

PLANNING COMMISSION MINUTES OF JUNE 23, 2008

2008-0405 – T-Mobile [Applicant] Pastoria Land and Building Corp. [Owner]: Application for a Use Permit to allow 3 additional antennas for a total of 6 antennas to an existing wireless telecom site that has 6 carriers on a 99' tall monopole. The property is located at **375 N Pastoria Avenue** (near Hermosa Dr.) in an M-S (Industrial & Service) Zoning District. (Negative Declaration) (APN: 165-30-119) AM

Andrew Miner, Principal Planner, presented the staff report. He referred to page 3 of the report and provided a correction stating that this project would “change the installation from 3 existing antennas flush mounted on the pole to 6 antennas offset from the pole”. He said staff recommends approval with the conditions as attached.

Vice Chair Rowe confirmed with staff that the main reason staff has not recommended this pole be camouflaged is because it is located in an industrial area. Mr. Miner said it would be difficult do redo the entire pole as it would be extremely expensive, and coordination-wise every antenna would have to come off the pole, and carriers would be out-of-service while rebuilding the pole.

Comm. Chang asked if staff has looked at painting the pole as it may be the only antenna pole in the City not painted a color. Mr. Miner said that option could be added as a condition to paint the pole. Mr. Miner said that this is an application for T-Mobile and would require coordination with other carriers on the pole.

Kathryn Berry, Senior Assistant City Attorney, said the Planning Commission has discretion over the aesthetics and interference when there are other carriers on the pole. She said there are some limitations. She said if the intent is to make the pole look more attractive, that can be done. She said the Commission would need to be careful about not interfering with the other co-locators.

Comm. Simons said that normally he would agree with staff about not interfering with already existing co-located antennas and providers. He discussed that he has been involved with decisions regarding almost every additional carrier added to this pole over the past 9 years and that he has requested on most of the prior applications that at a future date that any co-locator would share in aesthetic cost improvements on this tower. He said there are now quite a few co-located antennas, and the postponing of the aesthetics to a future date continues. He asked if the previous conditions on prior applications

of other co-located carriers changed, could the Commission impose the aesthetic cost improvement condition now requiring the co-locators to share in the cost. Ms. Berry said that the Commission has a great deal of discretion when code and design requirements for the aesthetics of cell tower equipment. Ms. Berry discussed other options to consider regarding aesthetics including incorporating existing landscaping if possible. Comm. Simons reiterated that he thinks the Planning Commission imposed conditions for co-locators on this pole multiple times over the past 9 years and that these co-locators could be required to share in the costs for aesthetic improvements at a future time. **Trudi Ryan**, Planning Officer, said fundamentally the issue is the existing pole and when the pole is replaced then the co-locators would need to assist in the cost to upgrading the pole aesthetically. Ms. Ryan said that the Commission cannot require that the current applicant upgrade the entire pole.

Comm. Babcock referred to page 6 of the report and asked staff how many of the existing 39 antennas on this pole were approved with a condition requiring the provider share in the cost of future enhancements to the pole. Staff discussed with Comm. Babcock that about 30 of the exiting 39 antennas, on the pole that was approved in 1994, were approved with that requirement staff adding that this application is for the addition of 3 antennas. Ms. Ryan said that the installation of the pole preceded the Telecommunications Act and at that time camouflaging the poles had not become an option as part of the state of design for these types of poles. Comm. Babcock asked what percentage of the previous projects had the condition requiring sharing in the cost of future enhancements to the pole. Ms. Ryan said there are four or five providers with antennas co-located on this pole. Ms. Ryan said the original pole and owner of the original antennas cannot be required to change out the pole. Ms. Ryan said at some point if the pole has to be changed out, at that time the condition required in latter providers' requirements would kick in and the providers would have to share in the expense to replace the pole. Mr. Miner added that one issue that may affect the pole in the future is the number of coax cables run inside the pole. He said currently all the coax cables are inside the pole. He said at some point there may not be enough room to add anymore cables inside and the cables would need to be run on the outside which would negatively affect the aesthetics. He said, at that time, it may be determined that the pole is not sufficient to manage the demand and the pole may need to be replaced, which the providers with the aesthetic requirement included in their conditions would have to share the cost.

Chair Sulser opened the public hearing.

Leah Hernikl, representing T-Mobile, said that this is a small upgrade to bring T-Mobile's service up to meet demand. She said all carriers need to upgrade the services to meet the increased demand for voicemail, internet, texting, video, etc. She said staff's presentation has well represented the application and that she is available to answer any other questions.

Chair Sulser asked the applicant, what area of Sunnyvale would be getting improved service from this upgrade. Ms. Hernikl said the area of coverage would remain the same and that the this upgrade is to improve the quality of the existing service.

Comm. Hungerford asked the applicant if the upgrade would affect the noise levels in the area and would the equipment in the shed be modified. Ms. Hernikl they would be replacing the cabinet, that the cabinet would not be expanded, and that the noise levels would remain the same.

Comm. Chang asked what the expected lifetime of these antennas are. Ms. Hernikl said that the lifetime is indefinite until the next wave of technology comes along. Ms. Hernikl said changes are geared to the advances in technology and the size of the antennas and poles are governed by the approval of the Commission.

Arthur Schwartz, a resident of Sunnyvale, suggested that if a flat neutral gray paint is used on the antennas and the pole that the tower can better be hidden under most lighting conditions. He said the paint color might be a possible option for camouflaging.

Chair Sulser closed the public hearing.

Comm. Simons discussed with staff whether the Planning Commission could impose aesthetic requirements on this application with staff confirming yes. Ms. Ryan said that the Commission cannot impose a requirement to replace the pole. Comm. Simons said, in the 9 years that he and the Commission have seen projects regarding this pole that it seems aesthetic requirements have not been easy to impose on new users due to the cost being too onerous. He said he has the impression now that the number of the antennas and different users are the excuse that they cannot easily impose aesthetic requirements. Ms. Ryan said there are conditions of approval on several of the installations that require that provider to participate in any future upgrade. She said the Commission can add the same condition to this project and cannot make any single new provider change out the pole.

Comm. Simons moved with Alternative 2 to adopt the Negative Declaration and approve the Use permit with modified conditions: to add that any antenna changes in the future, including technology changes, would require a public hearing review due to the number of antennas on the pole; to add that staff will review the correct color for aesthetic improvements and if it requires a paint change to better neutralize the look of the antenna to the maximum that is allowable by law; to add to the conditions that this project be required to share in aesthetic cost improvements for users on this antenna; to recommend to any future review of this antenna that new antenna additions be encouraged to trigger the aesthetic improvements and the intent of any changes that the number of users not be the excuse for excluding the triggering of the aesthetic improvements in the future.

Ms. Ryan confirmed with the maker of the motion that the modification regarding the requirement of a public hearing review to any antenna change, **applies to all of the antennas on the pole and not just the proposed antennas.** Ms. Berry, asked the maker of the motion for clarification stating her concern is the balancing the point at which the Commission is asking the providers and balancing whether there is a taking. She said if the purpose is just aesthetic and it is part of the overall design, then the requirement is fine. She said if the purpose is to take the pole down and redo it, then the Commission cannot require this. Comm. Simons said the purpose would be to improve the aesthetics of the existing tower. Ms. Berry asked Comm. Simons who should be required to bear the expense. Comm. Simons answered, all of the providers that have conditions of approval requiring improvement on the aesthetic of the pole and antennas. Ms. Berry said she does not want this to run afoul of a taking. Comm. Simons further discussed this issue with staff, including the goal of the City to co-locate antennas as much as possible.

Comm. Klein seconded the motion. Comm. Klein asked to add to the modifications, in regards to color, that the color be approved by staff or the Director of Community Development to the allowable extent by law. This addition was acceptable to the maker of the motion.

Ms. Ryan asked for clarification regarding the public hearing requirement modification confirming with Comm. Simons that the hearing would be required if there is a change to the antennas and not if the antenna is damaged and is replaced like for like.

Comm. Klein said he would be supporting the motion and said that this pole has been an issue for a long time. He said the Commission seems to have their

hands tied and hopefully the addition of some of these modifications in the conditions will make sure any future changes are reviewed by the Planning Commission. He said it is helpful that this pole is in the middle of an industrial area and that still the pole could be improved aesthetically.

Vice Chair Rowe said she would be supporting the motion. She thanked the member of public who addressed the color of the pole and hoped the Planning Division would select a color that would help make the pole “disappear”.

Comm. Hungerford asked whether the condition regarding paint applies to painting the entire pole. Comm. Simons said his intent is that the maximum allowable portion of the pole be painted. Comm. Simons added that the entities that should pay for the painting would be the current applicant and any other applicant that was approved with the condition requiring sharing in the aesthetic improvements. Ms. Ryan said not all of the providers would have to change the color unless they agreed as not all of the providers have the condition imposed on their application adding that the current color is a flat steel color as it is galvanized metal. Comm. Hungerford said that with the clarification that he would be supporting the motion understanding that if possible the pole will be painted with other providers sharing the cost unless it is not possible.

Comm. Chang said he would be supporting this motion. He said this pole is growing with antennas and it is time to do something about the pole aesthetically. He said the paint will be the first step.

ACTION: Comm. Simons made a motion on 2008-0405 to adopt the Negative Declaration and approve the Use Permit with modified conditions: to add a condition that any changes to the antennas or pole in the future would require public hearing review; to add a condition that staff would determine a correct color for aesthetic improvement to the pole and if the pole requires painting that the improvement be made to the maximum that is allowable by law; to add a condition that the proposed project be required to share in aesthetic cost improvements for users on this antenna; to recommend that any future review or addition to this antenna be encouraged to trigger aesthetic improvements and that the number of users not be an excuse for excluding the triggering of aesthetic improvements. Comm. Klein seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than July 9, 2008.