COUNCIL AGENDA: December 12, 2006
ITEM: 11.6

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: **SEE BELOW**

DATE: November 17, 2006

Approved: Kay Winer

Date: 11/25/06

COUNCIL DISTRICT: 7
SNI: None

SUBJECT: CP06-030. APPEAL OF THE PLANNING COMMISSION'S DECISION TO CONDITIONALLY APPROVE A CONDITIONAL USE PERMIT TO ALLOW THE CO-LOCATION OF SIX (6) ADDITIONAL WIRELESS ANTENNAS AT A HEIGHT OF APPROXIMATELY 52 FEET ON AN EXISTING 75 FOOT MONOPOLE WITH 12 EXISTING ANTENNAS AND ALLOW ASSOCIATED EQUIPMENT WITHIN AN EXISTING BUILDING LOCATED ON THE NORTH SIDE OF LANO STREET APPROXIMATELY 300 FEET EAST OF ALMADEN EXPRESSWAY ON A 0.24 GROSS ACRE SITE IN THE HI HEAVY INDUSTRIAL ZONING DISTRICT

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision to conditionally approve a Conditional Use Permit (File no. CP06-030) to allow the co-location of six (6) additional wireless antennas at a height of approximately 52 feet on an existing 75 foot monopole with 12 existing antennas and allow associated equipment within an existing building.

OUTCOME

Adopt a resolution approving the subject Conditional Use Permit with conditions as approved by the Planning Commission.

BACKGROUND

The project developer, T-Mobile USA, applied for a Conditional Use Permit for collocation at an existing wireless communications antenna (monopole). T-Mobile had previously filed for a Permit Adjustment, File No AD05-1185, to allow collocation on the existing monopole. This Permit Adjustment was conditionally approved by Staff in January of 2006. T-Mobile was not in agreement with the conditions imposed, but since there was no opportunity to appeal a Permit Adjustment, the applicant submitted this application for a Conditional Use Permit to allow collocation without the required conditions.

The existing monopole was approved in 1990 with a Conditional Use Permit, File No CP90-002, and a Development Variance, File No. V90-001, to allow a height exception. The existing 75 foot tall monopole was approved prior to the adoption of the City Council Policy for Wireless Communication Facilities in 1991, therefore the pole does not conform with this policy. In addition, the monopole is not in conformance with the current Zoning Ordinance in respects to the height and the diameter of the pole. There is no expiration date conditioned in the Conditional Use Permit CP90-002. Currently there are two carriers with antennas located on the pole: AT&T/Cingular and Sprint.

On October 11, 2006, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (CUP). The Director of Planning recommended approval of the Conditional Use Permit with special conditions for reasons stated in the original staff report (see attached). Mr. Steven Ledoux, an attorney representing T-Mobile USA, spoke on behalf of the request to approve the CUP without the special conditions.

At the hearing, the developer's counsel, Mr. Ledoux, explained that staff's recommended conditions to flush-mount existing antennas, internalize cables, and take off exterior ladders could not be achieved by T-mobile, as the existing monopole is not owned by T-mobile. Prior to the hearing the Planning Commission was provided a letter from Mr. Ledoux which stated the reasons to which the conditions should not be imposed (see attached). Mr. Ledoux presented these reasons to the Planning Commission at the hearing. In summary, Mr. Ledoux stated that T-Mobile cannot comply with the conditions imposed in the permit adjustment; therefore approving this CUP with the same conditions would be effectively denying the application due to actions required of a third party. He cited a case where the courts had overturned a denial of an application based on the unwillingness of the applicant's neighbors to dedicate land. He also stated that by effectively denying this permit the Planning Commission would have the effect of prohibiting the provision of wireless services, therefore would violate federal law.

In response, Commissioner Zito, commented that T-mobile has no interest in the land or the pole, therefore it could be a reasonable request that before T-Mobile leases ability to add antennas to the pole, the site should be brought up to current standards.

Commissioner Kalra commented that owner of the pole, Cingular, is not a disinterested party, therefore he disagreed that the legal case cited by Mr. Ledoux was applicable. He also noted that on other sites with similar circumstances seen before the Planning Commission, Cingular has not indicated that flush-mounting antennas is impossible.

Chair Campos asked for the City Attorney to clarify legal issues surrounding the project, noting receipt of a letter from legal counsel representing the applicant. The City Attorney noted antennas already exist on the pole at the site, and she stated that Commission action on the proposed project would not mean that no antennas could be installed by T-Mobile. Counsel further clarified that staff is not requiring that pole come down, only that if further modification of/expansion to antenna uses on pole were to be allowed, that the aesthetics would be improved to the City's current guidelines. The City Attorney further commented that the City, like T-Mobile, does not have ability to compel Cingular to make changes, but that the City is not required to approve collocation of antennas "at any cost".

Commissioner Zito asked for clarification regarding the five year expiration condition. He inquired if this condition was approved would the entire pole lose its conforming status after five years. In response to Commissioner Zito, the City Attorney explained that technology improvements could change future regulations, and a legally-erected pole could remain as legal-non-conforming use. Acting Deputy Director Hamilton commented that although the City could change regulations in the future, the real property owner or pole owner could also make changes.

Commissioner Zito recommended approval of the CUP with staff recommended conditions, and commented that staff is likely correct in their comment that future changes would be harder to implement with a third carrier, and he stated this might be their only opportunity to bring this site closer to current standards.

Commissioner Dhillon concurred with Acting Deputy Director Hamilton and said that he would support the motion. Commissioner Kamkar stated he would support the motion but felt applicant is in a difficult situation. The City Attorney clarified that the real property owner is the applicant in this case, not T-Mobile. Commissioner Zito stated he concurred with Commissioner Kamkar's comments.

Commission Kalra stated that the situation is really a choice about either forcing an upgrade in the current situation to get expansion for more antennas, or they could maintain existing situation.

No one from the public spoke in favor or opposition. The Planning Commission approved the proposed project by a unanimous vote of 7-0-0. The Planning Commission's resolution is attached.[1]

Subsequent to the hearing, on October 25, 2006, the developer, T-Mobile USA, appealed the Planning Commission's decision to conditionally approve the subject proposal.

ANALYSIS

The Permit Appeal submitted by the appellant (see attached) specifically identifies the four conditions that T-Mobile has stated they cannot fulfill. For the reasons specified, the appellant believes the City Council should consider approving the subject permit without the special conditions approved by the Planning Commission. The key point in the appeal noted that the conditions of approval are impossible for T-Mobile to comply with due to their inability to compel other providers to act, therefore, the special conditions should not be imposed with the permit.

Conformance of Existing Pole to City Ordinances and Policies

The original staff report (attached) provides a full analysis of this project with respect to the conformance of the existing pole to all applicable City ordinances and policies, and it specifies the conditions required by Staff in the Permit Adjustment to which T-Mobile objected. In summary, the existing monopole is a legal structure, approved with a Conditional Use Permit and Variance in 1990. The pole does not conform to current City policies and codes for several reasons, as detailed below. The original approval for the pole does not have an expiration date; therefore it can remain in its current situation in perpetuity. As part of allowing new antennas to be collocated on the pole, it is the position of the Director and the Planning Commission that special conditions should be imposed to bring the current situation into closer compliance with Title 20 of the San Jose Municipal Code and the

[1] Note: Between the staff report distribution and the public hearing, staff added a renewal condition to the permit. The signed resolution contains the additional condition.

Land Use Policy for Wireless Communication Facilities, City Council Policy 6-20. The pole as existing conforms to neither the current Zoning Ordinance nor the City Council Policy for Wireless Communication in the following aspects:

1. *Height.* The pole was granted a Development Variance to allow a height of 75'. The current requirements of the Zoning Ordinance allow wireless communication antenna to be increased over the maximum height of the Zoning District to a maximum of 60' in height, provided that the monopole is a slimline monopole.

2. *Diameter of Pole.* A wireless communications monopole may extend up to 60' in height, without a Development Exception, if the pole has a slimlime design. The existing pole has a greater diameter than a slimline pole (as defined in Title 20), and based on Policy 6-20, staff would not recommend approval of a Conditional Use Permit or a Development Exception for a pole of the existing design given current technology.

3. *Mounting of Antennas.* The Zoning Ordinance defines a slimline monopole as having antennas screened by an enclosure not exceeding three feet in diameter. The existing antennas exceed this specification and are not screened. The existing AT&T/ Cingular antennas have a "wagon wheel" configuration and extend approximately 4.5 feet from the monopole at their greatest dimension, creating a total diameter of approximately 13 feet at the top of the pole.

   There is a second set of existing antennas owned by Sprint that are situated below the Cingular antennas. A permit adjustment, AD04-161, shows that the antennas had been previously mounted at a height of less than 50 feet on the pole with an extension of approximately five feet from the pole on each side. The aforementioned adjustment allowed these antennas relocate to a height of approximately 65 feet and to extend from the pole approximately two feet on each side. It appears from the plans submitted by T-Mobile that the Sprint antennas were constructed at the allowed height, but extend five feet from the pole on each side, exceeding the permitted radius by three feet. This set of Sprint antennas, as they exist today, are in violation of their permit.

<u>Reasons for Appeal</u>

The Permit Appeal, submitted by T-Mobile USA, states: "*In Resolution No. CP06-030 the Planning Commission approved this CUP with conditions that are impossible for the applicant to satisfy...For these and other reasons presented to the Planning Commission and to be presented to the City Council, the Applicant appeals.*" The appellant has filed this appeal in order for the City Council to approve the Conditional Use Permit without the following conditions (these conditions noted in the appeal are actually facts from the Resolution):

1. This permit is conditioned to flush mount the existing Sprint antennas to no more than 12 inches from the pole.

The appellant has stated that it is impossible for T-Mobile to comply with this condition, however as mentioned above, these antennas were installed in violation of their permit. Because the antennas do not conform to the approved configuration, this array must be changed, whether it be through this

permit for the collocation of new antennas or through the Notice of Noncompliance and Order to Show Cause process.

2. This permit is conditioned to mount the Cingular and AT&T antennas no more than two feet from the pole.

3. This permit is conditioned to remove the existing pegs and ladder from the pole.

4. This permit is conditioned to conceal all existing and proposed wiring on the monopole.

These conditions are intended to bring the pole closer to the slimline monopole design which would be allowed under current Zoning Ordinance requirements and City Policies. The appellant has stated that the conditions are impossible to meet due to lack of cooperation of Cingular Wireless, the owner of the pole. When CUPs expire on existing wagon-wheel style monopoles, staff routinely recommends flush-mounting existing antennas as a part of the CUP renewal. Antenna configurations for this user have been flush mounted on other monopoles in San Jose. The only exception for this monopole is that the CUP approving the pole does not have an expiration date. CP90-002 was approved before the adoption of the applicable Council Policy which recommends imposing time conditions. The letter provided by the appellant to the Planning Commission states that "Under state law, a local agency may not impose a condition which requires concerted action by others not a party to the transaction and over which the permit applicant has no control." As the owner of the pole, Cingular is a party to the transaction; therefore it is not unreasonable to require action to be taken by Cingular as a condition of this permit. It is routine for staff to condition antennas on existing monopoles to be flush mounted as a part of renewal of their permits.

Conclusion

The existing monopole is unsightly, out-dated, and highly visible from Highway 87. Approval of the project as proposed by the applicant would make it increasingly difficult to implement additional design modifications in the future to improve the appearance of the wireless communications pole. The Planning Commission's conditions of approval for the project improve the project's level of conformance with the City's Zoning Ordinance, and City Council Policy 6-20. Implementation of the previously approved conditions would improve the appearance of the monopole without reducing the utility of the pole for the existing or proposed users. Requiring changes to the existing pole to allow collocation of a new carrier is neither unreasonable nor illegal; therefore the Director recommends that the City Council uphold the Planning Commission's decision to conditionally approve this project.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH

☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notices for the public hearings for the project and for this appeal were mailed to the owners and tenants of all properties located within 500 feet of the project site. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the City Council agenda, on the City's website. Staff has been available to discuss the proposal with members of the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

FISCAL/POLICY ALIGNMENT

The proposed project is aligned with applicable General Plan and development policies.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301(a), Existing Facilities, of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

For questions, please contact Mike Enderby at (408) 535-7806.

Attachments:

- Planning Commission Staff Report & Attachments
- Excerpt of Synopsis from 10/11/06 Planning Commission hearing
- Correspondence provided to the Planning Commission by attorney for the developer
- Appeal Application

cc: Applicant/Appellant

RESOLUTION NO. CP06-030

Resolution of the Planning Commission of the City of San Jose granting, subject to conditions, a Conditional Use Permit to use certain real property described herein for the purpose of allowing the collocation of six (6) cellular telephone antennas on an existing monopole located on a 0.24 gross acre site on the north side Lano Lane, approximately 300 feet east of Almaden Expressway.

FILE NO. CP06-030

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on April 12, 2006, an application (File No.**CP06-030**) was filed for a Conditional Use Permit for the purpose of allowing the collocation of six (6) cellular telephone antennas on an existing monopole, on that certain real property (hereinafter referred to as "subject property"), situate in the LI Light Industrial Zoning District, located on the north side of Lano Lane, approximately 300 feet east of Almaden Expressway, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San Jose Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, SF14990 Willow Glen," last revised September 22, 2005. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San Jose Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The applicant is requesting the subject Conditional Use Permit to allow collocation of six antennas on an existing wireless communications monopole.

2. A Conditional Use Permit is required for a wireless communication antenna that is not a slimline monopole in the HI Heavy Industrial Zoning District.

3. The existing monopole is located on a 0.24 gross acre site currently used for industrial purposes.

4. No change in the primary use of the site is proposed as a part of this application.

5. The uses immediately adjacent to this lot are industrial. Surrounding land uses consist of a mixture of industrial and commercial uses. The closest residential use is located on Cross Way, approximately 650 feet from the monopole.

6. In 1990 the subject monopole was approved with a Conditional Use Permit (CP90-002) and a Development Variance (V90-001) to allow a 75 foot tall monopole. The Conditional Use Permit was approved without an expiration date.

7. The existing monopole and AT&T and Cingular antennas are legal structures.

8. In 2004 collocation of three (3) new antennas for Sprint was approved through a Permit Adjustment, AD04-161. This adjustment approved the antennas to extend away from the pole no more than two (2) feet. The antennas were constructed extending approximately five (5) feet from the pole. These antennas were constructed in violation of the Permit.

9. The subject site is designated LI Light Industrial on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram.

10. The project site is located in the HI Heavy Industrial Zoning District.

11. The maximum allowed height in the HI Heavy Industrial Zoning District is 45 feet, however, Title 20 of the San Jose Municipal Code allows a wireless communication antenna to be increased over the required maximum height of the zoning district in which it is located to a maximum of 60 feet provided that the antenna is a slimline monopole.

12. The proposed T-Mobile antennas are to be mounted at a height of 50 feet.

13. This permit is conditioned to flush mount the proposed T-Mobile antennas to no more than 12 inches from the pole.

14. The existing Sprint antennas are mounted at a height of 65 feet.

15. This permit is conditioned to flush mount the existing Sprint antennas to no more than 12 inches from the pole.

16. This permit is conditioned to mount the Cingular and AT&T antennas no more than two feet from the pole.

17. This permit is conditioned to conceal all existing and proposed wiring on the monopole.

18. The purpose of Council Policy 6-20: Land Use Policy for Wireless Communication Facilities is to support necessary communication facilities in a manner that minimizes visual clutter and other land use impacts and provides future opportunities for reducing impacts as changes in technology or development patterns make this possible.

19. This permit is conditioned to remove the existing pegs and ladder from the pole.

20. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The primary industrial use of the property would not be affected by this permit.

21. The project will not reduce the amount parking spaces available on the site.

22. This permit is conditioned to provide 9 to 12 trees to be located on adjacent properties or streets in order to reduce the view of the existing monopole to the satisfaction of the Director of Planning, Building and Code Enforcement.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use Transportation Diagram.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The existing monopole does not fully comply with the City's Wireless Policy, however, the project as proposed with staff's conditions will improve the existing conditions and allow the structure to better meet the intent of the purpose of the City's Wireless Policy.

4. The proposed project is in compliance with the California Environmental Quality Act.

5. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
   a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
   b. Impair the utility or value of property of other persons residing or working in the surrounding area; or
   c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
   a. By highway or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate and; and
   b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
   a. Acceptance of the Permit by the applicant; and
   b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.

2. **Major Permit Adjustment Required.** Prior to the issuance of a building permit and commencement of construction, the applicant shall secure and agree to implement a Major Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement to address the following changes to the project plans:

   a. Show the diameter of the monopole with the proposed T-Mobile antennas and the Sprint antennas flush mounted to the pole (12 inches maximum extension from the pole surface).

   b. Show the diameter of the monopole with the proposed Cingular and AT&T antennas mounted no more than 2 feet from the pole.

   c. Show all existing and proposed wiring on the monopole to be concealed.

   d. Show that the pegs and the ladder on the existing pole are to be removed.

   e. Show the location of 9 to 12 trees to be located on adjacent properties or streets in order to reduce the view of the existing monopole.

   f. Provide an overall site plan showing the location of the monopole within the context of the overall site.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Structure Permit and/or Certificate of Occupancy from the Structure Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Structure Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Except, as noted under condition #2 under Conditions Precedent, construction and development shall conform to approved development plans entitled, "SF14990 Willow Glen," last revised September 22, 2005, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).

3. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.

4. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final approved plan set and approved Adjustment. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San Jose Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San Jose Landscape and Irrigation Guidelines.

6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.

7. **Compliance with Local and State Laws**. The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.

8. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.

9. **Anti Litter.** The site and the adjoining street frontage shall be maintained free of litter, refuse, and debris.

10. **Lighting.** No new lighting is approved as a part of this project.

11. **Outdoor Storage.** No outdoor storage is permitted except in areas designated on the approved plan set.

12. **Refuse.** All trash shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.

13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Director of Planning, Building, and Code Enforcement:

    a. ***Construction Plans.*** The permit file number, **CP06-030** shall be printed on all construction plans submitted to the Building Division.

    b. ***Emergency Address Card.*** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department

    c. ***Plan Conformance.*** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date. The subject permit shall be incorporated into all construction plans submitted to the Building Division as follows

        1) Index Sheet and all construction plans shall reference the approved permit, CP06-030, any subsequent Amendments, or Adjustments to the approved permit, and applicable sheets.
        2) The approved subject permit (with signature) shall be copied in it entirety onto plans set sheets.
        3) Construction plans shall also incorporated all elements of the approved permit included in the plan set.

14. **Compliance Review.** A compliance review is required at the discretion of the Director of Planning based on complaints regarding the operation of the facility.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. The Director of Planning may approve a Permit Adjustment/Amendment extending the permit in accordance with Title 20.

2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit.

Please note that this Conditional Use Permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

    a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

    b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

    c. The use as presently conducted creates a nuisance

APPROVED this 11th day of October 2006, by the following vote:

AYES: CAMPOS, DHILLON, KALRA, KAMKAR, PHAM PLATTEN, ZITO.

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

Chairperson

ATTEST:

Joseph Horwedel, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, California 95113

STAFF REPORT

Hearing Date/Agenda Number
P.C. 10-11-06, Item No. 4 C

File Number
CP06-030

Application Type
Conditional Use Permit

Council District
7

Planning Area
South

Assessor's Parcel Number(s)
455-22-034

PROJECT DESCRIPTION

Completed by: S. Martina Davis

Location: North side of Lano Street approximately 300 feet east of Almaden Expressway

Gross Acreage: 0.24 Net Acreage: 0.24 Net Density: n/a

Existing Zoning: HI Heavy Industrial Existing Use: Wireless communications monopole

Proposed Zoning: No change Proposed Use: Same with additional antennas

GENERAL PLAN

Land Use/Transportation Diagram Designation
LI Light Industrial

Project Conformance:
[☒] Yes [☐] No
[☒] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

North:	Commercial/Industrial	LI Light Industrial
East:	Industrial	HI Heavy Industrial
South:	Industrial	HI Heavy Industrial
West:	Industrial	HI Heavy Industrial

ENVIRONMENTAL STATUS

[☐] Environmental Impact Report found complete
[☐] Negative Declaration circulated on
[☐] Negative Declaration adopted on

[☒] Exempt
[☐] Environmental Review Incomplete

FILE HISTORY

Annexation Title: Cottage Grove No. 6A Date: July 24, 1959

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[☐] Approval
[☒] Approval with Conditions
[☐] Denial
[☐] Uphold Director's Decision

Date: October 3, 2006

Approved by: Michael P. Ludwig
[☒] Action
[☐] Recommendation

APPLICANT/OWNER

Judith Froom
PO Box 1852
San Jose, CA 95155

DEVELOPER

T-Mobile USA
12920 SE 38th Street
Bellevue, WA 98006

PUBLIC AGENCY COMMENTS RECEIVED Completed by: SMD

Department of Public Works

None received.

Other Departments and Agencies

NA

GENERAL CORRESPONDENCE

See attached correspondence from Cingular Wireless

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The project developer, T-Mobile USA, is requesting approval of a Conditional Use Permit for collocation at an existing wireless communications antenna (monopole). The existing monopole was approved in 1990 with a Conditional Use Permit, File No CP90-002, and a Development Variance, File No. V90-001, to allow a height exception. The existing 75 foot tall monopole was approved prior to the adoption of the City Council Policy for Wireless Communication Facilities in 1991, therefore the pole does not conform with this policy, nor is it in conformance with the Zoning Ordinance in respects to the height and the diameter of the pole. There is no expiration date conditioned in the Conditional Use Permit CP90-002. Currently there are two carriers with antennas located on the pole: AT&T/Cingular and Sprint. The developer, T-Mobile USA, has previously filed for a Permit Adjustment, File No AD05-1185, to allow collocation on the existing monopole. This Permit Adjustment was approved by Staff in January of 2006 with conditions further described in the analysis section of this report. T-Mobile is not in agreement with the conditions imposed, but since there is no opportunity to appeal a Permit Adjustment, the applicant has submitted this application for a Conditional Use Permit to allow collocation without the required conditions.

Project Description

T-Mobile USA has proposed collocation of six antennas at a height of 50'on the existing 75' tall monopole. The antennas are proposed to be mounted extending approximately 2 feet from the existing pole on three sides, creating a total maximum diameter of new antennas of approximately 5 feet. T-Mobile is not proposing to change the configuration of the existing antennas owned by other carriers. The proposed T-Mobile equipment will be located within the existing industrial building. Staff is recommending approval with significant changes to the proposed project, as discussed in the analysis section of this report.

The site is bordered by commercial and industrial uses to the north, and industrial uses to the east, south and west. The existing monopole is located approximately 390 feet from Highway 87.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, in that the project consists of only minor alterations to an existing structure which would not involve an expansion or intensification of the existing primary uses on the subject site.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Policies and Land Use/Transportation Diagram designation of LI Light Industrial. Wireless communication antennas/monopoles developed in conformance with the Zoning Ordinance and applicable City policy are considered an appropriate land use on industrially designated lands.

ANALYSIS

The key issues analyzed for the proposed project are conformance with the Zoning Ordinance and City Council Policy 6-23 for Wireless Communication Facilities. Staff's recommended conditions to improve the visual appearance of this pole are also evaluated.

Conformance with Zoning Ordinance and Applicable Policies

The pole was granted a Development Variance to allow a height exception and in all other ways was built in conformance with the Zoning Ordinance as adopted 1990. The pole was approved prior to the adoption of City Council Policy 6-23, therefore it was not subject to the requirements of this policy. The monopole is a legal structure, with one exception which will be discussed later in this analysis. No time limitation was included in the Conditional Use Permit (File No. CP90-002), approving the construction of the pole; therefore this pole could remain in its existing state in perpetuity. The pole as existing conforms to neither the current Zoning Ordinance nor the City Council Policy for Wireless Communication in the following aspects:

1. *Height.* The pole was granted a Development Variance, V90-001 to allow a height of 75'. The current requirements of the Zoning Ordinance allow wireless communication antenna to be increased over the maximum height of the Zoning District to a maximum of 60' in height, provided that the monopole is a slimline monopole. The maximum height allowed in the HI Heavy Industrial Zoning District is 45'. T-Mobile is proposing to mount their new antennas at a height of approximately 50'.

2. *Diameter of Pole.* A wireless communications monopole may extend up to 60' in height without a Development Exception of that it proposes a slimlime design. The Zoning Ordinance defines a slimline monopole as a "single antenna pole not exceeding 1.5 feet in diameter at base of the antenna or pole, with antennas screened by an enclosure not exceeding 3 feet in diameter." The diameter at the base of the existing pole is approximately four feet and the diameter of the pole at the height of the existing antennas is approximately three and a half feet. The pole was granted a Development Variance to exceed the allowed height in the Zoning Ordinance. Staff would not recommend approval of a Conditional Use Permit or a Development Exception for a pole of the existing design given the current technology available which allows for a more inconspicuous design.

3. *Mounting of Antennas.* The Zoning Ordinance also defines a slimline monopole as having antennas screened by an enclosure not exceeding three feet in diameter. The existing antennas exceed this specification and are not screened. The existing AT&T/ Cingular antennas have a "wagon wheel" configuration and extend approximately 4.5 feet from the monopole at their greatest dimension, creating a total diameter of approximately 13' at the top of the pole.

   There is a second set of existing antennas owned by Sprint that are situated below the Cingular antennas. A permit adjustment, AD04-161, shows that the antennas had been previously approved at a height of less than 50' on the pole and extended approximately 5' from the pole on each side. The aforementioned adjustment allowed these antennas relocate to a height of approximately 65' and to extend from the pole approximately 2' on each side. It appears from the plans submitted by T-Mobile that the Sprint antennas were constructed at the allowed height, but extend 5 feet from the pole on each side, exceeding the permitted radius by three feet. This set of Sprint antennas as exist today are in violation of their permit. Staff has recommended a condition in this permit to flush mount the Sprint antennas to extend no more than one foot from the monopole on each side prior to the issuance of a building permit for any additional antennas.

   T-Mobile USA is proposing to mount their antennas extending approximately 2' from the pole at the greatest dimension. Staff has recommend a condition in this permit to flush mount the proposed T-Mobile antennas no more than one foot from the pole.

<u>*Conditions Recommended by Staff*</u>

As a part of a new approval Staff would typically require the monopole and antennas be brought into compliance with Title 20 of the San Jose Municipal Code and the applicable Council policy, especially given the high visibility of this pole from Highway 87. However, given that this pole is existing and legal, staff will use discretion in recommending conditions to minimize the cost of the upgrades to the pole for the applicant. Staff is recommending the following conditions, which are similar to those approved with the Permit Adjustment AD05-1185 noted below:

1. *All existing and proposed antennas are to be mounted closer to the existing pole. The existing Sprint antennas and the proposed T-Mobile antennas are to extend a maximum of 12 inches from the pole. The existing Cingular and AT&T antennas are to be mounted no more than two feet from the pole.*

   The representative for T-Mobile USA has indicated to Staff that this condition cannot be met due to engineering difficulties. Staff has not received any technical reports from the applicant to support this statement. Antenna configurations for these users have been mounted in this manner on other monopoles in San Jose. Additionally, when CUP's expire on existing wagon-wheel style monopoles, staff routinely recommends flush-mounting existing antennas as a part of the CUP renewal. The only exception for this monopole is that the CUP approving the pole does not have an expiration date. CP90-002 was approved before the adoption of the applicable Council Policy which recommends imposing time conditions.

2. *All existing and proposed wiring on the monopole is to be concealed.*

This condition is intended to bring the pole closer to the slimline monopole design which would be allowed under current Zoning Ordinance requirements and City Policies.

3. *The pegs and the ladder on the existing monopole are to be removed.*

   Similar to the condition above, this condition is intended to improve the visual impact of the pole by reducing visual clutter and bring it closer to compliance with slimline design requirements.

4. *Receive approval of a Permit Adjustment showing the location of 9 to 12 trees to be located on adjacent properties or streets in order to reduce the view of the existing monopole prior to the issuance of building permits to the satisfaction of the Director of Planning, Building and Code Enforcement.*

   Staff routinely recommends additional landscaping as a condition of the approval of a new monopole. The site where this monopole is situated could not support additional landscaping, therefore Staff is recommending that landscaping be planted on adjacent parcels near the streets to better screen the view of the pole. The new trees would be strategically situated to provide the maximum screening of the pole from a line of sight perspective from adjacent or nearby roadways.

5. *This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit.*

   City Council Policy 6-23 recommends imposing an expiration date on all new monopoles. This is intended to require review of the design of the pole as technological advances are made in the cellular communications field. Staff is recommending this condition be imposed on this Conditional Use Permit, which effects the entire pole. Therefore, the entire pole and antenna configurations would be subject to review in five years time.

COMMUNITY OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. A notification sign has been placed on the site to inform the public of the proposed changes. A notice of the public hearing and a copy of the Staff Report have been made available online, accessible from the Planning Divisions' web page. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the subject Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. The applicant is requesting the subject Conditional Use Permit to allow collocation of six antennas on an existing wireless communications monopole.

2. A Conditional Use Permit is required for a wireless communication antenna that is not a slimline monopole in the HI Heavy Industrial Zoning District.

3. The existing monopole is located on a 0.24 gross acre site currently used for industrial purposes.

4. No change in the primary use of the site is proposed as a part of this application.

5. The uses immediately adjacent to this lot are industrial. Surrounding land uses consist of a mixture of industrial and commercial uses. The closest residential use is located on Cross Way, approximately 650 feet from the monopole.

6. In 1990 the subject monopole was approved with a Conditional Use Permit (CP90-002) and a Development Variance (V90-001) to allow a 75 foot tall monopole. The Conditional Use Permit was approved without an expiration date.

7. The existing monopole and AT&T and Cingular antennas are legal structures.

8. In 2004 collocation of three (3) new antennas for Sprint was approved through a Permit Adjustment, AD04-161. This adjustment approved the antennas to extend away from the pole no more than two (2) feet. The antennas were constructed extending approximately five (5) feet from the pole. These antennas were constructed in violation of the Permit.

9. The subject site is designated LI Light Industrial on the City of San Jose's 2020 General Plan Land Use/Transportation Diagram.

10. The project site is located in the HI Heavy Industrial Zoning District.

11. The maximum allowed height in the HI Heavy Industrial Zoning District is 45 feet, however, Title 20 of the San Jose Municipal Code allows a wireless communication antenna to be increased over the required maximum height of the zoning district in which it is located to a maximum of 60 feet provided that the antenna is a slimline monopole.

12. The proposed T-Mobile antennas are to be mounted at a height of 50 feet.

13. This permit is conditioned to flush mount the proposed T-Mobile antennas to no more than 12 inches from the pole.

14. The existing Sprint antennas are mounted at a height of 65 feet.

15. This permit is conditioned to flush mount the existing Sprint antennas to no more than 12 inches from the pole.

16. This permit is conditioned to mount the Cingular and AT&T antennas no more than two feet from the pole.

17. This permit is conditioned to conceal all existing and proposed wiring on the monopole.

18. The purpose of Council Policy 6-20: Land Use Policy for Wireless Communication Facilities is to support necessary communication facilities in a manner that minimizes visual clutter and other land use impacts and provides future opportunities for reducing impacts as changes in technology or development patterns make this possible.

19. This permit is conditioned to remove the existing pegs and ladder from the pole.

20. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The primary industrial use of the property would not be affected by this permit.

21. The project will not reduce the amount parking spaces available on the site.

22. This permit is conditioned to provide 9 to 12 trees to be located on adjacent properties or streets in order to reduce the view of the existing monopole to the satisfaction of the Director of Planning, Building and Code Enforcement.

The Planning Commission concludes and finds, based on the analysis of the above facts, that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use Transportation Diagram.

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.

3. The existing monopole does not fully comply with the City's Wireless Policy, however, the project as proposed with staff's conditions will improve the existing conditions and allow the structure to better meet the intent of the purpose of the City's Wireless Policy.

4. The proposed project is in compliance with the California Environmental Quality Act.

5. The proposed use is compatible with the surrounding neighborhood.

Finally, based on the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
   a) Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
   b) Impair the utility or value of property of other persons located in the vicinity of the site; or
   c) Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
   a) By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
   b) By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until this Resolution has been recorded with the County Recorder.

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
   a. Acceptance of the Permit by the applicant; and
   b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Major Permit Adjustment Required.** Prior to the issuance of a building permit and commencement of construction, the applicant shall secure and agree to implement a Major Permit Adjustment to the satisfaction of the Director of Planning, Building, and Code Enforcement to address the following changes to the project plans:
   a. Show the diameter of the monopole with the proposed T-Mobile antennas and the Sprint antennas flush mounted to the pole (12 inches maximum extension from the pole surface).
   b. Show the diameter of the monopole with the proposed Cingular and AT&T antennas mounted no more than 2 feet from the pole.
   c. Show all existing and proposed wiring on the monopole to be concealed.
   d. Show that the pegs and the ladder on the existing pole are to be removed.
   e. Show the location of 9 to 12 trees to be located on adjacent properties or streets in order to reduce the view of the existing monopole.
   f. Provide an overall site plan showing the location of the monopole within the context of

the overall site.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Structure Permit and/or Certificate of Occupancy from the Structure Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Structure Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Except, as noted under condition #2 under Conditions Precedent, construction and development shall conform to approved development plans entitled, "SF14990 Willow Glen," last revised September 22, 2005, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).

3. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.

4. **Nuisance**. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final approved plan set and approved Adjustment. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San Jose Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San Jose Landscape and Irrigation Guidelines.

6. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.

7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to

permit a violation of any part of the San Jose Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in a manner as to cause a nuisance, as defined above.

8. **Liability.** The Applicant shall indemnify and hold harmless the City and any officers and employees thereof against and from all claims, loss, liability, damages, judgments, decrees, costs and expenditures which the City of such officer or employee may suffer, or which may be recovered from or obtainable against the City of such officer or employee, proximity caused by and growing out of or resulting from the exercise of the Permit.

9. **Anti Litter.** The site and the adjoining street frontage shall be maintained free of litter, refuse, and debris.

10. **Lighting.** No new lighting is approved as a part of this project.

11. **Outdoor Storage.** No outdoor storage is permitted except in areas designated on the approved plan set.

12. **Refuse.** All trash shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.

13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Director of Planning, Building, and Code Enforcement:

    a. ***Construction Plans.*** The permit file number, **CP06-030** shall be printed on all construction plans submitted to the Building Division.

    b. ***Emergency Address Card.*** The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department

    c. ***Plan Conformance.*** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date. The subject permit shall be incorporated into all construction plans submitted to the Building Division as follows

        1) Index Sheet and all construction plans shall reference the approved permit, CP06-030, any subsequent Amendments, or Adjustments to the approved permit, and applicable sheets.
        2) The approved subject permit (with signature) shall be copied in it entirety onto plans set sheets.
        3) Construction plans shall also incorporated all elements of the approved permit included in the plan set.

14. **Compliance Review.** A compliance review is required at the discretion of the Director of Planning based on complaints regarding the operation of the facility.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. The Director of Planning may approve a Permit Adjustment/Amendment extending the permit in accordance with Title 20.

2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit.

   Please note that this Conditional Use Permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

   a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

   b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

   c. The use as presently conducted creates a nuisance

Attachments

cingular
raising the bar

January 30, 2006

William Stephens
T-Mobile
1855 Gateway Blvd, Suite 900
Concord, CA 94520

RE: T-Mobile PCS request to collocate
Cingular Wireless ("Willow Glen")
Address: 419 Lano Street, San Jose CA

Dear Bill,

Please be advised that Cingular Wireless has reviewed the proposed changes to the Cingular CUP.

Currently Cingular and Sprint's antennas are not flush mounted to the tower, and Cingular is unable to move to reconfigure our antennas in such a way. To go to a flush mounted scenario requires the use of more than one centerline on the tower and limits the amount of antennas we can install. Which would reduce our antenna count and flush mounting would severely affect Cingular's coverage area and capacity for calls.

Concerning the removal of the pegs and ladder. Operations is unable to agree to the request as they need the ability to climb the tower to maintain our equipment.

Cingular Wireless would like to cooperate as much as possible to allow T-Mobile to collocate, which helps alleviate the necessity of additional towers. Cingular and T-Mobile have both already invested a lot of time to get to this step.

Please contact me if you have any questions or comments.

Sincerely,

Stephanie Weirich

Stephanie Weirich
Co-Location Specialist
Cingular Wireless fka ATTWS
(916) 636-9082

Excerpt from 10/11/06 Planning Commission Synopsis

CP06-030. Conditional Use Permit to allow the co-location of six (6) additional wireless antennas at a height of approximately 52 feet on an existing 75 foot monopole with 12 existing antennas and allow associated equipment within an existing building on a 0.24 gross acre site in the HI Heavy Industrial Zoning District, located on north side of Lano Street approximately 300 feet east of Almaden Expressway (419 LANO ST) (Froom, Judith R Trustee & Et Al, Owner). Council District 7. SNI: None. CEQA: Exempt.

APPROVED (7-0-0) WITH STAFF RECOMMENDED CONDITIONS TO FLUSH-MOUNT ANTENNAS, CONCEAL WIRING, REMOVE LADDER, PLANT TREES AND ADD 5-YEAR TIME CONDITION.

Applicant's representative explained reasons why staff's recommended conditions to flush-mount existing antennas internalize cables and take off exterior ladders could not be achieved just by T-mobile, since existing monopole not owned by T-mobile. In response to Commissioner Zito, the applicant commented T-mobile has no interest in the land or the pole, and commented it could be a reasonable request that before T-Mobile leases ability to add antennae to the pole, that the site be brought up to current standards. Commissioner Zito commented that staff is not saying existing use needs to end, but that an expansion should not be considered until current standards achieved. The applicant commented that if this permit not approved, then T-Mobile would likely need to apply for a new monopole in area.

Commissioner Kalra commented that singular owner of the pole is not a disinterested party, and that prior discussion with Cingular on other sites have not indicated that flush-mounting antennas is impossible. Commissioner Kalra additionally stated that City has an interest in moving older antennas to conformance with new guidelines

Commissioner Kamkar asked the applicant if Cingular was being uncooperative and stated that applicant is in difficult spot, especially since Cingular's Conditional Use Permit has no time condition and would not otherwise come before the Commission. Applicant did comment and agree that flush-mounted antennas look better. In response to Commissioner Kamkar, staff confirmed that Cingular CUP would not need removal.

Chair Campos asked for the City Attorney to clarify legal issues surrounding the project, noting receipt of a letter from legal counsel representing the applicant. The City Attorney noted antennas already exist on pole on site, and stated Commission action on proposed project would not mean no antennas. Counsel further clarified that staff are not requiring that pole come down, only that if further modification/expansion to antenna uses on pole is allowed, that the aesthetics be improved to the City's current guidelines. The City Attorney further commented that the City like T-Mobile, does not have ability to compel Cingular to make changes, but that the City is not required to approve collocation of antennas "at any cost".

In response to Commissioner Zito, staff clarified that proposed condition for 5-year time limit would apply to entire pole with antenna, not just T-Mobile antennas. The City

Attorney commented that the City has a current policy for a 5-year "check-in" renewal for staff to be able to review changes in technology over time to be able to enhance operation and aesthetics. In further response to Commissioner Zito, the Attorney explained that the City's responsibility is to review the totality of the impacts, and confirmed it could be appropriate to add 5-year renewal timeframe. Staff, in response to Commissioner Zito, commented that no alternatives analysis had been done, and that it is not clear 50 ft new pole in area would result, and that it could be building-mounted, or placed on some other pole.

In response to Commissioner Zito, the City Attorney explained that technology changes could change future regulations, and a legally-erected pole could remain as legal-non-conforming use.

Deputy Hamilton commented that although the City could change regulations in the future, the real property owner or pole owner could also make changes.

Commissioner Zito recommended approval of the CUP with staff recommended conditions, and commented that staff is likely correct that change in future would be harder with 3 carriers and stated this might be only opportunity to bring this site closer to current standards.

Commissioner Dhillon concurred with Deputy Hamilton and said he'd support motion. Commissioner Kamkar stated he'd support the motion but felt applicant is in difficult situation. The City Attorney clarified that the real property owner is the applicant in this case.

Commission Kalra stated situation is really choice about forcing upgrade in situation to get expansion for more antennas, or they could maintain existing situation.

Commissioner Zito stated he concurred with Commissioner Kamkar's comments.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

CITY OF SAN JOSE
Planning, Building and Code Enforcement
200 East Santa Clara Street
San José, CA 95113-1905
tel (408) 535-3555 fax (408) 292-6055
Website: www.sanjoseca.gov/planning

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP06-030	RECEIPT # 450322
PROJECT LOCATION 419 LANO ST. SAN JOSE, CA 95125	AMOUNT $ 2092.77
	DATE 10/24/06
	BY J KIM

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
419 Lano Street San Jose, CA 95125

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
In Resolution NO. CP06-030 the Planning Commission approved this CUP with conditions that are impossible for the applicant to satisfy, including without limitation conditions numbered 15, 16, 17 & 19. For these and other reasons presented to the Plannign Commission and to be presented to the City Council, the Applicant appeals.

PERSON FILING APPEAL

NAME Bill Walton for T-Mobile USA		DAYTIME TELEPHONE (415) 200-9819	
ADDRESS 1855 Gateway Blvd, Suite 900	CITY Concord	STATE CA	ZIP CODE 94520
SIGNATURE Bill Walton		DATE 10/25/06	
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) Applicant			

CONTACT PERSON
(IF DIFFERENT FROM PERSON FILING APPEAL)

NAME WILLIAM STEPHENS			
ADDRESS 1855 GATEWAY BLVD, SUITE 900,	CITY CONCORD	STATE CA	ZIP CODE 94520
DAYTIME TELEPHONE (510) 612-2511	FAX NUMBER ( )	E-MAIL ADDRESS william.stephens@t-mobile.com	

PROPERTY OWNER

NAME Trustee Judith Froom		DATE 10/16/2006	
ADDRESS PO Box 1852	CITY San Jose	STATE CA	ZIP CODE 95155

PLEASE SUBMIT THIS APPLICATION IN PERSON TO THE 2ND FLOOR OF THE DEVELOPMENT SERVICES CENTER, CITY HALL.

Santa Clara, CA, 2004-2005 - 455-22-035, 417 LANO ST, SAN JOSE CA 95125-1245, Sheet: 1 of 1

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA

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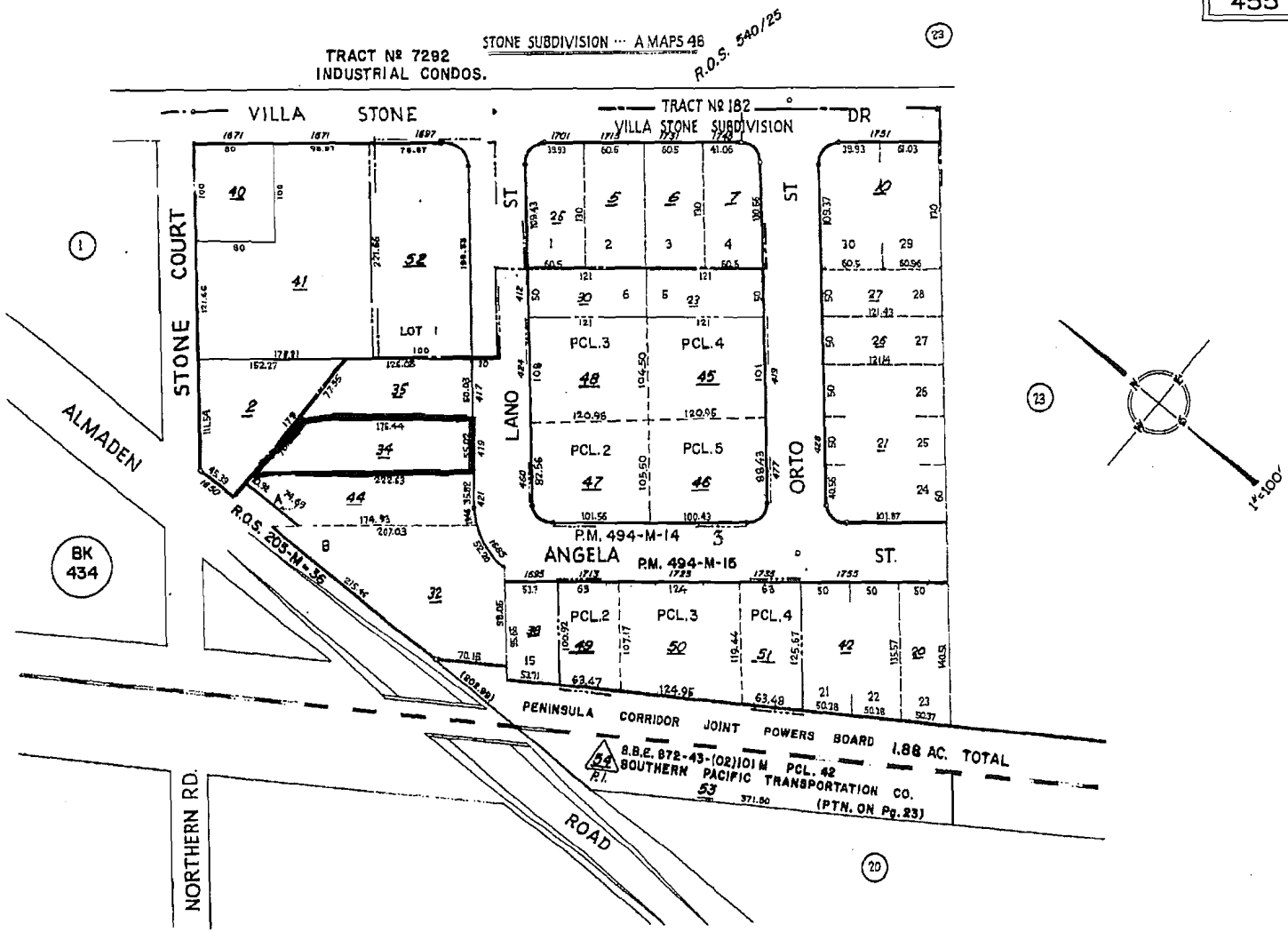

LAWRENCE E. STONE – ASSESSOR
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