



ZONING EXAMINER

REPORT TO MAYOR AND COUNCIL

September 5, 2013

SE-13-14– A.T.& T. – East 25th Street
Public Hearing: May 16, 2013, and subsequent dates

BACKGROUND

This is a request for approval of a wireless communication facility (WCF) located on the north side of 25th Street, approximately 160 feet west of 3rd Avenue.

Land use policy direction for this area is provided by the 1979 *Old Pueblo South Neighborhood Plan (OPSNP)* and the *General Plan*.

PUBLIC HEARING SUMMARY (Minutes Attached)

Glenn Moyer, Planning and Development Services Department, presented the staff report with a recommendation for approval. Mr. Moyer also commented that no written approvals were received and one hundred and four (104) letters of protest were received.

Timothy Burmer and Greg Lake, the applicant's agents, presented the rezoning request. Nearby property owners testified at numerous hearings, objecting to the request.

With no one else wishing to be heard, the public hearing was closed.

FINDINGS OF FACT

This is a request for approval of a wireless communication facility (WCF) located on the north side of 25th Street, approximately 160 feet west of 3rd Avenue. The Preliminary Development Plan (PDP) proposes a wireless communication tower and antennas, concealed within an artificial palm tree, known as a "monopalm." The proposed height is 70 feet. Associated ground equipment around the proposed tower includes an equipment shelter, approximately 11-1/2 feet by 20 feet in size. The facility is proposed to be located within a 36-foot by 36-foot lease area at the southwest corner of an existing walled enclosure surrounding a .18 acre City of Tucson well-site, zoned R-2. The property is

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bordered on the north, east, and south sides by single family homes, also zoned R-2. To the west, along the east side of 4th Avenue are commercial retail uses, zoned C-1.

A communication use of this type may be permitted in an R-2 zone subject to a Mayor and Council Special Exception Procedure, pursuant to Section 4.9.4.I.2, .3, and .7 of the *Unified Development Code*. A Special Exception is required because the proposed tower height exceeds 50 feet, and is not set back at least two times the height from the boundary of an adjacent R-2 zoned property.

The Mayor and Council Special Exception Procedure requires a public hearing before the Zoning Examiner. Multiple public hearings were held on this matter culminating in a final hearing on August 22, 2013. Additional public hearings were necessitated in order to provide a meaningful opportunity for Spanish speakers, whose property rights were effected, to participate in the process.

Land use policy direction for this area is provided by the 1979 *Old Pueblo South Neighborhood Plan (OPSNP)* and the *General Plan*. The *OPSNP* provides policy direction for community facilities to provide landscaping. Although no specific policy in the *OPSNP* addresses cellular communication facilities, the plan does stress the importance of citizen involvement in *OPSNP* implementation. Citizen participation in the case was substantial. At the time of the final hearing, approximately 104 citizens had protested locating the tower at the proposed site. No letters were received supporting the proposal.

The *General Plan* supports the protection of established residential neighborhoods by supporting compatible development which may include appropriate non-residential uses. Supporting Policy 3.9 supports nonresidential uses, where the scale and intensity of uses will be compatible with adjacent uses.

Element 4 (Community Character and Design), Policy 3.7 requires that, if possible, telecommunications facilities be located, installed and maintained to minimize visual impacts and preserve views. Visual impacts are a key consideration during the review process. Policy 4.6 promotes the coordination of efforts of government, private developers and utility firms to improve the appearance of above-ground utilities and structures. Policy 5 promotes neighborhood identity and visual character. Supporting Policy 5.3 supports redevelopment projects that reflect sensitivity to site and neighborhood conditions. Action 5.5A is to consider incentives for telecommunications providers to install infrastructure not only in newer areas, but also in older neighborhoods to increase opportunities for all citizens to have access to high-tech telecom services. Policy 6 promotes quality in design for all development. Supporting policy 6.1 promotes an environmentally sensitive design that protects the integrity of existing neighborhoods, complements adjacent land uses and enhances the overall function and visual quality of the street, adjacent properties, and the community.

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Vehicular access to the proposed site is through a 13-foot opening in the well-site perimeter wall, along the 25th Street frontage. A designated parking space is proposed for the service technician. Both 25th Street to the south of the site and 3rd Avenue, to the east of the site, are local streets with right-of-way widths of 60 feet.

The applicant provided evidence demonstrating that a coverage gap exists which the proposed tower would address. Applicant further provided an alternate site analysis showing that other sites for the facility were available within their search ring. Other sites available include industrially zoned property in which a setback of twice the height of a tower could be met. Applicant testified that locating the proposed tower on another viable site could require them to propose a taller tower. As testified to by staff at the last public hearing, the City of Tucson *Unified Development Code* affords a preference to siting telecommunications facilities in industrial zones.

Public opposition to the facility focused on several topics including height, noise, safety, aesthetics, property values, and the health effects of RF emissions. Section 704 of The Telecommunications Act of 1996 prohibits telecommunications siting decisions from being based upon concerns that emissions from telecommunications sites may cause undesirable health effects. Testimony that tower emissions cause undesirable health effects is not considered here.

Many neighbors testified that the proposed wireless communications facility was too tall and not compatible with surrounding structures, which are almost without exception single-story buildings. Although there is vegetation on the site, the proposed monopalm will still be visible from surrounding properties. To give context to the proposed monopalm, planning staff recommend that live palms be planted on the site. However, Tucson Water objects to the planting of live palm trees due to the potential of root interference with well-site operations. The applicant proposed “planting” several more artificial palm trees to give context to the tower and create a thicket of artificial palms. Neighbors expressed displeasure with this proposal as it compounds the objection they have to artificial trees. Therefore, there is no proposed adequate mitigation for visual intrusion that addresses the concerns of both the neighbors and the City.

Several residents expressed concern that the tower would be located too close to the Casa Maria Soup Kitchen at 325 E. 25th Street. These concerns ranged from safety issues regarding the potential for the tower to fall to opinions that the tower might be an eyesore. The applicant testified regarding the safety of the tower structures. They also met with neighbors near the proposed site to discuss alternatives to mitigate the look of the tower, including disguising it as a Eucalyptus tree.

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This application is processed under the *Unified Development Code* pursuant to *UDC* Section 1.7.4.A.1, because, although submitted in 2012, the application was not deemed complete and accepted until after the effective date of the *UDC*. Per the *Unified Development Code*, a communications use is allowed in the C-1 zone as a special exception land use, subject to the following use specific standards in Sections 4.9.4.I.2, .3, and .7.

4.9.4.I.2 Provider's Communication Plan. Each wireless communication provider shall provide a plan of its facilities to the City prior to any application for the installation of a tower or antennae. The plan shall cover the entire city and within three miles of the city limits. The plan shall include the following.

- a. All of the provider's existing towers and antennae, by size and type, and their coverage areas.
- b. All presently anticipated future service areas and the types of antennae and heights desired for each of the service areas.
- c. The various types of antennae and towers used by the provider to furnish service and when they are used. This includes drawings providing the sizes and shapes of the antennae and equipment and written materials describing their application.
- d. The provider's policy direction for the mitigation and/or reduction of existing and proposed towers and antennae to avoid the negative proliferation of such facilities.
- e. The provider's policy direction on the mitigation and/or the reduction of the negative visual impact created by existing or proposed towers and antennae, including any proposals to conceal or disguise such facilities designed to be architecturally and/or environmentally compatible with their surroundings.
- f. The provider's policy direction on collocation of antennae on their own facilities or on ones from other providers or on other structures that provide the verticality required for the antennae. The policy shall also provide that the provider shall not enforce any requirement by an owner of property that would prohibit collocation.
- g. Designation of an agent of the provider who is authorized to receive communications and notices pursuant to this section.

4.9.4.I.3 General. The following shall be applicable to all wireless communication requests.

- a. **Noninterference with Public Safety.** No wireless communication transmitter, receptor, or other facility shall interfere with police, fire, and emergency public safety

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communications. The Director of Operations for the City is authorized to determine whether any transmitter, receptor, or other facility has interfered with public safety communications or is reasonably believed to be an imminent threat to public safety communications. Upon making that determination, the Director of Operations shall notify the Zoning Administrator and the provider responsible for that facility. The Zoning Administrator may obtain a temporary restraining order from the City Court with or without notice to enforce this section, provided a hearing is scheduled within five days of the Court's order.

b. All applications for towers/antennae will be reviewed by the Communications Division of the City of Tucson Operations Department and any other appropriate public safety department to ensure that the proposed installation of the towers/antennae will not interfere with any public safety communications or operations of the City. All applications shall include a certification by a registered or electrical engineer that each proposed antenna or tower will be in compliance with all standards established by the Federal Environmental Protection Agency and Federal Communications Commission (FCC) regarding potential health and safety hazards. Submittal of information and review of the application by the Department of Operations shall be in accordance with all applicable standards.

c. Any antenna or tower for which the use is discontinued for six months or more shall be removed, and the property shall be restored to its condition prior to the location of the antenna or tower, all at the expense of the provider. The City may require financial assurances to ensure compliance with this provision.

d. No new towers shall be permitted within 400 feet of a designated Scenic Route or Gateway Route; within a designated Historic Preservation Zone (HPZ) or Environmental Resource Zone (ERZ); or on a protected peak or ridge as identified in a Hillside Development Zone (HDZ) except as follows:

(1) Communication towers and antennae shall be permitted on a protected peak or ridge that was used for such facilities prior to March 3, 1997, provided any new antennae and towers do not increase the area already disturbed and the placement of any new towers in such areas is approved as a special exception in accordance with Section 3.5.3, Zoning Examiner Legislative Procedure.

(2) New antennae may be permitted under Section 4.9.4.I.4 and.5 if they also comply with the purposes and review procedures of the overlay zone.

(3) New communication towers may be permitted on Gateway Routes in exceptional circumstances provided there is no alternative and the placement is approved in accordance with Section 3.5.3, Zoning Examiner Legislative Procedure.

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e. The dimensional provisions of Article 6 as applicable to towers and antennae shall be superseded by the provisions of Section 4.9.4.I.5 and by the height and setback provisions of Section 4.9.4.I.5, .6, and .7.

f. All proposed wireless communication towers and antennae shall be in compliance with all Federal Communications Commission (FCC) regulations, including those protecting the public health and those protecting historic districts.

g. Submittal Requirements. The following information is to be submitted with each application for the installation of a tower or antenna.

(1) An updated Provider's Communication Plan, including any proposed changes in the service areas, antennae, towers, or policy direction.

(2) The proposed antennae/tower location, the type of antennae/tower, and the proposed service area.

(3) A statement of compliance with FCC requirements and specifically the areas listed in Sec. 3.5.4.20.C.6.

(4) If the proposed installation involves a new tower, then the following information is required.

(a) The searched area for the proposed location.

(b) All existing structures, buildings, towers, etc., of greater than twenty (20) feet in height located within the searched area.

(c) A report on why collocation within the search area is not a viable alternative.

(5) Any technological or engineering requirements which effect or limit the location, height, or construction of the proposed tower/antennae should be included in reports.

4.9.4.I.3.7. The following requires approval as a special exception in accordance with Section 3.4.4, *Mayor and Council Special Exception Procedure*. The Mayor and Council may forward the request to the Design Review Board (DRB) for design review and recommendation.

a. Wireless communication antennae, provided:

(1) The tower or antennae are not permitted by other provisions of this section.

(2) New towers require a minimum separation of one mile from any existing tower, regardless of ownership, unless documentation establishes that no practical alternative exists.

(3) All appropriate measures shall be taken to conceal or disguise the tower and antenna from external view.

(4) All appropriate measures shall be taken to reduce the negative proliferation of visible towers and antennae by the collocation of new antennae on existing towers with the facilities of other providers that are located or planned for development within the proposed service area.

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(5) Notice shall be provided to all agents designated, in accordance with Section 4.9.4.I.2.g, at least 15 days prior to the date of the public hearing before the Zoning Examiner.

The Planning and Development Services Department reports that the submitted proposal complies with the applicable performance criteria of the Uniform Development Code subject to certain recommendations, including the planting of live palm trees nearby to create a mini-oasis concept. However, as noted, Tucson Water objects to this recommendation. Additionally, the proximity of the proposed tower to the adjacent residences produces a negative visual impact to the neighboring properties, especially if the monopalm is not surrounded by live palms. Further, the applicant identified an alternate location in an industrially zoned property near the proposed tower site that may be a more compatible location for a wireless communication facility. As the applicant testified, this site is within their “search ring,” with a willing landlord, and is therefore available as a potential site.

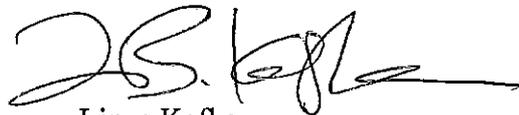
CONCLUSION

The special exception request for a new 70-foot high monopalm is not fully in compliance with the applicable policy and the intent of the *General Plan*, the *Old Pueblo South Neighborhood Plan*, and the UDC Use-Specific Standards. The special exception request is inappropriate at this time and particular location.

RECOMMENDATION

The Zoning Examiner recommends denial of the special exception.

Respectfully Submitted,



Linus Kafka
Zoning Examiner

ATTACHMENTS:

Public Hearing Minutes
Rezoning Staff Report