence backyard if that is the wish of City Council and residents.

SETBACK ENCROACHMENT

The proposed project includes encroachments into the side and rear yard setbacks. Two of the four poles used to mount the antennas are located within the triangular area of the lot where the setbacks converge at the terminus of the property. The encroachments into the setbacks allow the poles to be located further down the slope than they would be without the encroachment and therefore, the poles are less visible from the adjacent properties above. The site could be designed in a manner that no such encroachment into the setbacks are required however, staff believes that the current design is more beneficial to the neighbors. The encroachment allows the antennas to be lower on the slope and less visible. In addition, this design moves the antennas further away from the useable flat areas of the adjacent properties.

ENVIRONMENTAL REVIEW

The Planning Commission certified the Environmental Negative Declaration on February 1, 2001, however, the Notice of Determination (NOD) reflecting that action has not been filed with the State. If the City Council decides to certify the Negative Declaration, an NOD will be filed and the Statute of Limitations for a legal challenge to the document would be in effect.

CONCLUSION

The project has been designed and sited in conformance with the City of San Diego Communication Antenna Regulations and, to the extent possible, complies with the underlying RS-1-7 development regulations. Conditional Use Permit No. 99-0464-54 has been prepared and conditioned to ensure the installation and operation of the proposed facility will not adversely impact the surrounding area. Environmental Negative Declaration No. 99-0464-54 has been prepared in conformance with the California Environmental Quality Act (CEQA) and determined that the proposed project will not have any significant environmental effects.

Staff recommends that City Council certify Negative Declaration No. 99-0464-54 and approve Conditional Use Permit (CUP) No. 99-0464-54 which is attached.

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: George I. Loveland
Senior Deputy City Manager

CHRISTIANSEN:JPH

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments: 1. Location Map
2. Site Plan and Elevations

3. Draft Permit and Conditions
4. Draft Findings of Approval
5. Planning Commission Report No. P-01-019
6. Ownership Disclosure