

RESOLUTION NO. 73621

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ TO APPROVE A CONDITIONAL USE PERMIT TO USE CERTAIN REAL PROPERTY DESCRIBED HEREIN FOR THE PURPOSE OF ALLOWING UP TO 12 WIRELESS ANTENNAS AND ONE OMNI ANTENNA TO BE LOCATED ON A MONOPOLE, A SATELLITE DISH AND GPS ANTENNA TO BE MOUNTED ON AN ADJACENT 10-FOOT TALL POLE, APPROXIMATELY 780 SQUARE FEET OF ASSOCIATED EQUIPMENT CABINETS, AND AN EMERGENCY BACK UP GENERATOR AND TO APPROVE A DEVELOPMENT EXCEPTION TO ALLOW AN 80 FOOT IN HEIGHT ANTENNA SYSTEM WHICH EXCEEDS THE HEIGHT LIMIT OF 65 FEET IN THE CG COMMERCIAL GENERAL ZONING DISTRICT

FILE NO. CP06-021 & V06-012

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San Jose Municipal Code, on March 24, 2006, an application (File No.CP06-021) and on September 5, 2006 an application(V06-012) was filed for a Conditional Use Permit and Development Exception Permit, respectively, for the purpose of allowing up to 12 wireless antennas and one omni antenna to be located on monopole which was approved with conditions to be 65 feet in height, a satellite dish, and GPS antenna to be mounted on an adjacent 10-foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator on an existing monopole, all on that certain real property (hereinafter referred to as "subject property"), situate in the CG Commercial General Zoning District, located at south side of Tully Road, approximately 290 feet north of Lanai Road, San José; 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, "Crown Castle International, Highway 101" last revised September 7 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 the Planning Commission; and

WHEREAS, an appeal of the Planning Commission's decision was filed on October 12, 2006 and a hearing on that appeal was subsequently scheduled for City Council consideration; and

WHEREAS, said appeal hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

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

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Crown Castle International," last revised September 7, 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, the City Council approved the Conditional Use Permit without certain conditions recommended by Planning staff and approved the Development Exception to allow the antenna to be a height of 80 feet; and

WHEREAS the applicant has agreed to flush-mount all the existing and proposed antennas, remove barbed wire on site, and removed existing pegs from the monopole, all as described in and pursuant to the terms and conditions of this Resolution.

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

The City Council finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG Commercial General Zoning District.
3. The subject site is approximately 900 square feet in size.
4. The existing monopole is operating without the benefit of all necessary permits. The Conditional Use Permit for the existing monopole, File number CP96-033, expired on May 22, 2001.
5. The proposed project included installation of 12 wireless antennas and one omni antenna to be located on the 80 foot monopole, a satellite dish and GPS antenna to be mounted on an adjacent ten foot tall pole, approximately 780 square feet of associated equipment cabinets, and an emergency back up generator.
6. The subject Zoning District, CG Commercial General, has a height limit of 65 feet.
7. The closest residential use is located on Dixie Way, approximately 200 feet from the proposed monopole.
8. The project site is located in the CG Commercial General zoning district, which establishes front, rear and side setbacks of 25, 0 and 0 feet, respectively.
9. There is no "front lot line" on the subject site as defined by Section 20.200.700 of the Zoning Ordinance. As such, the Commercial General Zoning District's front setback of 25 feet, which is to be measured from the front lot line, is not an applicable requirement to this parcel.
10. This permit is conditioned to remove all barbed wire fencing on the subject property.
11. The City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities

recommends that freestanding monopoles be located no closer than a distance equal to one foot for every one foot of structure height from any parcel developed for use as a single-family or multi-family residence. The proposed monopole would be 80 feet in height and would be located over 200 feet from the nearest residential uses on Dixie Drive.

12. Under the provisions of Section 15301 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.
13. The proposed project includes an emergency back-up generator, which has obtained a BAAQMD permit to operate. Conditions of approval will limit the operational criteria for the generator.
14. No members from the public spoke against the proposal at either the held Planning Commission or City Council hearings.
15. The proposed Conditional Use permit includes the flush mounting of all existing and proposed antennas, removal of existing pegs from the existing monopole, and removal of all barbed wire on the site, and thus will minimize any visual impacts of the 80 feet in height monopole.
16. The monopole has been in continuous operation at 80 feet in height since 1994.
17. No members of the public spoke to any negative impacts on their property due to the existence of the 80 foot in height monopole.

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

1. The proposed project conforms to the site's General Plan Land Use Transportation Diagram designation of General Commercial.
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.
5. The proposed development exception permit is conforms to the requirements called out in section 20.100.1320 of the Zoning Ordinance.

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

- 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.
 4. The granting of the development exception to allow the subject monopole to be a height of 80 feet will not impair:
 - a. The utility or value of adjacent property or the general welfare of the neighborhood, and
 - b. The integrity and character of the zoning district in which the subject property is situate.

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.

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. **Site changes.** The applicant will remove the wagon wheel configuration that currently exists and will flush mount existing and proposed antennas. The applicant will remove existing climbing pegs and existing barb wire fencing that surrounds the monopole. The applicant will paint the monopole and antennas light gray color.
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. **Conformance with Plans.** Except, as noted under condition #2 under Conditions Precedent, construction and development shall conform to approved development plans entitled, "Crown Castle, Highway 101, aka Tully" dated September 7, 2006 on file with the Department of Planning, Structure and Code Enforcement.
2. **Colors and Materials.** All structure colors and materials are to be those specified on the approved plan set.
3. **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.
4. **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.
5. **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, **CP06-021** 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, CP06-021, any subsequent Amendments, or Adjustments to the approved permit, and applicable sheets.
- 2) The approved subject permit (with signature) shall be copied in its entirety onto plans set sheets.
- 3) Construction plans shall also incorporate all elements of the approved permit included in the plan set.

6. **Generator.** This permit includes the use of a John Deere, 96 hp emergency standby generator.

7. **Generator Operation.** The Stand-by or Backup Electrical Power Generation Facility shall be operated only during interruptions of electrical service from the distribution system or transmission grid due to circumstances beyond the operator's control.

- a. **Disturbance Coordinator.** Applicant shall post on the site the name and phone number for a disturbance coordinator who shall be available to answer questions and respond to complaints from the neighborhood.
- b. **Equipment Testing.** Testing of emergency power equipment shall be limited to two (2) hours per month not exceed a maximum of four (4) consecutive months in any 12 month period. Testing of the generator is limited to 7A.M to 7P.M Monday through Friday.
- c. **Record of Operation.** The generator shall include a non-resettable totalizing counter to record all hours of operation. The applicant shall maintain an accurate record of the operation of the standby/back-up generator to the satisfaction of the Director of Planning of the City of San José and appropriate local, State, and Federal agencies. These records shall cover at least the following items:
 1. Hours of operation for testing and maintenance.
 2. Dates and hours of operation for discretionary use in the event of a power failure.
 3. Operational problems, complaints, and difficulties.
 4. A log of Special Occurrences to include the following: fires, earthquakes, unusual and sudden settlement, injury and property damage accidents, explosions, discharge of hazardous or other wastes not permitted in the class of the site involved, citizen complaints received, flooding, unscheduled shutdowns, and other unusual occurrences.

5. Dust and litter control efforts and results.
6. Description of materials received, identified by source and material.
7. The records shall be open to inspection by the City of San José and other duly authorized regulatory and enforcement agencies during normal business hours.
8. **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.
9. **Bay Area Air Quality Management District Permit.** Applicant must operate the backup/standby generator in compliance with a Bay Area Air Quality Management District (BAAQMD) permit.
10. **Nuisance.** The power generation facility and any use allowed by this Permit shall be maintained and operated only in a manner that does not create a public or private nuisance. For purposes of this Permit, a public nuisance shall mean and include without limitation any act or omission that obstructs or causes substantial inconvenience or damage to the public or any member thereof, in the course of, or by the manner of, the exercise of rights created by the granting of the permit.
11. **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 structures 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.
12. **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.
13. **Lighting.** This permit allows no new on-site lighting.
14. **Outside Storage.** No outside storage is permitted.
15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.

16. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.
17. **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.
18. **Collocation.** 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. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) 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 structures 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 or City Council on appeal. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two (2) years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **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 the use as presently conducted creates a nuisance.

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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.

APPROVED this 23rd day of January, 2007 by the following vote:

AYES: CHIRCO, CONSTANT, CORTESE, LICCARDO,
NGUYEN, PYLE; REED

NOES: CAMPOS

ABSENT: WILLIAMS

DISQUALIFIED: NONE

VACANT: DISTRICT 4, DISTRICT 6

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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.