

**PLANNING COMMISSION MINUTES OF JULY 12, 2010**

**2009-0679 - Clearwire LLC** [Applicant] **Roman Catholic Welfare Corp Of San Jose Church of the Resurrection** [Owner]: Application for a Use Permit to allow the collocation of three antennas and one microwave dish on an existing 65' monopine with associated ground equipment (Resurrection Parish Church) for a site located at **1399 Hollenbeck Avenue** (APN: 323-06-005). RK

**Comm. Larsson** recused himself and left the Council Chambers saying that his employer as a relationship with Clearwire.

**Andrew Miner**, Principal Planner, presented the staff report. He said staff recommends approval of the Use Permit subject to the Conditions of Approval in the report. He said the letter on the dais from an interested party was received after the completion of the report requesting that two different types of RF (Radio Frequency) emission readings be done in the neighborhood. He said one reading would be done as an ambient reading before the antennas are installed and one after installation and while operating to make sure standards are not exceeded.

**Comm. Hendricks** asked if anyone had contacted the provider who built the tree pole and asked to them to fix the appearance. **Trudi Ryan**, Planning Officer, said the project planner contacted the provider and advised them that tree pole is not in accordance with our standards and needs to be modified. Ms. Ryan said the City will not finalize the building permit until the conditions are met.

**Comm. Sulser** discussed with staff the appearance of the current tree pole and said there are many wires visible. Mr. Miner said AT & T made a presentation to the Planning Commission showing samples of what the tree would look like and they did not build the pole to the standard presented.

**Comm. Hungerford** discussed with staff condition 15 regarding testing certification. Staff said the letter from the interested party suggested additional testing when the antenna service is turned on, but before it is actually available to the public. Comm. Hungerford asked if the testing would be a representative test of the RFs and noise with staff explaining how the testing occurs. **Kathryn Berry**, Senior Assistant City Attorney, explained that a new state law dictates that City permits cannot be shorter than 10 years and Sunnyvale amended our ordinance to include an additional requirement that cell carriers test every other year. She said City cannot make this requirement retroactive to the carriers already approved.

**Comm. Dohadwala** discussed with staff the testing of the poles and how the results are made available to the public. Mr. Miner said the results of the testing

are public record, can be provided to the public many different ways to anyone interested. Mr. Miner said the tests are to prove antennas meet federal guidelines. Ms. Ryan said when a new facility is being proposed, a notification is sent to the neighbors advising them of the proposed project.

**Chair Chang opened the public hearing.**

**Gordon Bell**, representing the applicant Clearwire, said they chose this location so they could co-locate on an existing pole. He said he has concern about the condition to upgrade the tree pole as they are not the pole owners and some of what is being required cannot be accomplished unless AT & T, the pole owner, is a willing partner. He said he is concerned about condition 22, regarding the annual design inspection, and condition 7.a regarding design elements. He said he would like to have additional language added to 7.a that will give them more specific guidance about the tree design. He clarified that the RF measurements are typically taken at the closest residential property lines or other closest sensitive receptors. He said that would be accomplished by the annual inspections.

**Comm. Hendricks** asked staff about condition 7.a and whether this applies to Clearwire or AT & T. Ms. Ryan said before the City issues any building permit for Clearwire on this pole, it needs to be brought up to the standards that were required of AT & T, and that Clearwire will need to work this out with AT & T. Mr. Bell expressed concern about the condition and the timing, and whether Clearwire could do their work without the building permit. Ms. Ryan said the appearance of the existing monopine needs to be corrected, and anyone can complete the work required in the conditions. Comm. Hendricks clarified with staff the applicant can do the work correcting the shape and appearance of the monopine, however they cannot do any other work until the aesthetics are satisfied as these are two different kinds of construction activities.

**Chair Chang closed the public hearing.**

**Comm. Hungerford** asked staff about condition 7.a clarifying that the photosimulations refer to those approved for AT & T, that the tree pole is owned by AT & T, who is leasing the space from the church.

**Comm. Hendricks** referred to Attachment D clarifying with staff that the photosimulations are the intent of how the tree pole should look and not what is actually on the site.

**Comm. Sulser moved for Alternative 1 to approve the Use Permit with the Conditions of Approval located in the report. Vice Chair Travis seconded the motion.**

**Comm. Susler** said when the Commission approves a telecommunication pole the approval is essentially an aesthetic design review as the Commission has no authority regarding health and safety issues. He said he thinks this project, as conditioned, will be a nice project.

**Vice Chair Travis** said he would be supporting the motion. He said Clearwire has been before the Commission many times. He said in this case he can understand how Clearwire may have some frustration as the City would be holding their project conditional upon somebody else doing work. He said occasionally that is the City's only recourse. He said he looks forward to Clearwire being able to do their work and to the owner of the pole making it look like they originally stated it would look.

**Comm. Hungerford offered a Friendly Amendment to amend condition 15 to include that Clearwire also be required to provide an initial test for decibels and RF emissions in the surrounding neighborhood while the new antennas are being tested and before the facility is activated for commercial service with the obligation falling on Clearwire. The Friendly Amendment was acceptable to the maker and seconder of the motion.**

**Comm. Hendricks** said he would be supporting the motion as he can make the findings. He said he does not think the City is holding Clearwire hostage and asked staff if there is anyway to expedite the work. Ms. Ryan said staff will be pursuing the correction to the pole independently, wanted to make sure it was part of the permit, and that the work should be completed soon.

**ACTION: Comm. Sulser made a motion on 2009-0679 to approve the Use Permit with the modified Conditions of Approval located in the report: to amend condition 15 to include that Clearwire also be required to provide an initial test for decibels and RF emissions in the surrounding neighborhood while the new antennas are being tested and before the facility is activated for commercial service. Vice Chair Travis seconded. Motion carried, 6-0 with Comm. Larsson recusing himself.**

**APPEAL OPTIONS: This action is final unless appealed to the City Council no later than July 27, 2010.**