

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 8/11/04

File Number
CP04-049

Application Type
Conditional Use Permit

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
381-19-025

STAFF REPORT

PROJECT DESCRIPTION

Completed by: **Rebekah L. Ross**

Location: **South side of Williams Road approximately 450 feet southerly of Moorpark Avenue**

Gross Acreage: **7.6** Net Acreage: **7.6** Net Density: **N/A**

Existing Zoning: **R-1-8 Residence** Existing Use: **City of San Jose corporation yard**

Proposed Zoning: **No change** Proposed Use: **Same w/new monopole for City of San Jose communications antennas and privately-owned PCS wireless communications antennas**

GENERAL PLAN

Completed by: **RLR**

Land Use/Transportation Diagram Designation
Public/Quasi-Public

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **RLR**

North: **Commercial/Retail** **CP Commercial Pedestrian**

East: **Single-family residential** **R-1-8 Residence**

South: **PG&E office/utility facility** **R-1-8 Residence**

West: **Santa Clara County corporation yard** **R-1-8 Residence**

ENVIRONMENTAL STATUS

Completed by: **RLR**

Environmental Impact Report found complete
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: **RLR**

Annexation Title: **Johnson No.1**

Date: **3/5/1956**

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER

City of San Jose
c/o Public Works, Real Estate Division
Thomas Zia
170 West San Carlos,
San Jose, CA 95113-2005

DEVELOPER/OPERATOR

Cingular Wireless
c/o Luke Stamos
Ruth & Going, Inc.
2216 The Alameda
Santa Clara, CA 95050

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: RLR

Department of Public WorksNone

Other Departments and Agencies

Fire Department Memo – see attached memorandum

CPTED Program (Police Department) – see attached memorandum

ITD/Communications - see attached memorandum

GENERAL CORRESPONDENCE

N/A

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

Cingular Wireless is requesting a Conditional Use Permit to allow 1) the construction of a new 136-foot tall monopole for the City within an existing City of San Jose corporation yard that would replace the existing 126-foot tall monopole currently used exclusively for City emergency communications purposes, and 2) to collocate privately-owned PCS wireless communications antennas on the new pole. Cingular Wireless is also proposing to locate four (4) small associated equipment cabinets near the base of the proposed monopole. The subject property is 7.6 acres in size and located in the R-1-8 Residence Zoning District. Adjacent to the existing corporation yard are single-family residences to the east, a neighborhood shopping center to the north along Moorpark Avenue, a Santa Clara County corporation yard to the west, and a PG&E office/utility facility to the south across a private shared driveway.

New “privately-owned” wireless communication antennas require the approval of a Conditional Use Permit in the R-1 Residence Zoning Districts. The physical expansion of public facilities/uses, such as the subject monopole, although exempt from the City’s own land use regulations, are required to go through a public hearing process prior to construction.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed wireless communication antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas.

Project Description

As previously indicated, the proposed 136-foot tall monopole will replace an existing 126 foot tall monopole. Unlike the existing structure, the proposed monopole will also facilitate the co-location of privately-owned wireless communication antenna panels on the same structure as City communication antennas. The three new private wireless communication antennas will be flush mounted onto the monopole at a height not to exceed 60 feet above grade. The individual antenna panels will measure 12 x 51 inches and are approximately three inches thick. The antenna panels will be painted with a flat non-reflective color to match the color of the monopole. Approximately ten feet away from the base of the new monopole, four (4) new

equipment cabinets, each with a footprint measuring 4 x 3 feet and an overall height of approximately 6 feet will be constructed. The existing sheds used for City communications equipment will not be altered in anyway. This proposal does not include an emergency back-up generator.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15302 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) this project is found to be 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. Section 15302 allows the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Examples include but are not limited to: Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Public/Quasi-Public. This category is primarily used to designate land uses such as parks, fire stations library and other public facilities. Joint development projects that include public and private participation are also allowed. In this case, the new monopole will provide a new structure to be owned by the City that is seismically superior to the old monopole and also provides an opportunity to co-locate privately-owned PCS wireless communications antennas.

The addition of incidental but, privately-owned antennas on the structures will not impair the primary intended use of this City-owned structure as a facility for emergency communication antennas. It should be noted that privately-owned monopoles on properties with Public/Quasi-Public land use designations may also be allowed when located on sites that are adjacent to arterial streets or designed and located in a manner to minimize visibility. The proposed monopole is located on property that fronts onto an arterial street (Moorpark Avenue) and it has a setback of approximately 500 feet. Further, the structure will be located over 300 feet from the nearest residentially used property. Numerous existing trees will further help to substantially screen the proposed structure.

ANALYSIS

The issues relative to this project discussed below are conformance with the following regulations and policies: 1) zoning regulations, 2) City Council Policy 6-16, Uses of Public Property, 3) City Council Policy 7-10, Placement of Communication Facilities on City –Owned Property, and 4) City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

Conformance to the Zoning Regulations

As discussed earlier, this monopole will be owned by the City of San Jose and will provide a new structure that is seismically superior to the existing monopole which will be removed. If the subject monopole were proposed for the exclusive use of the City of other governmental agency, it would be exempt from the City's zoning regulations, including setbacks and height. Although there is clearly a benefit from a public necessity standpoint, no specific, formal or required findings would need to be made to justify the proposed height for the "public" aspect of the proposed structure. In lieu of conformance with the zoning regulations, pursuant to City policies, as described later in this report, a formal public review process is required prior to construction of any such public facility.

The privately-owned component of this proposed structure, specifically the placement of the Cingular wireless antennas, are subject to the Zoning Ordinance requirements. The ordinance requires that private wireless communications monopoles in all R-1 Residence Districts obtain a Conditional Use Permit in .

Setbacks

The proposed project substantially exceed the minimum setbacks prescribed for the R-1-8 Zoning District. The project has a proposed front setbacks of 500 and 45 feet and a side setback of 26 feet. The front and side setbacks for the R-1-8 Zoning District are 25 and 5 feet respectively.

Height

The maximum height allowed for buildings and structures in the R-1-8 Zoning District is 35 feet. Exceptions integrated into the zoning ordinance allow new private wireless communications facilities of a slim pole design an exceptions to this height to a maximum height of 60 feet. The proposed project would allow the private antennas on the subject structure to the placed up to the 60-foot level.

Conformance to Council Policy 6-16, Uses of Public Property

City Council Policy 6-16, Uses of Public Property generally states that all improvements to public property in San Jose undergo a public hearing process to allow adequate community participation. The proposed replacement monopole with upgraded City-owned emergency communication antennas would normally be processed as a Site Development Permit to provide for this public hearing process. However, since the project also includes private wireless communications, which are conditional use in the R-1-8 Residence zoning district, the Conditional Use Permit process will fulfill the public hearing process in said policy as well as the zoning requirements for the private antennas.

The Council Policy also identifies the following factors for consideration prior to approval of public facilities:

1. Is the new use compatible with the existing or planned public use?
2. Does it essentially serve the same population?
3. Is it incidental to be supportive of the basic public activity?

All of the above factors have been considered as part of the review of this proposal. The new pole is compatible with other public serving uses provided within the existing corporation yard. In this instance, the new monopole will replace an existing pole of generally similar height and provides an improved support structure for City emergency communications antennas to benefit the public in accordance with its present purpose.

Conformance to Council Policy 7-10, Placement of Communication Facilities on City-Owned Property

The purpose of this City Council Policy is to support the expansion of telecommunications services to City businesses and residents. The policy states that City-owned property may be leased or used for the placement of communication facilities as determined on a case-by-case basis in accordance with Land Use Policy 6-20 and relevant ordinance requirements. The key relevant criteria and guiding principles, as summarized below, for consideration of private communication facilities on City-owned property include the following:

- ? The portion of City-owned land or building upon which the communications facilities will be placed is not immediately needed for public purposes.
- ? The siting of the wireless communication antennas should be in conformance with Land Use Policy 6-20 (below), including relevant sections and development standards of the Zoning Ordinance.
- ? The siting of the wireless communication antennas should be in conformance with all other relevant City laws, regulations and policies.
- ? The placement of wireless communication antennas should not adversely affect or impact the security of the property, maintenance or operation of the City facility.
- ? The agreement between the City of San Jose and proposed wireless communications provider is non-exclusive and allows for other private companies to collocate additional wireless communication antennas on the same structure when feasible.
- ? The private wireless communications provider shall be responsible for all repairs and maintenance of the installed wireless communication antennas and the portion of the monopole on which they are located.
- ? The lease or use agreement may be terminated by the City at any time for any of the reasons established in the agreement, including, but not limited to the following: 1) the property or is required for some other government purposes, 2) the facility is to be leased or sold as surplus property, 3) the improvements are not being properly maintained, 4) operation or maintenance of the telecommunication provider's property of facilities interferes with adversely affects or impacts the City's property, facilities, communications or projects.

With respect to this permit, many aspects of this City Council Policy are not directly relevant to the issue of land use, but are rather part of a business arrangement will be subsequently administered by the Real Estate Division of the Department of Public Works. Conditions are included in this permit to ensure that lease terms and conditions comply with the intent of this

policy. With regards to the land use considerations identified above, which are also generally duplicated in other development policies related to wireless communication uses, this project conforms to all elements of this City Council Policy.

Conformance to Council Policy 6-20, Land Use Policy for Wireless Communication Facilities

The City Council Policy generally discourages wireless communications facilities on residential properties except those developed solely with public utilities, parks or schools. Further, the policy also generally discourages the erection of new monopoles, except as a last resort if building mounted or other creative “stealth” monopoles cannot be provided as an acceptable alternative. In this instance, the new monopole is proposed primarily to provide an improved seismically sound replacement structure for an existing City communications antennas. This said, the co-location of private wireless communications antennas on this new structure, and perhaps other in the future, will help to reduce other new monopole proposals for the exclusive use of private providers.

Visual Impacts

The proposed wireless communication antennas will be flush mounted to the new monopole and will be placed at a height no greater than sixty feet. The antennas will be painted with a non-reflective paint in a color that matches the design of the replacement monopole. The wireless communication antennas will be partially screened from view by a cluster of existing trees.

Height

Antenna installations should conform to the General Plan and Zoning Ordinance height restrictions. The proposed installation conforms to the General Plan Urban Design Policy for maximum height of communication structures. This policy allows a maximum height of 100-feet on sites with non-residential land use designations. Pursuant to the more restrictive Zoning Ordinance requirements, the proposed wireless communication antenna installations will result in an overall height of no greater than sixty feet above grade.

Setbacks from Residential Uses

The City Council Policy requires that building mounted antennas and antennas mounted on other structures should be located at least 35 feet from a parcel developed for use as a single-family or multi-family residence. The proposed installation would be located more than 300-feet from the nearest residential property use.

Performance Standards

This project does not include the installation of power-generating equipment. Should the applicant wish to include such equipment in the future, a Special Use Permit would be required and the equipment would be required to meet all relevant performance standards, including noise, air quality, and vibration.

Parking

The project will not displace any existing parking spaces nor will the use generate the need for the creation of additional formal parking areas.

PUBLIC OUTREACH

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is a 7.64-gross-acre parcel in the R-1-8 Residence Zoning District.
3. The project site is currently developed with a City of San Jose corporation yard.
4. The subject R-1-8 Residence Zoning District has a maximum height limit of 35-feet.
5. Section 20.80.1900A of the Zoning Ordinance allows the maximum height of wireless communications antenna to be increased over the maximum height of the zoning district in which it is located up to a maximum of 60-feet.
6. The proposed project is subject to City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.
7. The proposed project is subject to City Council Policy 7-10, Placement of Communications Facilities on City-Owned Property.
8. The proposed project is subject to City Council Policy 6-16, Uses of Public Property.
9. The proposed project consists of the installation of a seismically superior 136 foot tall replacement monopole with six upgraded City-owned emergency communication antennas as well as three privately-owned PCS wireless communication antennas.
10. The proposed monopole is designed as a “slim pole”.
11. An existing 126 foot tall monopole will be removed upon construction of the new monopole without a delay in performance of the six emergency communication antennas.

12. Private wireless communication antennas are a “conditional use” in all of the City’s residential zoning districts.
13. The public hearing for this project addresses the objectives for a public review process for the publicly owned component of this project.
14. The overall heights of the City’s emergency communication antennas are no greater than 123 feet.
15. The overall height of the privately-owned wireless communication antennas will not exceed 60 feet.
16. The proposed monopole will be located approximately 300 feet from the nearest residential use.
17. There are several large trees that will help screen much of the proposed monopole from off-site areas.
18. The proposed project does not include a generator.
19. Under the provisions of Section 15302 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. The project will not have a significant adverse effect on the environment.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site’s designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project substantially complies with the applicable criteria of 1) City Council Policy 6-16, Uses of Public Property, 2) City Council Policy 7-10, Placement of Communication Facilities on City –Owned Property, and 3) City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission 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 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 Planning Commission 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 and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional

Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to the approved development plans entitled, "City Corporation Yard, SF-977-01; Cingular Wireless" dated July 28, 2004, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. The applicant must abate any such nuisance immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** This permit allows no new on-site lighting.
6. **Generators.** This permit does not approve any emergency/back-up generators on site. Any proposed emergency/back-up generators will require subsequent approvals.
7. **Outside Storage.** No outside storage is permitted except in approved and designated areas.
8. **Lease Terms and Conditions.** Subsequent lease agreements with the subject private wireless communications provider shall include terms and conditions to comply with all aspects of City Council Policy 7-10, Placement of Communications Facilities on City-Owned Property and City Council Policy 6-16, Uses of Public Property to the satisfaction of the City's Real Estate Division.
9. **Colors and Materials.** All wireless communications antennas and screening colors and materials are to be those specified on the approved plan set and shall match the existing structure.
10. **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, CP04-049, 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. *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.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
12. **Equipment Removal.** The applicant shall remove the wireless communications antennas, associated equipment and structures from the site at such time as the equipment is no longer in use or should the Conditional Use Permit expire.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two 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 buildings 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. 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.
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
 - c. The use as presently conducted creates a nuisance.

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.