

**RESOLUTION NO. 73154**

A RESOLUTION OF THE CITY COUNCIL 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 A NEW SLIM DESIGN MONOPOLE WITH 3 WIRELESS COMMUNICATION PANEL ANTENNAS WITH A CYLINDER RAY DOME AND PLACEMENT OF A NEW 220 SQUARE FOOT EQUIPMENT SHELTER

**FILE NO. CP04-076**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on July 29, 2004, an application (File No. CP04-076) was filed for a Conditional Use Permit for the purpose of a new slim design monopole with 3 wireless communication panel antennas with a cylinder ray dome and placement of a new 220 square foot equipment shelter. , on that certain real property (hereinafter referred to as "subject property"), situate in the R-1-8 Single-Family Residence Zoning District, located at the northwest corner of Narvaez Avenue and Branham Lane, San Jose, and

WHEREAS, the subject property is all that real property described in Exhibit "A," 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 City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, on March 8, 2006, the Planning Commission approved the application, from which decision a property owner within 1,000 feet of the subject site, Mr. William J. Garbett, has appealed to this City Council; and

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

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Nextel Communications HWY 87 & Branham Lane Site No. CA-2339-B," dated January 17, 2006; 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 City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

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

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Single-Family Residence Zoning District.
3. The subject site is 0.1-acres in size and is developed with the Santa Clara County Valley Transportation Authority transit station surface parking lot.
4. The proposed project includes installation of three wireless communication panel antennas located on a new slim design monopole located in a surface parking lot.
5. The subject Zoning District, R-1-8 Single-Family Residence, establishes front, rear and side setbacks of 25, 20, and 5 feet, respectively.
6. The subject parcel is of a triangular shape, having two front lot lines and one side lot line.
7. The location of the proposed antennas and equipment cabinet are setback 10 feet from the side lot line and 60 feet from the closest front lot line, Narvaez Avenue, respectively.
8. The subject Zoning District, R-1-8 Single-Family Residence, has a height limit of 35-feet.
9. Section 20.80.1900 the maximum height of a wireless communication antenna may be increased over the required maximum height of the zoning district in which it is located up to a maximum of sixty-feet provided that the antenna is a Wireless Communications Antenna slim design monopole.
10. The proposed slim design monopole will have a height of sixty feet.
11. The City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities requires freestanding monopoles to be located a minimum of 35 feet or one foot for every one foot of structure height, which ever is greater, horizontally from any property with a residential use or residential General Plan designation.

12. The proposed monopole will be located on a surface parking lot in a residential neighborhood. The closest residential use is located across Narvaez Avenue, approximately 139 feet from the new monopole.
13. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is 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.
14. The proposed equipment enclosure and landscaping will effectively screen the equipment.
15. The project does not reduce the existing on-site parking.
16. The proposed project does not include an emergency back-up generator.

This City Council concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the San Jose 2020 General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities, in that the applicant has provided wireless antennas that are in conformance with the Zoning Ordinance (with the above noted exception) and are of a slim design.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the City Council 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 City Council 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 all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

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1. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. **Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance** for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.
2. **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.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building 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 Building 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. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) years from and after the date of adoption of this Resolution by the City Council granting this Permit, if within such two-year period, the proposed construction 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 City Council. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Nextel Communications HWY 87 & Branham Lane Site No. CA-2339-B" dated January 17, 2006, on file with the Department of Planning, Building and Code Enforcement.
2. **Colors and Materials.** All building, structures and fencing colors and materials are to be those specified on the approved plan set.
3. **Equipment Enclosure/Shelter.** The equipment enclosure/ shelter shall be painted an earth tone color that blends with the adjacent sound wall.
4. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Generators.** This project does not permit the use temporary or permanent emergency back-up generators unless otherwise approved by the Director of Planning.
7. **Lighting.** This permit allows no new on-site lighting.
8. **Outside Storage.** No outside storage is permitted.

9. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
10. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
11. **Landscaping.** Landscaping shall be provided as shown on the approved plan set, with the exception of the proposed cypress trees, which shall be replaced with five, 24" box London Plane Trees.
12. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP04-076 shall be printed on all construction plans submitted to the Building Division.
  - b. *Construction 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.
10. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
11. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement
13. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements and related equipment/enclosures associated with this permit within 30 days.

14. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. Other wireless providers shall also be allowed to add on to existing at grade equipment enclosures.

**CONDITIONS SUBSEQUENT**

1. **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.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

**ADOPTED** this 2<sup>nd</sup> day of May 2006 by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, LeZOTTE, NGUYEN,  
PYLE, REED, WILLIAMS, YEAGER, CHAVEZ

NOES: NONE

ABSENT: GONZALES

DISQUALIFIED: NONE

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CINDY CHAVEZ  
Vice Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

