

DATE ISSUED: September 11, 2002

REPORT NO. 02-199

ATTENTION: Honorable Mayor and City Council
Docket of September 17, 2002

SUBJECT: Nextel-Murray Ridge, Appeal of Decision by Planning Commission,
Conditional Use Permit/Planned Development Permit No. 94-0330-087
Council District 6, Process 4

OWNER: FOUR SQUARE GOSPEL CHURCH OF SAN DIEGO (AKA FAITH
COMMUNITY SQUARE CHURCH OF SAN DIEGO)

APPLICANT: NEXTEL COMMUNICATIONS

SUMMARY

Issue(s) - Should the City Council deny the appeal and uphold the Planning Commission's decision to approve Conditional Use Permit/Planned Development Permit 94-0330-87, for an existing telecommunication facility, disguised as a faux palm tree? The application requests a six foot side yard setback where 27 feet is required and to allow a height deviation of 35 feet where 30 feet is required.

City Manager's Recommendations - The City Manager recommends that the City Council deny the appeal of the Planning Commission action and uphold the approval of the Nextel Murray Ridge project by taking the following actions:

1. **Approve** the existing wireless communication facility designed as a faux palm; and
2. State for the record that the information contained in the final Environmental Negative Declaration No. 94-0330-87 has been reviewed and considered prior to approving the project.

Planning Commission Recommendation - On May 16, 2002, the Planning Commission voted 5-1 to approve Conditional Use Permit/Planned Development Permit 94-0330-87 (Chase-No, Garcia, Steele, Lettieri, Shultz, Brown-Yes).

Community Planning Group Recommendation - On April 18, 2002, the Serra Mesa Community Planning Group voted 7-2 to recommend denial of the project.

Environmental Impact - Environmental Negative Declaration No. 94-0330-087 has been prepared for this project pursuant to Article 19, Section 15302 of the California Environmental Quality Act (CEQA).

Fiscal Impact - All costs associated with the processing of this application have been paid by the applicant.

Code Enforcement Impact - Neighborhood Code Compliance (NCCD) received a complaint about the Nextel facility on March 13, 2001. Council approval of this permit will resolve the code enforcement issues and settle the pending federal litigation with Nextel. Denial of the permit will return the case to further code enforcement proceedings and the pending litigation will continue.

Housing Affordability Impact - None.

BACKGROUND

The Nextel-Murray Ridge project is an existing wireless communication facility consisting of a 35-foot high faux palm tree supporting twelve panel antennas and an approximate 200-square foot equipment shelter and trash enclosure. The facility is located at 2285 Murray Ridge Road on the perimeter of the church parking lot in the southwestern portion of the property overlooking Interstate-805 (Attachment 2).

The faux palm tree and associated equipment was originally approved administratively on September 17, 2000 under previous regulations that permitted integrated wireless facilities on lots containing non-residential uses within residential zones. The project was later modified, on November 3, 2000, through a Substantial Conformance Review approval, to move the equipment enclosure further south and to add a trash enclosure. An application for a Building Permit was submitted to the City shortly thereafter and construction began. When construction of the facility was nearly complete, a complaint from a nearby resident prompted staff to investigate the approval.

It was ascertained that the side yard setback regulations had changed from the previous zoning code requiring a four-foot side yard setback to the new Land Development Code (LDC) requirement. The side yard setback requirement for lots with front yard widths exceeding 50 feet is a combined side yard setback of 20 percent of the lot width. The 255-foot wide premises technically requires a combined side yard setback of 51 feet. The opposite side of the property, to the north, already maintains a fixed side yard setback of 24 feet. This therefore, requires the setback on the south to be 27 feet. The faux palm is located six feet, two inches from the side yard property line. The associated equipment shelter is located 11-feet, eight-inches from the side property line (Attachment 5). The antennas, which are attached by means of cross arms affixed to the upper portion of the faux trunk, extend to within six inches of the property line. Both Nextel, who prepared the plans and the City, who reviewed the plans, failed to identify the proper setback.

In addition to the setback issue, the height of the faux palm exceeds the 30-foot height limit by five feet due to the extended arching fronds. The Land Development Code defines structure height as the vertical distance between all points on top of a structure or any of its appurtenances and grade directly below. In certain circumstances, City staff has permitted the fronds or foliage to exceed the height limit in order to enhance and simulate the likeness of a live tree. This determination was based on two points: 1) the fronds are aesthetic features and have no support or structural elements; 2) the LDC does not regulate the height of natural landscape material. In an effort to encourage more accurate representations of faux design elements, staff did not

consider the fronds part of the structural height of the facility.

A Stop Work Order was posted at the site on May 1, 2001 and a letter was sent to Nextel notifying them that operations must cease immediately. The letter also indicated that within fifteen business days, one of three corrective measures must be pursued:

- 1) Relocate the facility and reduce the height to comply with the development regulations of the RS-1-7 zone; or
- 2) Submit an application for a Conditional Use Permit for a major communication facility and a Planned Development Permit to allow the facility to encroach into the side yard setback and exceed the 30-foot height limit; or
- 3) Completely remove the facility from the premises.

On December 7, 2001, Nextel filed a lawsuit against the City alleging non-compliance with the Telecommunications Act of 1996. On February 7, 2002, as part of the lawsuit, Nextel and the City met with a Federal Magistrate Judge and agreed to place the lawsuit on hold while Nextel applied for a Planned Development Permit (PDP)/Conditional Use Permit (CUP) for the wireless communication facility. The City staff agreed as part of the settlement process to recommend approval of Nextel's application for a PDP/CUP and that the following representations would be provided to the City Council in this report:

- a. The City staff made errors in reviewing and approving Nextel's application for the Permit for Nextel's wireless telecommunications facility. Any errors by the City did not result from any fraud or bad faith on the part of Nextel or the City. Both the City and Nextel have acted in good faith throughout the permit application and review process.
- b. The City is aware that Nextel is currently operating the Facility. Nextel is operating the facility without obtaining final inspection from the City.

On March 21, 2002, the Planning Commission reviewed and discussed the Nextel-Murray Ridge project. The project was continued to allow Nextel to investigate four alternatives identified by the Planning Commission and to present those options to the Serra Mesa Community Planning Group for their review and recommendation. After presenting the options to the Serra Mesa community planning group, Nextel was asked to come back to the Planning Commission and present photo simulations and coverage information for each of the options. The four alternatives included:

Alternative No. 1: Existing Project with Enhanced Landscape - Maintain the existing location adding supplemental landscaping to further screen the antennas from the nearby homes. In this design alternative, the existing queen palms would be removed and replaced with fan palms planted 20 feet on center along the southern side-yard property line. The row of palms would extend west and include 8 specimen size palms plus two existing fan palms for a total of ten live fan palms ranging in height from 20 feet to 40 feet along the property line. The faux-palm-fronds would be replaced with fronds that match the newly planted fan palms. From staff's perspective, this alternative seems to be the most favorable in terms of

land use and design.

Alternative No. 2: Relocate the faux-palm from its current location further to the west approximately 100 feet, along the side yard property line that abuts I-805. This would locate the wireless communication facility further from the existing residential homes on Galahad Road and Regency Road. Additionally, the original planted queen palms would be removed and replaced with fan palms planted at 20 feet on center. The faux-palm- fronds would be replaced with fronds that match the newly planted fan palms. The difference between the existing project and this alternative is minimal. The visual impact from some of the homes on Galahad Road and Regency Road may be minimized, however, visual impacts would be increased to other homes on those same streets.

Alternative No. 3: Relocate the wireless communication facility approximately 350 feet to the northwest of the existing faux palm adjacent to Murray Ridge Road. Relocating the faux palm further to the northwest would necessitate an increase in height of the faux palm by a minimum of ten feet for technological reasons. The faux palm would be placed with other live palms that match the specie type to form a cluster of similar palms. This alternative moves the visual impact from one group of houses on Galahad Road and Regency Road to a much more visually prominent location adjacent to Murray Ridge Road.

Alternative No. 4: The Caltrans Right-Of-Way adjacent to the southern side yard setback was the final alternative considered. Caltrans enforces strict requirements for all wireless communication facilities located on their property. The most restrictive requirement is that the wireless provider maintain uninhibited access to the site without interfering with the Right-Of-Way. This would necessitate Nextel having to obtain an easement through the church property, thereby executing leases with both Caltrans and the church. In all likelihood, the technological needs would compel the antennas to be located at a similar height and the equipment enclosure to be located immediately adjacent to the church property. The visual impact would remain to many of the same homes.

On May 16, 2002, the Planning Commission voted 5-1 to approve Alternative 1 which would leave the telecommunication facility in its current location with enhanced landscaping and add rodent control measures to the permit conditions.

APPEAL

On May 31, 2002, two separate Appeal Applications were filed by Brian Welch and Robert Sisemore. The appellants identified a number of issues including zoning regulation deviations, as well as, fraud and deceit. The Appeal Applications do not identify grounds for appeal specific to SDMC 112.0508(c)(1-5) which state, "A Process Four decision may be appealed on any of the following grounds:

- 1) Factual Error;
- 2) New Information;
- 3) Findings not supported;
- 4) Conflicts;
- 5) Citywide Significance

Staff affirms that the project as approved by the Planning Commission meets the purpose and intent of the Planned Development Permit and the City of San Diego's Communication Antenna regulations. A detailed response to each issue identified in the appeals is attached for review (Attachment 8).

CONCLUSION

Staff recommends approval of the existing project with enhanced landscape (alternative 1). This alternative proposes the enhancement of the existing site with additional landscape that would further integrate the facility into the environment and reduce the visual impact to the nearby homes. Additionally, the existing project would be designed and located on the property so that it is well integrated with the existing church use, facilitating the existing vehicular circulation, parking and emergency access (Attachment 4).

The City's Communication Antenna regulations aim to protect the aesthetic qualities of our neighborhoods by requiring facilities to be integrated into the surrounding environment through the use of architecture, landscape architecture and siting solutions. The regulations allow staff to review and analyze these projects on a case by case basis, to examine the application's substantive evidence and to make a justifiable recommendation to the decision maker. It is therefore staff's recommendation that the existing facility with enhanced landscape be approved.

ALTERNATIVES

- 1.Uphold the Planning Commission's decision and approve the project with modifications.
- 2.Approve the appeal and deny the project.

Respectfully submitted,

Tina P. Christiansen, A.I.A....	Approved: P. Lamont Ewell
Development Services Director	Assistant City Manager

CHRISTIANSEN/KLA:WJZ

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

- Attachments:
1. Serra Mesa Land Use Designation Map
 - 2.Project Location Map(s)
 - 3.Project Site Plan Illustrating Existing Utilization of Property
 - 4.Site Photosimulations
 - 5.Site Plan and Elevation Plan

- 6.Draft Permit
- 7.Draft Resolution
- 8.Nextel Murray Ridge CUP/PDP Appeal Issues and Responses
- 9.Ownership Disclosure Statement

The project before the City Council is an appeal of the Planning Commission's decision to approve a Condition Use Permit (CUP)/Site Development Permit (SDP) and to certify the associated Negative Declaration No. 94-0330-87. The project was approved by the Planning Commission on May 16, 2002 and was appealed by Brian Welch and Robert Sisemore on May 31, 2002.