



**CUPERTINO**

City of Cupertino  
10300 Torre Avenue  
Cupertino, CA 95014  
(408) 777-3308  
FAX (408) 777-3333

*Community Development Department*

August 26, 2015

Complete Wireless  
Attn: Jenny Blocker  
2009 V Street  
Sacramento, Ca. 95818

SUBJECT: PLANNING COMMISSION ACTION LETTER – ASA-2014-10, DP-2014-07, EXC-2014-12

This letter confirms the decision of the Planning Commission, given at the meeting of August 25, 2015, approving a Architectural and Site Approval for the design of a personal wireless service facility consisting of 6 panel antennas mounted on a tree pole designed for collocation and an enclosed base equipment station and emergency power generator; Development Permit to allow a personal wireless service facility consisting of 6 panel antennas mounted on an 80-foot tall tree pole designed for collocation and an enclosed base equipment station and emergency power generator and a ; Height Exception to allow six panel antennas to be mounted at a height of 66 feet on an 80-foot tall tree pole, where 55 feet is allowed for a wireless communications facility at Cupertino City Hall, located at 10300 Torre Avenue, according to Planning Commission Resolution No.(s) 6786, 6787 and 6788.

Please be aware that if this Permit is not used within a ten-year period, it shall expire on August 25, 2025.

Also, please note that an appeal of this decision can be made within 14 calendar days from the date of the decision. If this happens, you will be notified of a public hearing, which will be scheduled before the City Council.

Sincerely,

Colin Jung  
Associate Planner  
Planning Department

Enclosures: Resolution 6786, 6787 and 6788

Cc: Verizon Wireless, 2785 Mitchell Dr, Walnut Creek, Ca 94598

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

RESOLUTION NO. 6786

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO APPROVING AN  
ARCHITECTURAL AND SITE APPROVAL FOR A NEW PERSONAL WIRELESS SERVICE  
FACILITY CONSISTING OF SIX PANEL ANTENNAS MOUNTED ON A COLLOCATABLE,  
80-FOOT TALL TREEPOLE AND AN ASSOCIATED EQUIPMENT ENCLOSURE AT  
CIVIC CENTER, 10300 TORRE AVENUE

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SECTION I: PROJECT DESCRIPTION

Application No.: ASA-2014-10  
Applicant: Jenny Blocker (for Verizon Wireless)  
Property Owner: City of Cupertino  
Location: 10300 Torre Avenue

SECTION II: FINDINGS FOR ARCHITECTURAL AND SITE APPROVAL:

WHEREAS, the Planning Commission of the City of Cupertino received an application for an Architectural and Site Approval as described in Section I. of this Resolution; and

WHEREAS, the necessary public notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the application; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Planning Commission finds as follows with regard to this application:

1. The proposal, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;
2. The proposal is consistent with the purposes of Chapter 19.134, Architectural and Site Review, of the Cupertino Municipal Code, the General Plan, the wireless facilities master plan, zoning ordinances, applicable planned development permit, conditional use permits, variances, subdivision maps or other entitlements to use which regulate the subject property including, but not limited to, adherence to the following specific criteria:
  - a) Abrupt changes in scale have been minimized. The new treepole has been sited in an area with existing tall trees.
  - b) Design harmony between the new treepole and existing trees has been preserved and the materials, textures and colors of the new treepole harmonize with adjacent landscaping and preserve the future character of the neighborhood and purposes of the zone in which it is situated. The location, height and materials of walls, fencing, hedges and screen planting harmonize with adjacent development. Unsightly utility installations have been concealed.

Ground cover or various types of pavements have been used to prevent dust and erosion, and the unnecessary destruction of existing healthy trees have been avoided to the extent practical.

- c) This new development, abutting an existing residential development, has been designed to protect residents from noise, traffic, light and visually intrusive effects by use of buffering, setbacks, landscaping, fences and other appropriate design measures.

NOW, THEREFORE BE IT RESOLVED

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in this Resolution beginning on Page 2 thereof, The application for an Architectural and Site Approval, Application no. ASA-2014-10 is hereby approved, and;

That the subconclusions upon which the findings and conditions specified in this Resolution are based and contained in the Public Hearing record concerning Application no. ASA-2014-10 as set forth in the Minutes of Planning Commission Meeting of August 25, 2015 and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPT.

1. APPROVED EXHIBITS

Approval is based on Exhibits titled: "Verizon Wireless/DEANZA STEVENS CREEK/ 10800 TORRE AVENUE/CUPERTINO, CA 95014/ APN: 369-31-033/ LOCATION #: 249535" prepared by MST ARCHITECTS dated 05/26/15 and consisting of ten sheets labeled T1.1, C-1, C-2, A1.1, A2.1, A2.2, A3.1, A3.2, A3.3, L1.1, except as may be amended by the conditions contained in this resolution.

2. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

3. COLOCATION OF ANTENNAE

The treepole shall be structurally designed to accommodate the collocation of additional antennae from other wireless carriers. The co-location agreement shall be at market rates with reasonable compensation to the mast owner.

4. ABANDONMENT

If after installation, the aerial is not used for its permitted purpose for a continuous period of 18 months, said aerial and associated facilities shall be removed. The applicant shall bear the entire cost of demolition and removal.

5. EXPIRATION DATE

This architectural and site approval shall expire ten (10) years after the effective date of the approval. The applicant may apply for a renewal of the approval at which time the Planning Commission may

review the state of wireless communication technologies, camouflage techniques and maintenance to determine if the visual impact of the aerial facility can be reduced.

6. TREE POLE APPEARANCE AND MAINTENANCE

The applicant shall construct a eucalyptus style treepole to raise the height of the antennas and shall meet the following design criteria:

- a) Use a sufficient number of artificial branches to obscure the appearance of the panel antennas and any associated mounting framework.
- b) Panel antennas mounted away from the mast shall be covered in leaf socks to blend with the green foliage of the artificial branches.
- c) The mast shall be wrapped with a faux bark and any antenna mounted close to the mast shall be painted brown to mimic a tree trunk.
- d) The foliage shall have a mottled green coloration.

The building permit shall be reviewed and approved to the satisfaction of the Community Development Director to ensure the above condition is met. The applicant shall perform regular maintenance of the tree pole to maintain its appearance and obscure the panel antennas from public view.

7. EQUIPMENT ENCLOSURE

The base equipment enclosure shall be constructed of high quality materials and/or be screened by appropriate landscaping as determined by the City Council. The final enclosure design shall be reviewed and approved by the Director of Community Development prior to issuance of building permits.

8. TREE REMOVAL

The applicant shall apply to the City Streets and Trees Supervisor for permission to remove any Park trees associated with the construction of this wireless facility.

9. ACOUSTICAL ENCLOSURE FOR EMERGENCY POWER GENERATOR

To meet City Noise standards, the power generator shall be enclosed with a Level 2 Acoustic Enclosure. The addition of the acoustic enclosure shall be noted on the building plans.

10. SETBACK OF ENCLOSURE FENCING FROM TRASH ENCLOSURE & PARKING LOT CURBING

At the building permit stage, the applicant shall provide revised drawings of the equipment enclosure demonstrating a minimum 2-foot setback of the enclosure fencing from the parking lot curbing and a minimum 3-foot setback of the enclosure fencing from the trash enclosure fencing.

11. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file nos. DP-2014-07 and EXC-2014-12 shall be applicable to this approval.

SECTION IV: CONDITIONS ADMINISTERED BY THE PUBLIC WORKS DEPARTMENT DEPT.

12. WIRE CLEARANCE EASEMENT

Prior to building permit approval, Applicant shall coordinate with Public Works staff to vacate or otherwise address the wire clearance easement that affects the project.

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13. LANDSCAPING AND IRRIGATION APPROVAL

Prior to building permit approval, Applicant shall coordinate with Public Works staff to obtain City approval for new/replacement landscaping and irrigation for the project.

14. CONSTRUCTION STAGING PLAN

Prior to building permit approval, Applicant shall provide a construction management plan that identifies the timing/duration of construction activities, and construction staging and temporary construction improvement locations that shall be reviewed and approved by the Director of Public Works.

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PASSED AND ADOPTED this 25<sup>th</sup> day of August, 2015, at a regular Meeting of the Planning Commission of the City of Cupertino, State of California, by the following roll call vote:

AYES: COMMISSIONERS: Chair Lee, Vice Chair Takahashi, Gong, Sun, Paulsen  
NOES: COMMISSIONERS: none  
ABSTAIN: COMMISSIONERS: none  
ABSENT: COMMISSIONERS: none

ATTEST:

APPROVED:

          /s/Gary Chao          

Gary Chao  
Asst. Community Development Director

          /s/Winnie Lee          

Winnie Lee  
Chair, Planning Commission



OFFICE OF THE CITY CLERK

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3223 • FAX: (408) 777-3366

To: Planning Department

From: Kirsten Squarcia

Re: Subject: Consideration of Lease with Verizon Wireless for a cell tower to be located on the Civic Center Property (10300 Torre Avenue) and conduct a public hearing on an appeal of the Planning Commission's decision to provide Verizon with a development permit, site approval, and height exception for the Civic Center cell tower and any actions necessary for CEQA. A. Proposed Lease with Verizon Wireless for a cell tower to be located on the Civic Center Property (Torre Avenue), subject to the terms of any City-issued permits; and B. Appeal of the Planning Commission's approval of an Architectural and Site application for a personal wireless service facility consisting of 6 panel antennas mounted on a tree pole designed for collocation and an enclosed base equipment station and emergency power generator; a Development Permit to allow a personal wireless service facility consisting of 6 panel antennas mounted on an 80-foot tall tree pole designed for collocation and an enclosed base equipment station and emergency power generator; and a Height Exception to allow 6 panel antennas to be mounted at a height of 66 feet on an 80-foot tall tree pole, where 55 feet is allowed for a wireless communications facility at Cupertino City Hall (Applicant(s): Jenny Blocker (Verizon); Appellant: Lei Wang; Location: 10300 Torre Ave.; APN #369-31-033)

Date: October 13, 2015

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At its October 6, 2015 meeting, the Cupertino City Council took the following action:

**DID NOT ADOPT RESOLUTION NO. 15-086 TO DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION'S DECISION PER RESOLUTIONS #6786, #6787 AND #6788 (SINKS AND WONG VOTING YES, PAUL VOTING NO, CHANG ABSENT, AND VAIDHYANATHAN RECUSING). (AS A RESULT OF THE MOTION FAILING, THE PLANNING COMMISSION DECISION WAS UPHOLD).**

**CONTINUED NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT WITH VERIZON FOR CELLULAR WIRELESS SERVICE AT THE CIVIC CENTER WITH THE FOLLOWING DIRECTION TO STAFF AND THE APPLICANT (CHANG ABSENT AND VAIDHYANATHAN RECUSING):**

- **ALLOW THE APPLICANT TO RUN TESTS AT A POLE HEIGHT OF 55 FEET AND UP TO 65 FEET IN ORDER TO DETERMINE THE MINIMUM HEIGHT REQUIREMENT FOR THE ANTENNA ARRAY**
- **CONTACT AT&T TO SEE IF THEY CONTINUE TO BE INTERESTED AND GET THEIR INPUT ON THE TWO POTENTIAL SOLUTIONS: (1) LOCATE THE ANTENNA ARRAY ABOVE THAT OF VERIZON ON THE PROPOSED TREE POLE; OR (2) BUILD ANOTHER TREE POLE IN THE SAME AREA AT THE MINIMUM HEIGHT REQUIRED.**
- **BRING BACK THE FOLLOWING OPTIONS FOR REVIEW: (1) CONSTRUCT THE POLE FOR VERIZON AT THE MINIMUM HEIGHT REQUIRED WITH THE OPTION TO EXTEND THE HEIGHT FOR ANOTHER PROVIDER; OR (2) BUILD ANOTHER TREE POLE FOR THE SECOND PROVIDER AT THE MINIMUM HEIGHT REQUIRED.**



**COMMUNITY DEVELOPMENT DEPARTMENT**  
CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3308 www.cupertino.org

## **CITY COUNCIL STAFF REPORT**

Meeting: October 6, 2015

### Subject

Appeal of the Planning Commission's approval of an Architectural and Site application for a personal wireless service facility consisting of 6 panel antennas mounted on a tree pole designed for collocation and an enclosed base equipment station and emergency power generator; a Development Permit to allow a personal wireless service facility consisting of 6 panel antennas mounted on an 80-foot tall tree pole designed for collocation and an enclosed base equipment station and emergency power generator; and a Height Exception to allow 6 panel antennas to be mounted at a height of 66 feet on an 80-foot tall tree pole, where 55 feet is allowed for a wireless communications facility at Cupertino City Hall (Applicant(s): Jenny Blocker (Verizon); Appellant: Lei Wang; Location: 10300 Torre Ave.; APN #369-31-033)

### Recommended Action

Staff recommends that the City Council:

Conduct hearing and adopt Resolution No. 15-\_\_\_ denying the appeal and upholding the Planning Commission's decision per Resolutions #6786, #6787 and #6788; If appeal is denied, authorize the City Manager to negotiate and execute a lease agreement with Verizon for cellular wireless service at the Civic Center

### Description

Appeal of the following Planning Commission Approvals:

Development Permit (DP-2014-07) to allow a personal wireless service facility, consisting of six panel antennas mounted on an 80-foot tall tree pole, designed for collocation, with a base equipment station and emergency power generator in a fenced enclosure at Cupertino City Hall located at 10300 Torre Avenue.

Architectural and Site Approval (ASA-2014-10) to allow a personal wireless service facility, consisting of six panel antennas mounted on an 80-foot tall tree pole, designed for collocation, with a base equipment station and emergency power generator in a fenced enclosure at Cupertino City Hall.

Height Exception (EXC-2014-12) request to allow antennas to be mounted at a height of 66 feet on a planned 80-foot tall tree pole, where 55 feet is allowed.



Appellant: Lei Wang  
Applicant: Jenny Blocker, Complete Wireless (for Verizon Wireless)  
Property Owner: City of Cupertino  
Property Location: Northeast corner of 10300 Torre Avenue, APN 369-31-033

## Discussion

### *Background*

On August 25, 2015, the Planning Commission considered a proposal to develop a new Verizon personal wireless service facility, designed for collocation, in an existing landscaped area at Cupertino City Hall (Attachment B). Detailed discussion and testimony during the meeting can be reviewed in the Planning Commission meeting minutes (Attachment C).

Seven residents spoke at the hearing, the primary concerns raised at the Commission meeting (See Attachments C & D) relate to the following:

- Desire for better cell phone coverage in the area;
- Proximity to residences;
- Explore alternate sites, including parks;
- Perceived hazards of radio frequency energy of the project; and
- Insufficient noticing.

After considering all of the facts of the project and public testimonies, the Planning Commission approved this project on a 5-0 vote in accordance with the attached resolutions (Attachments E, F & G). Documents supporting the Commission's decisions are attached below (Attachments E through S). The Planning Commission approval was appealed by one resident on September 4, 2015 (Attachment T).

### *Staff Responses to the Appeal*

The appellant is an adjacent neighbor who lives in the residential development across Rodrigues Avenue north of the project site. Her appeal points are summarized below with staff comments in *italics*. The full text of the appeal points can be found in Attachment T.

#### **1. The facility violates the Cupertino Wireless Master Plan (CWMP)**

The appellant contends:

- That the project does not protect community aesthetics and promote safety because the project is not well-sited and well-designed to fit unobtrusively in the Cupertino environment.

- The project is a new structure in a residential area, which the CWMP considers to be the Least Preferred location for wireless service facilities. The proposed facility is bordered in three quadrants by residences.

The appellant contends that the project violates policies in the CWMP as follows:

Policy 5-2: Only unobtrusive personal wireless service facilities shall be considered in residential neighborhoods.

-Residential areas border the proposed facility in three quadrants. The proposed facility will dominate the area that surrounds it, towering over buildings and vegetation.

Policy 6-1: Personal wireless service facilities should be sited to avoid visually intrusive impacts as viewed from the public right-of-way and from residential neighborhoods.

The artificial eucalyptus tree will conflict with its surroundings, which will be a sparsely landscaped area when the project is finished.

Policy 6-2: Personal wireless service facilities shall be appropriately scaled to fit harmoniously with the surrounding elements of the site and neighborhood.

-The proposed tree appears at least twice the size of surrounding trees and buildings (if not more) and thus not appropriately scaled. Many of the trees that are currently located in that area will have to be removed for installation, further removing any cover the area currently provides.

Policy 6-3: Personal wireless service facilities shall be compatible with their surroundings so that their shape, size, color, material and texture blend with their surroundings.

-An 80-foot artificial eucalyptus tree will not blend with the far smaller acacia trees and one-to-two-story buildings that surround it.

The appellant contends that the project does not follow the design guidelines of the CWMP in that the proposed tree pole is not of a form similar to surrounding trees. The faux tree is eucalyptus and the surrounding trees are acacia. The design guidelines also recommend that the artificial tree should not be significantly taller than the surrounding vertical elements (i.e. buildings, trees, structures, etc.). The proposed artificial tree is clearly in violation of this guideline and is significantly taller than surrounding trees and structures.

Santa Clara County also has a document called the Wireless Telecommunications Facilities Design Guidelines, which requests facilities “blend with and/or complement the color design and/or character of the surrounding context, whether natural backdrop, building or existing facility.” The document gives several examples of tree poles that are or are not cited properly highlighting “the importance of blending with surroundings.” The example given of a poorly sited tree pole notes: “The constructed “tree” bears no relationship to the size, shape and character of surrounding physical elements.” The proposed City Hall facility is one such poorly situated tree.

Community wireless facility plans like those prepared by Cupertino and Santa Clara County exist to protect neighborhoods and residences from unsightly and oversized facilities that threaten their aesthetic and property values. Furthermore, nowhere in the various policies and guidelines does it state that siting and design requirements can be ignored for 20-30 years as new landscaping grows to cover and surround the 80-foot artificial tree. They all require that such conditions exist or are put in place immediately. In these documents, all of the examples of properly located artificial trees show them among mature, full grown trees of comparable size to the artificial tree.

*Staff Comments: The proposed wireless facility is located completely on city property at Civic Center and the project site is bordered on two sides: north and east by residential developments. The CWMP considers new wireless structures on non-residential land as the second most preferred location for cell facilities. The CWMP identifies city-owned properties, including parks and city utility structures, as viable candidates for cell site locations. Altogether, the City hosts five wireless facilities on City-owned properties: three at the Service Center, one at Memorial Park and one on the Bollinger Road right-of-way.*

*A tree-like camouflage was selected by staff for this monopole because of the environmental setting in a civic landscaped area with mature trees, and residences located across the street and creek. The eucalyptus tree-form was selected as it would be the most effective form (i.e. tall and dense canopy) to hide two vertically-stacked antenna arrays, consisting of an upper array of 12, 8-foot tall antennas (AT&T) and a lower antenna array of 6, 8-foot tall antennas (Verizon). The tree pole will have a realistic appearance and its height of 80 feet is comparable to living eucalyptus trees which normally range from 30 to 200 feet in height. The attached photosimulations and photograph of an actual tree pole illustrate what Verizon is proposing at City Hall (Attachments M, N, & O).*

*The tree pole is proposed at this height to accommodate two wireless carriers' on the same tree pole and provide satisfactory wireless coverage and service capacity. At 80 feet the tree pole is expected to be about twice the height of the tallest city trees in the vicinity. Collocation of antennas on a single taller tree pole is a design consideration intended to reduce potential obtrusive visual impacts of wireless facilities. If the design consideration does not accomplish that design objective, then the Council should consider either:*

- 1) two tree poles on-site of lower height, which reduces visual height, but increases the visual bulk of the facility; or*
- 2) Limiting the site to just one wireless carrier.*

*The 3-story attached housing complex to the north is already visually buffered from the proposed wireless facility by an equally tall landscaped perimeter of mature trees in the residential common area. Still, staff has concluded that new landscaping (trees) planted in the landscaped setback between the enclosure and Rodrigues Avenue will help the tree pole to blend into the visual landscape from all vantage points. The existing trees proposed for removal are shorter in stature and offer limited vegetative screening of the tree pole. New trees that can grow to taller heights can do a better job of reducing any visual disparity in tree heights.*

## **2. The facility will aesthetically damage the surrounding residential neighborhood.**

The proposed wireless facility will not blend in to its surroundings and will tower over surrounding trees and buildings, damaging the appearance of the neighborhood. The Planning Commission defer review and approval of the landscape plan to the City Council and the Public Works Department"--- however, landscaping is key in this proposal if it is to "blend in" as plans require. Several of the acacia trees that were cited as providing camouflage and cover will be removed for the installation of the facility. With drought restrictions, we question if and when new trees will be planted. New landscaping will not offer immediate visual relief. With technology changing at such a rapid rate, we questioned if the facility will even be in use in 20-30 years.

*Staff Comments: The proposed tree pole structure supporting the antennas is proposed at 80 feet tall. The tree pole is cloaked with artificial branches and plastic leaves to give it a more realistic tree-like appearance. The plastic leafing adds five feet to the overall height; otherwise, it would appear to be tree with a flat-top. The tallest trees closest to the tree pole are blackwood acacias that are about half the height around 40 feet tall. The tree pole is visually screened from the 3-story attached housing project to the north by the residences' own onsite landscape screen of mature trees upwards of 50 feet tall.*

*The city trees north of the enclosure that are proposed to be removed are shorter in stature and are a combination of blackwood acacias and Brazilian Peppers from 20-40 feet in height, which contribute, but cannot completely screen an 80-foot tall tree pole. Staff agrees with the appellant that new landscaping with taller trees will help the tree pole to blend better in the visual landscape. If the City Council agrees, staff recommends consulting with the City Streets and Trees Supervisor to select trees that grow to taller heights and are drought-tolerant. Adequate irrigation will be necessary to establish the newly planted trees. With any potential construction and landscaping delayed until the late Fall, the region may receive enough rainfall, in addition to planned irrigation, to help any new trees.*

*The appellant questioned whether advancing wireless communications technology will render the wireless facility obsolete in 20-30 years. If that should happen, the permit conditions of approval require Verizon to remove any abandoned facility at its cost.*

## **3. Alternative locations were not fully investigated.**

The Alternative Site Analysis provided by Verizon Wireless notes that they were unable to contact or reach agreements with surrounding buildings. Their efforts did not go far enough. An Apple building is listed as a preferred location but the document notes they were unresponsive to their form letters. Furthermore, the Cypress Hotel was rejected after no agreements could be made with the owners. The hotel has been purchased by new

owners who have not yet been contacted. Lastly, much of the discussion with building owners happened several years ago and we argue that it is worth doing another round.

Local parks such as Wilson Park were not considered, even though they have groves of tall trees. Within City Hall property, other locations were rejected because they were not visually pleasing and did not have enough visual cover. However, as already stated above, the current proposed site does not have enough visual cover and will lose even more during installation. Furthermore, the other proposed City Hall locations are farther from residences and less in their visual site lines. It is also worth pointing out that this Alternative Site Analysis document mentions that Verizon consulted Santa Cruz County regulations regarding zoning, not Santa Clara County.

*Staff Comments: Verizon's Alternative Site Analysis describes the efforts a company must pursue in order to find new cell facility locations that are technically suitable from a network, coverage and capacity standpoint, that also must have adequate land or roof area, a willing landowner, agreeable lease terms and meet local zoning and building regulations. Verizon's search efforts started in January 2011 encompassing all of the tall non-residential buildings in the vicinity before discussions were held with City officials on alternative sites within the Civic Center property. In July 2013, the City Council selected the project site as the preferred alternative for a City Hall cell site (Attachment U). Staff feels the applicant has conducted a good faith effort in analyzing site alternatives to the project site.*

*The suggestion of Wilson Park as an alternative site is not feasible as it is located outside of the original and revised search rings. A site to the east closer than Wilson Park has already been rejected by Verizon's RF engineer for geographic reasons.*

*The appellant is correct in pointing out that Santa Cruz County zoning regulations are not applicable to this analysis, staff would add that Santa Clara County zoning regulations do not apply as well. The applicable regulations governing cell site development are those of the local jurisdiction (Cupertino), State of California, and the U.S. government. All of the studied alternative sites complies with Cupertino zoning from a land use standpoint.*

#### **4. Safety concerns have not been fully addressed.**

Only the safety of the facility with respect to radio frequency energy emissions was addressed. It does not discuss the safety of the facility itself, such as:

- The safety of the generator.
- Susceptibility to flooding. A 2005 Cupertino City study in cooperation with FEMA indicated that the site is in or very near a flood zone.
- Susceptibility to lightning strikes.

*Staff Comments:*

### Generator Safety

*The appellant does not elaborate on what aspects of generator safety she is concerned about. The generator is expected to create equipment noise when it is in operation. It will only be tested during the daytime and will be enclosed in an acoustical shelter that will limit noise to levels below City noise standards.*

*The generator will be powered by a built-in diesel tank and the fuel is considered a hazardous material. The facility and emergency power generator will be reviewed by the Santa Clara County Fire Department during the building permit stage to ensure the storage of any hazardous materials complies with City ordinance regulating the storage of such materials.*

*The entire facility will be secured behind a locked fenced enclosure to prevent unauthorized access.*

### Flooding

*Cupertino is a full participant in the Federal government's flood insurance program and must restrict and control buildings in the 100-year flood zone in compliance with federal flood regulations. In the vicinity, the 100-year flood plain is entirely contained within the creek to the east of the project. The project site, like City Hall, library and the surrounding residences are at the same elevation and are outside of the 100-year flood plain and not subject to flood hazard regulations.*

### Lightning Strikes

*Lightning strikes on tall wireless communication facilities are more of a planning concern in southern and central states where lightning storms are a common occurrence. In such an environment, where there are tall structures in an isolated area, a cell tower can increase the chances of a direct lightning strike as the metal tower, like other tall structures, can provide a better conducting path for the electricity than the surrounding air.*

*According to the Santa Clara County Office of Emergency Services' website, lightning storms in the San Francisco Bay Area are an unusual occurrence. Also the website mentions that in a long-term, nationwide survey, California ranked last, meaning the least number of lightning incidents that caused casualties or damage.*

*In the unlikely occurrence there is a lightning strike on a cell tower in Cupertino, it would damage the equipment and the electrical charge would dissipate into the ground. The facility is unmanned, so there is less of a risk of casualties. If lightning causes a breakage of the pole, there is a building-free, fall zone around the tree pole equal to the height of the pole. If lightning causes a cell tower fire, the nearest fire station is just a quarter of a mile away on Stevens Creek Boulevard.*

## **5. Affected residents were not adequately notified.**

Residents were not adequately notified. Residents were confused by the different forms of noticing. Many also feel that a greater radius than 300-feet is affected by the facility. We ask if ordinance 19.108.090B of the Wireless Communications Facilities Ordinance applies,

which requires mailed written notice of public hearings within one thousand feet of the exterior boundary of the property.

We do feel that not enough residents understood the significance of this project and that the additional hearing following the appeal would allow us the opportunity to get the word out.

*Staff Comments: The appellant is using an older 2009 version of the Wireless Communications Facilities Ordinance (Cupertino Municipal Code section 19.108) that was superseded by the City Council adoption of a reorganized zoning code in year 2011 and now the wireless facilities ordinance falls under Municipal Code section 19.136. The August 25, 2015 Planning Commission Hearing was fully, legally noticed under the current codes, which includes:*

- *a legal advertisement in the Cupertino Courier published on August 14, 2015;*
- *mailed notice to property owners within 300 feet of the civic center property at least 10 days prior to the hearing;*
- *posted on the City's official notice board a week prior to the hearing;*
- *posted on the City's website a week prior to the hearing;*
- *Site signage posted at two locations at City Hall: one sign along Rodrigues Avenue next to the project, and another along Torre Avenue. Signs were posted at least 14 days prior to the hearing.*

*In addition to the legal noticing, the applicant held a neighborhood meeting prior to the public hearing on July 22, 2015. Verizon mailed meeting notices to property owners within a 300-foot radius of the Civic Center property at least 10 days before the neighborhood meeting. Over two hundred notices were mailed and three residents attended the neighborhood meeting. Also, temporary story poles were erected prior to the public hearing to delineate the perimeter of the equipment enclosure and height of the fencing.*

#### *Applicant's Response to the Appeal*

On behalf of Verizon Wireless, MacKenzie & Albritton, LLP, has prepared a written response to the appeal petition, responding to each appeal point. In addition, the response letter includes:

- 1) a determination by a Verizon radio frequency engineer that the area to be serve by the proposed wireless facility constitutes a significant gap in Verizon's coverage;
- 2) an update of the alternative sites analysis, which includes a re-survey of some of the previously evaluated sites, an evaluation of an additional site suggested by the appellant, and a previously not considered DAS (distributed antenna system) alternative; and
- 3) a legal analysis of the project based on its interpretation of federal regulations and case law(Attachment V).

#### *Noticing and Community Outreach*

See staff comments under Appeal Point #5.

*Environmental Assessment*

The Development Permit, Architectural & Site Approval and Height Exception applications are categorically exempt from the California Environmental Quality Act (CEQA) per section 15303 (New Construction or Conversion of Small Structures) of the CEQA Guidelines because the project involves small accessory structures of less than 10,000 square feet in area that do not involve the use of a significant amount of hazardous materials in an urban, developed environment with access to utilities. The proposed facility will also not generate significant noise or RFE emissions, which are estimated to be below city and federal safety standards respectively.

*Timeframe for Reviewing and Approving Wireless Facility Applications under Permit Streamlining Act and 1996 Telecommunications Act*

This project is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

***Project Received:*** September 8, 2014

***Deemed Incomplete:*** September 18, 2014

***Deemed Complete:*** June 11, 2015

***City Action on Project:*** August 25, 2015 (Planning Commission decision to approve)

The 1996 Telecommunications Act provides that a local government shall act on any request for the development of a personal wireless service facility within a reasonable period of time after the request is duly filed. Originally there was no definite timetable provided, but that is no longer the case. The Federal Communications Commission ruled that a state or local government has 90 days to process a personal wireless service facility application requesting a collocation, and 150 days to process all other wireless facility applications, like the subject applications. The processing deadlines may be extended by mutual agreement of the local agency and the applicant, which was the case with the Verizon application when it was appealed by neighbors. This was done through a tolling agreement and a subsequent time extension that preserved Verizon's legal rights and extended the processing deadline.

*Sustainability Impact*

None.

*Fiscal Impact*

See lease agreement staff report on this Agenda.

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Prepared by: Colin Jung, Associate Planner



Reviewed by: Gary Chao, Assistant Community Development Director & Aarti Shrivastava, Community Development Director/Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

- A. City Council Resolution
- B. Planning Commission staff report dated 08/25/15
- C. Planning Commission meeting minutes from 08/25/15
- D. Compilation of public comments received prior and after the Commission hearing
- E. Planning Commission Resolution No. 6786
- F. Planning Commission Resolution No. 6787
- G. Planning Commission Resolution No. 6788
- H. Project Description
- I. Existing & Proposed Coverage Maps
- J. Complete Wireless Height Justification Statement
- K. RFE Exposure Study for Verizon and AT&T project proposal at 10800 Torre Avenue, prepared by Hammett & Edison, Consulting Engineers dated June 12, 2014.
- L. Environmental Noise Analysis of De Anza Stevens Creek Cellular Facility, Cupertino, CA, prepared by Bollard Acoustical Consultants, Inc., dated May 26, 2015.
- M. 3-D computer simulation of proposed wireless facility with second generation eucalyptus tree pole
- N. Photograph of a second generation eucalyptus tree pole erected in San Luis Obispo, CA.
- O. Photosimulations of tree pole from three viewpoints; Photosimulation of enclosure fencing
- P. Arborist Report for De Anza Stevens Creek Verizon Site by Foothill Associates dated April 9, 2015
- Q. Alternative Sites Analysis
- R. TICC Comments
- S. Plan Set
- T. Appeal Petition dated September 4, 2015
- U. City Council Study Session Minutes and Staff Report dated July 16, 2013
- V. Applicant's Response to Appeal Petition dated September 24, 2015 and emailed on September 24, 2015