



COUNTY OF SAN MATEO
Inter-Departmental Correspondence

PLANNING AND BUILDING DEPARTMENT

DATE: August 31, 2009
BOARD MEETING DATE: September 15, 2009
SPECIAL NOTICE/HEARING: 10 days, within 300 feet
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Lisa Grote, Director of Community Development *L. G.*

SUBJECT: Re-consideration of a Use Permit Renewal, pursuant to Section 6500 of the County Zoning Regulations, to allow the continued operation of a cellular communications facility consisting of two 13-foot tall monopoles and one equipment enclosure measuring 18 feet by 15 feet located in the rear yard of the residential property located at 1175 Palomar Drive in the unincorporated Palomar Park area of San Mateo County.

County File Number: PLN 2000-00497 (Sprint/Nextel)

RECOMMENDATION

Approve the use permit renewal, County File No. PLN 2000-00497, by making the required findings and adopting the conditions of approval in Attachment A.

BACKGROUND

Proposal: The permit holder (Sprint Spectrum L.P.) is requesting re-consideration of the Board's decision to deny renewal of its use permit for an existing wireless communications facility located in the rear yard of an existing single-family residence at 1175 Palomar Drive. The system consists of two monopoles and one equipment cabinet enclosure. The cellular antennas are attached to the two 13-foot tall monopoles located on the southeast and northwest sides of the parcel. The equipment cabinet is located in the rear portion of the yard, adjacent to an existing T-Mobile cellular facility. The total area of the cabinet enclosure is 270 sq. ft., and is surrounded by a 6-foot high chain-link fence with green plastic slats.

Report Prepared By: Michael Schaller, Senior Planner, Telephone 650/363-1849

Applicant/Owner: Nossaman LLP (*representing Sprint Spectrum L.P.*)/Curtis Brooks

Location: 1175 Palomar Drive, Palomar Park

APN: 051-416-040

Size: 22,858 sq. ft.

Existing Zoning: R-1/S-101 (Single-Family Residential/20,000 sq. ft. min. parcel size)

General Plan Designation: Low Density Residential (0.3 – 2.3 dwelling units per net acre)

Sphere-of-Influence: Redwood City

Existing Land Use: Single-Family Home and Other Wireless Communication Facilities

Flood Zone: Zone C (Area of Minimal Flooding); Community Panel No. 060311-0250B, Effective Date: July 5, 1984

Environmental Evaluation: Exempt from environmental review, pursuant to the California Environmental Quality Act (CEQA), Section 15301, Class 1, relating to the continued operations of an existing utility.

Setting: The project site is located on the west side of the street and is accessible from Palomar Drive. The site is improved with a 1-story, single-family home and an existing T-Mobile cellular facility. The surrounding uses are single-family homes. The site is visible from Edgewood Road at Crestview, but the antennas and equipment compounds are painted to blend with the existing vegetation and are masked by both existing Monterey pine and similar trees located behind the existing facilities.

The renewal of this use permit will allow continued operation of a wireless communications facility, which contributes to the Livable Communities 2025 Shared Vision because it is consistent with the County's land use regulations, including the General Plan, and Zoning Regulations. The site is located within a high traffic area and provides cellular coverage for both convenience and emergency situations.

Chronology:

Date

Action

November 17, 2000 - Use permit for Sprint cell site approved.

- December 7, 2006 - First Zoning Hearing Officer (ZHO) public hearing to consider renewal of this use permit. Item continued to January 18, 2007, to allow sufficient time for the applicant to implement the approved landscaping plan that was previously required and for staff to confirm installation.
- January 18, 2007 - ZHO conditionally approves renewal of Sprint use permit.
- February 1, 2007 - Appeal to Planning Commission (PC) filed.
- May 9, 2007 - First PC public hearing. PC directs staff to prepare findings for revocation.
- May 23, 2007 - Second PC public hearing. PC discusses the proposed findings for revocation; however, the Commission is unable to adopt the findings due to lack of voting majority (only three Commissioners were present and the vote was 2-1 for revocation).
- June 13, 2007 - Third PC public hearing. PC adopts findings of revocation.
- June 19, 2007 - Appeal to the Board of Supervisors filed by the permit holder.
- October 4, 2007 - Board of Supervisors public hearing. Item continued to November 6, 2007. The Board requests the permit holder to submit an alternative site study, the purpose of which is to determine if there are alternative locations in the vicinity that could provide similar coverage. The Board also directed staff to examine what impact removal of this site would have upon the Emergency-911 network.
- November 6, 2007 - Staff requests continuance to December 18, 2007.
- December 18, 2007 - Second Board of Supervisors public hearing. The Board denies the permit holder's appeal.
- January 18, 2008 - Sprint Spectrum files lawsuit in United States District Court in Oakland, alleging permit denial was not based on substantial evidence and violated Telecommunications Act of 1996 by effecting a prohibition of wireless services. The County answered the lawsuit, denying all claims.
- July 21, 2008 - County files Administrative Record with the Federal District Court regarding basis for prior Board action.

March 31, 2009

In closed session, Board authorizes settlement of litigation by agreement to hold new public hearing to consider additional evidence by applicant.

DISCUSSION

A. BACKGROUND

At the Board's public hearing on October 4, 2007, the Board requested the permit holder, Sprint, to submit an alternative site study, the purpose of which is to determine if there are alternative locations in the vicinity that could provide similar coverage. The Board also directed Staff to examine what impact removal of this site would have upon the Emergency-911 network. The Board reviewed the submitted alternative study at the December 18, 2007, hearing and found that insufficient evidence had been presented to overturn the Planning Commission's decision for revocation. Subsequent to the Board's action and after the initiation of litigation in Federal Court, the permit holder proposed resolution of the lawsuit by submitting a revised study which includes more detailed information regarding level of use of this cell site, frequency of Emergency-911 calls routed through this site as well as the feasibility of alternative sites within the area. The revised study is included as Attachment D.

B. ALTERNATIVE SITES STUDY

Following the commencement of the Federal Court action, and in the context of negotiating a resolution of the lawsuit, the applicant proposed submittal of a new written analysis to demonstrate to the Board's satisfaction that the infeasibility of specific potential alternative locations for the facility would either provide diminished quality of coverage or would have other detrimental project attributes (such as new visual impacts) that might make, on balance, the existing facility the optimal solution. The intention of the new alternative sites study was to establish a new basis for adopting the requisite finding that renewal of the existing use permit is "necessary for the public health, safety, convenience or welfare" within the meaning of Section 6500(c) of the County Zoning Regulations. On December 5, 2008, Sprint submitted a revised study to County Counsel for its review in connection with the factors set forth in Section 6500(c).

The report begins by describing the existing facility: the sectors covered by each antenna and the average number of calls handled within that sector. The existing site covers three sectors:

Sector A covers an area to the northwest of the project site, from approximately Appian Way (in San Carlos) to Hassler Road (in the Pulgas Ridge Open Space Preserve). This sector handles an average of 264 calls per day with an average of 680 minutes of usage per day.

Sector B provides contiguous coverage from the PG&E tower at the top of Edgewood Road down to approximately Old Stage Road (entrance to Edgewood County Park). This sector handles an average of 203 calls per day with an average of 625 minutes of usage per day.

Sector C provides contiguous coverage along Edgewood Road to Cordilleras Road, and into Emerald Lake Hills. This sector handles an average of 2,215 calls per day with an average of 5,462 minutes of usage per day.

In addition, the report points out that this facility handles an average of four Emergency-911 calls per month. The report then discusses four alternative locations:

1. The Mormon Church located at 1475 Edgewood (at corner of Scenic Drive/Edgewood). The site is approximately 500 feet below the existing facility and, according to Sprint, would not be viable for the total coverage that the existing facility currently provides. It would serve as a replacement to Sector C covering mobile traffic on Edgewood Road from Bennett Road to Crestview Court. In order to replace as much of the coverage along Sector C as possible, Sprint estimates that they would require a 75-foot tower at this location. A tower of this size presents potentially significant visual impacts that would require more analysis through photo-simulations.
2. Cordilleras Mental Health Center at 200 Edmonds Road. This site is next to the County Fire Facility and sits approximately 500 feet below the existing site on Palomar Drive. Sprint estimates this alternative site would provide only a maximum of 25% coverage compared to the existing site and would require a tower height of 150 feet to achieve this level. Again, a tower of this size presents potentially significant visual impacts that would require more analysis through photo-simulations.
3. The Clifford K-8 School located at Clifford Drive. This is a single-story building located at approximately the same elevation as Edgewood Road; however, this location sits approximately 400 feet below the existing cell site on Palomar Drive. Because of the existing topography, Sprint would need to elevate the antennas significantly (100-150 feet) with a light pole or other tower structure to provide even 25% of the coverage of Sector A. The easterly location prevents this site from providing replacement coverage for the entirety of Sector B.
4. Edgewood County Park. Depending on the proposed location within the park, this site could provide replacement coverage for much of Sectors B and C, and at least a portion of Sector A. However, extension of road access and utilities to the site could have significant visual impacts, depending upon the exact location proposed. Also, Edgewood Park contains several sensitive

habitats for threatened/endangered species. Construction of a replacement site could potentially create a significant impact on these habitats.

In view of the alternative sites analysis, which was not available to the Board prior to its vote to deny the permit in December 2007, there is substantially more evidence to support the required findings under Section 6500(c) of the County Zoning Regulations that the use authorized by the use permit would be "necessary for the public health, safety, convenience or welfare." The applicant disputes that such an alternatives analysis was necessary under the use permit regulations in effect as of the date of its renewal application, and therefore contends that the showing made by the applicant in December 2007 was sufficient to justify renewal of the permit. In other words, the applicant contends that its prior showing was legally sufficient and that the new alternatives analysis is unnecessary to establish a compelling basis for permit issuance in light of the Telecommunications Act of 1996. However, the applicant has offered the alternatives analysis as a potential basis for resolution of the Board's concerns raised as the grounds for permit denial in December 2007.

Staff believes that the adequacy of the original December 2007 showing would continue to be a matter for court resolution. But, if the revised alternatives analysis satisfies the Board, then permit renewal would moot the litigation and would establish that the renewal of the permit is "necessary for the public health, safety, convenience or welfare" under the Use Permit Regulations that were in effect on the date of the permit application.

C. CONFORMANCE WITH USE PERMIT FINDINGS

In order to continue the operation of this facility, the following use permit findings are necessary:

1. **Find that the establishment, maintenance and/or conducting of the use will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in said neighborhood.**

The impacts from the continued operation of this facility, subject to the recommended conditions of approval, will be minimal.

Because the facility is unmanned and only requires periodic service visits, continued operation of the facility should not generate additional traffic, noise, or intensity of use of the property.

2. **Find that the use is necessary for the public health, safety, convenience, or welfare.**

The use is for telecommunication services. The FCC has established, through the Telecommunications Act of 1996, the desirability and need for wireless communications facilities to enable communication between mobile units and the existing wire-dependent telephone system. As shown in the site alternatives analysis, this facility handles a large volume of calls per day and plays an integral role in providing cellular coverage along the Edgewood Road corridor. Removal of this facility would significantly impact the public's ability to communicate with the Emergency-911 network in the case of an accident. Alternative sites would not be able to provide the same level of coverage as this site, and thus could potentially have a negative impact upon the public's ability to access the Emergency-911 network. This facility contributes to an enhanced wireless network for increased clarity, range, and system capacity, and therefore is a benefit to both public and private users. This facility is considered necessary for public health, safety, convenience, and welfare, particularly in the case of a large-scale natural disaster, such as an earthquake or wildland fire. No adverse effects to public safety would result from the continued operation of this facility.

FISCAL IMPACT

None.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval
- B. Location and Vicinity Map
- C. Site Plan
- D. Alternatives Study (prepared by SprintPCS)