

Planning Commission Minutes of September 28, 2009

2009-0410: T-Mobile (Applicant) **Sunnyvale Office Park LP** (Owner) Application for a Special Development Permit to extend an existing 90-foot tall monopole to 100 feet to allow a fifth carrier to add 3 panel antennas and associated ground equipment for a site located at **1184 North Mathilda Avenue**. (APN: 110-25-042) NC

Andrew Miner, Principal Planner, presented the staff report. He said staff recommends approval subject to the conditions in Attachment B. Mr. Miner commented that this application is for a fifth carrier on the existing pole and staff has also received an application for a sixth carrier on this property.

Comm. Klein discussed with staff the need to increase the height of the existing pole by 10 feet to accommodate the antennas. Comm. Klein discussed the new style of Conditions of Approval (COAs) with staff. **Trudi Ryan**, Planning Officer, said that staff has been looking at all types of applications and is reorganizing the the COAs to list the standard requirements and discretionary areas separately so it is clearer to applicants what is required. Comm. Klein discussed with staff the signs currently on the pole and the lack of emergency contact information. Staff said the applicant must include in the plans what the contact signs will include and some of the older signs need to be brought into compliance.

Comm. Hungerford discussed with staff COA E requiring that every other year the owner has to certify that the facility meets local and federal permits and noise requirements. Comm. Hungerford discussed with staff COA H regarding RF (Radio Frequency) emissions. **Kathryn Berry**, Senior Assistant City Attorney, said that language could be added to require test results for the RF emissions every two years.

Comm. Rowe discussed an email sent by a member of the public with Comm. McKenna saying the email was regarding Los Angeles County seeking relief from the Federal telecommunication laws that do not allow state or local jurisdictions to control cell towers based upon health concerns. Ms. Ryan said that generally local jurisdictions can only generally regulate where facilities are located and can regulate the appearance.

Chair Chang discussed with staff whether the proposed carrier's antennas could be accommodated on the existing pole with staff saying that the antennas usually need about a 10 foot distance between antennas.

Comm. Sulser discussed with staff the design of the pole with staff saying that fiber optics will be inside the pole and not change the look of the pole other than the height.

Chair Chang opened the public hearing.

Dayna Aguirre, representative for the applicant, said approval of this site would alleviate a gap in coverage for T-Mobile users. She said the applicant concurs with the requirements in the COAs. She said that there is an interference issue with the existing carriers if they do not increase the height of the pole to 100 feet. She said the fiber optic design was presented recently by staff and T-Mobile agrees to this change which is more expensive than what was originally proposed. She said being required to provide test results for EMF (Electromagnetic Field) and noise every two years may be a problem for the applicant due to the expense.

Comm. Hungerford discussed the COA requirement for noise confirming with Ms. Aguirre the probable objection by T-Mobile and that T-Mobile's legal staff would have to review the requirement.

Comm. McKenna discussed with the applicant that Crown Castle owns the pole, leases the ground from a property owner, and that the telecommunication carriers have a lease with Crown Castle to use the pole.

Comm. Rowe asked the applicant if she thinks two years is too often, what would be fair. The applicant said possibly every five years; however it would be up to the T-mobile legal team to say.

Mei-Ling Stefan, a Sunnyvale resident, said she disagrees with the applicant, and that a report every two years is fair for Sunnyvale residents. Ms. Stefan said it should be the City that sets the rule and not the applicant.

Michael Flores, a Sunnyvale resident, said he thinks a test every two years by a third party at a non-announced time is good and that the cost could be divided between the multiple carriers on the pole.

Comm. Sulser asked staff if the City normally requires the noise tests. Staff discussed that the tests were required every five years and now certification is being required every two years. Ms. Berry, added that the two year certification has been adopted by other Cities in California and if the Planning Commission decides to require the applicant prove that RF and noise regulations are met, that can be included in the motion.

Ms. Aguirre addressed the audience members' comments. She said it would be fair to request the EMF (Electromagnetic Field) report of all the carriers. She said some jurisdictions will impose a fee ahead of time and the City hires a third party to do the testing. She said it is easier for carriers to incur the fees ahead of time.

Comm. Hungerford discussed with staff about requiring the entire pole be certified every two years and requiring all carriers share the cost. Ms. Ryan said ultimately it is the property owner's responsibility that the conditions are met.

Chair Chang discussed with staff whether the FCC (Federal Communications Commission) requires RF testing at anytime.

Chair Chang closed the public hearing.

Comm. McKenna discussed with staff possibly merging condition H with condition E and said she would like to see that the noise and RF testing be required every two years. Ms. Ryan suggested that condition H be retained as it is an initial certification, and that the language "and RF emissions" could be added to condition E.

Comm. Rowe moved for Alternative B to approve the Special Development Permit with modified conditions, adding the language "and RF emissions" at the end of condition E.(i). Comm. Hungerford seconded.

Comm. Rowe said that the City is limited in what can be considered with cell towers and the increase in periodic testing is an effort to protect the citizens.

Comm. Hungerford said the COAs are important and the need to certify noise and RF emissions are needed. He said he thinks it is a good idea to require verification that a pole is meeting the noise requirements. He said it will be interesting to see what happens when the Planning Commission reviews the application for the sixth carrier on this pole.

Comm. Klein said he would be supporting the motion and reiterated that the recertification of the pole is very critical for all cell towers going forward. He said from an aesthetic point, adding 10 feet to this pole in an industrial area is not that noticeable. He said he would like staff to make sure the signage for this pole is in compliance and that this is a minor change to an existing pole that does not affect residential areas.

Comm. McKenna said she likes the new format of the COAs. She said she agrees this does not impact residential areas, however she is very concerned about the number of cell towers in the City in the future. She said she would like the staff to keep close tabs on new legislation available to the communities regarding cell towers and that she thinks the conditions regarding the certification are a good addition.

Chair Chang said he would be supporting the motion and he is glad staff required the cables be fiber optics inside the pole rather than cables outside the pole. He said cell towers are a part of modern life and it is important that additional antennas be handled responsibly so people are safe.

ACTION: Comm. Rowe made a motion on 2009-0410 to approve the Special Development Permit with modified conditions: to add to the end of condition E(i) the language “and RF (Radio Frequency) emissions”. Comm. Hungerford seconded. Motion carried, 6-0, with Vice Chair Travis absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than October 13, 2009.