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Title: Consideration of Conditional Use Permit Application No. P18-02352 for property located at 309 West Nielsen Avenue C/T, on the south side of West Nielsen Avenue between North Fruit and North Thorne Avenues (Council District 3) - Development and Resource Management Department.

1. ADOPT Environmental Assessment No. P18-02352 dated November 21, 2018, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,
2. DENY the applicant's appeal and UPHOLD the Director's Approval of Conditional Use Permit Application No. P18-02352 to authorize the construction of an 80-foot high Wireless Telecommunication Facility, subject to compliance with the Conditions of Approval dated November 21, 2018.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Exhibit A - Vicinity Map, 2. Exhibit B - Noticing Map, 3. Exhibit C - Planned Land Use Map, 4. Exhibit D - Zoning Map, 5. Exhibit E - Operational Statement, 6. Exhibit F - Site Plan, 7. Exhibit G - Elevations, 8. Exhibit H - Photosimulations, 9. Exhibit I - Conditions of Approval, 10. Exhibit J - Fresno Municipal Code Regulations, 11. Exhibit K - Environmental Assessment, 12. Exhibit L - Master Application, 13. Exhibit M - Appeal Letter, 14. Exhibit N - Wireless Telecommunications Facilities Policy, 15. Exhibit O - Project Information Tables

Date	Ver.	Action By	Action	Result
3/20/2019	1	Planning Commission	approved as amended	Pass

REPORT TO THE PLANNING COMMISSION

MARCH 20, 2019

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Development Services Division

THROUGH: BONIQUE EMERSON, Planning Manager
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Development Services Division

SUBJECT

Consideration of Conditional Use Permit Application No. P18-02352 for property located at 309 West Nielsen Avenue C/T, on the south side of West Nielsen Avenue between North Fruit and North Thorne Avenues (Council District 3) - Development and Resource Management Department.

1. **ADOPT** Environmental Assessment No. P18-02352 dated November 21, 2018, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) through a Class 3 Categorical Exemption; and,
2. **DENY** the applicant's appeal and **UPHOLD** the Director's Approval of Conditional Use Permit Application No. P18-02352 to authorize the construction of an 80-foot high Wireless Telecommunication Facility, subject to compliance with the Conditions of Approval dated November 21, 2018.

EXECUTIVE SUMMARY

Conditional Use Permit Application No. P18-02352 was filed by Casey Ogata-Tran of SAC Wireless and pertains to ±1.1 acres located at 309 West Nielsen Avenue C/T. The applicant requests authorization to construct an unscreened 80-foot high Wireless Telecommunication Facility (WTF) with space for future colocation, and outdoor cabinet equipment within a secured area.

On November 21, 2018, Conditional Use Permit Application No. P18-02352 was conditionally approved, with the requirement that prior to construction of the WTF, frontage improvements and aesthetic upgrades are made, pursuant to the Fresno Municipal Code (FMC). The decision was appealed by the applicant on December 5, 2018. Staff recommends upholding the approval based on substantial evidence detailed in this staff report that should these requirements be waived or removed, Finding A contained in Section 15-5306 of the FMC cannot be made and therefore the Conditional Use Permit cannot be approved.

BACKGROUND

Conditional Use Permit Application No. P18-02352 requests authorization to construct an 80-foot high WTF with space for future colocation, and outdoor cabinet equipment within a secured area. Per Table 15-1302, Antenna and Transmission Towers are permitted subject to Section 15-2759 of the FMC, where telecommunications and wireless facilities shall comply with the City's policy pertaining to said uses, Policy and Procedure Issue No. 33: Wireless Telecommunication Facilities dated June 20, 2006 (Exhibit N).

District 3 Project Review Committee

Council District 3 does not have an active Project Review Committee and therefore did not make a recommendation.

Fresno General Plan

The Fresno General Plan designates the subject site for Light Industrial planned land uses and provides objectives to guide in the development of these projects. Conditional Use Permit Application No. P18-02352, as conditioned, meets all applicable policies and objectives of the Fresno General Plan.

Fresno County Airport Land Use Commission

On March 4, 2019, the Fresno County Airport Land Use Commission made a Finding of Consistency with the Fresno County Airport Land Use Compatibility Plan, as required pursuant to Public Utility Code 21676.

Notice of Intent to Take Action

The Development and Resource Management Department mailed notices of the Intent to Take Action on this project to surrounding property owners within 1,000 feet of the subject properties (Exhibit B), pursuant to Sections 15-5007 and 15-5305 of the FMC on October 26, 2018. No inquiries were received.

Notice of Planning Commission Hearing

The Development and Resource Management Department mailed notices of this Planning Commission hearing to surrounding property owners within 1,000 feet of the subject property (Exhibit B). Staff also sent notices, via U.S. mail and email, to individuals who requested notification.

ANALYSIS OF THE APPEAL LETTER

An appeal of the Conditions of Approval was received on December 5, 2018 from the applicant. Several conditions were clarified, however there are several outstanding issues. Below is an analysis of those issues raised in this appeal letter (Exhibit M):

Item #1: Restrictive Requirements on WTF Design

The applicant states that complying with the traditional, objective standards of the City's WTF policy would be technically infeasible, as the smaller antennas would sacrifice signal coverage and capacity of the WTF. Complying with the identified subject standard, a monopalm, would not result in the screening of the equipment desired by the City.

Response:

The City's policy on WTFs was adopted by City Council on June 20, 2006 and allows two options: 1) design a WTF in accordance with specific standards (objective) route, or 2) design a WTF that ensures compatibility with the surrounding physical environment. The applicant's submittal proposed a WTF that, in staff's opinion, met neither standard.

The subject property is located in a Light Industrial district, surrounded by industrial uses to the east, west, and north, and Highway 180 to the south. The subject property is primarily vacant, consisting of a tree, fencing, and what appears to be an abandoned building. To the south of the property is a row of palm trees located on CalTrans property. As the WTF would be most seen by drivers along Highway 180, rather than West Nielsen Avenue, staff conditioned the project to blend in with the palm trees.

Below are two images of existing conditions at the project site, one at street level (Nielsen Avenue) and one from Highway 180.



View of Property from West Nielsen Avenue, looking south



View of Property from Highway 180, looking north

Staff has conducted research of other California jurisdictions and found that there are monopalm trees that provide space for colocation. On the next page are photos of other monopalm trees that have been designed to screen equipment mounted beneath the antennas on the pole.



Hemet, California



Fremont, California



San Bernardino, California

Item #2: Connecting to City Services

The project was also conditioned to connect the site to City water and sewer facilities, if the site has not already done so. The applicant states that the WTF does not use water or discharge waste, and therefore should not be required to connect to City services.

Response:

There is an existing building on the site, and the City does not have records of sewer connections to the building. Pursuant to FMC Section 6-303, if the building has plumbing, it will be required to connect to City sewer facilities.

Item #3: Street Frontage Improvements, Undergrounding Utilities, and Dedication of Property

The project was required to bring its frontage into compliance with today's standards, which includes constructing the necessary street improvements, such as sidewalk, streetlights, curb, and gutter, undergrounding existing utilities, and to dedicate the land where those improvements are on to the City. The applicant states that this requirement is not reasonably related to the proposed project, and conflicts with California Government Code Section 65909.

Response:

California Government Code 65909 states, "no local governmental body, or any agency thereof, may condition the issuance of any building or use permit or zone variance on any or all of the following:

(a) The dedication of land for any purpose not reasonably related to the use of the property for which the variance, building, or use permit is requested.

(b) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which the variance, building, or use permit is requested.”

Requiring street frontage improvements, underground utilities, and dedication of property for right of way purposes does not conflict with Government Code Section 65909 because the subject property’s frontage is unimproved in that it lacks the appropriate curb, gutter, sidewalk and street lights. These improvements protect and preserve the investments that the applicant is proposing. Curbs, for examples, prevent vehicles from entering and damaging private property. Paved streets allow for vehicles to safely traverse in and out of the property. Gutters prevent stormwater from entering and damaging private property. Sidewalks allow for persons to enter private property, especially when roads are under construction. Streetlights allow for pedestrians and vehicles to see where they are going. These improvements are therefore reasonably related to the use permit that is being requested.

Government Code Section 65909 precludes bonding for public improvements not related to the project as a condition of a use permit. Bonding was not made a condition. Secondly, the City's requirement that parcels that have development projects being proposed have the curb, gutter and sidewalk constructed along the street frontage of the parcel where the development project is proposed, is a directly-related requirement to the project. The argument the applicant made could possibly be valid if the City, for example, requested that the curb, gutter and sidewalk be installed along the entire block, or across the street. Such conditions were not imposed.

FMC Section 13-208(c) prohibits building permits from being issued when a structure proposed to be erected exceeds 50% of the replacement cost of buildings on the site, unless dedicated and street improvements thereon have been provided for.

The Fresno County Assessor’s Office indicates the value of the current improvements on site as being \$19,463. The proposed tower structure and its associated appurtenances are expected to exceed this amount many times over.

FMC Section 13-208(h) allows the Public Works Director to waive the improvement requirements when the waiver:

1. would not be detrimental to the public safety and welfare; and,
2. when the purpose for the requested building permit is the reconstruction of a building destroyed or partially destroyed due to an Act of God; and,
3. when no development or expansion other than such reconstruction is to be undertaken.

A request to waive these frontage improvements could not be granted because findings #2 and #3 cannot be made.

Undergrounding utilities and streetlights are a requirement of FMC Section 15-2017, and Resolution 78-522, as amended by Resolution 88-229. The Public Works Director may waive the requirement to underground existing overhead services if the property owner executes a Covenant, which shall be recorded and run with the land, agreeing to participate in and support any improvement district or

underground utility district formed for the purpose of undergrounding the existing overhead utilities.

Summary Response

Upholding the appeal, thus removing the requirement for street frontage improvements and connecting to City services, would place the project out of compliance with a required finding for Conditional Use Permits, as all Conditional Use Permits are required to comply with all other applicable provisions of this Code and all other chapters of the FMC.

ENVIRONMENTAL FINDINGS

The California Environmental Quality Act permits a public agency to determine whether a particular project is exempt from CEQA. A determination of Categorical Exemption, Section 15303/Class 3 of the California Environmental Quality Act (CEQA) Guidelines was completed for this project on November 21, 2018 (Exhibit K).

Projects are exempt under Class 3 if they consist of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The communication facility is comprised of a 80-foot telecommunications tower, with outdoor cabinet equipment within a secured area and which due to placement and screening should have minimal visual effect.

FRESNO MUNICIPAL CODE FINDINGS

The required findings under Section 15-5306 of the FMC are as follows:

- a. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,
- b. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,
- c. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements; and,
- d. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,
- e. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

If the Planning Commission decides to grant approval of the proposed project, the Commission must find that there is substantial evidence in the administrative record to make these findings.

Staff believes the following findings can be met, subject to the Conditions of Approval. However, should the appeal be approved, they cannot be made, and Planning Commission would need to

make them.

Finding A: The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code; and,

The project, subject to the Conditions of Approval, is allowed within the IL zone district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code.

Approving the appeal would require the Planning Commission to make the determination that this finding can still be made.

Finding B: The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted; and,

The proposed project, subject to the Conditions of Approval, is considered to be in compliance with the Fresno General Plan.

Finding C: The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;

The provision of a WTF will not create a safety hazard to Fresno-Chandler Airport, and the WTF will be required to comply with all FCC regulations. Therefore, this finding can be made.

Finding D: The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and,

The subject site abuts industrial uses and an interstate highway. The proposed WTF use is considered to be compatible with existing and reasonable foreseeable future industrial land uses in the vicinity, given the screening requirements found in the 2006 Wireless Telecommunication Facility policy.

Finding E: The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

The proposed development of a wireless telecommunication facility is consistent with the allowable land use and intensity requirements per the underlying zone district. Adequate access, parking, utilities and services has been provided to serve the property and were reviewed for consistency with the requirements of the Light Industrial planned land use and the IL (*Light Industrial*) zone district.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno Chandler Downtown Airport Master Plan and Fresno General Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of

potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the proposed Conditional Use Permit Application No. P18-02352, is appropriate for the project site if Conditions of Approval remain. If the Planning Commission desires to approve the Applicant's appeal, findings would be required to be identified and made.

Attachments:

- Exhibit A - Vicinity Map
- Exhibit B - Noticing Map
- Exhibit C - Planned Land Use
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- Exhibit M - Appeal Letter
- Exhibit N -Wireless Telecommunication Facilities Policy
- Exhibit O - Project Information Tables