

CITY OF UNION CITY

**MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
OF OCTOBER 2, 2003, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

I. ROLL CALL: Commissioners Anderson, Kelley, Lew, Savage and Sweeney

STAFF PRESENT: Mark Leonard, (Director, Economic and Community Development); Aki Honda (Associate Planner); Tina Gallegos (Assistant Planner); Richard Sealana (Public Works Superintendent), and Kris Fitzgerald (Administrative Assistant)

II. APPROVAL OF MINUTES:

The minutes for the Regular Planning Commission meeting of September 18, 2003 were approved as submitted.

III. ORAL COMMUNICATIONS: None.

IV. WRITTEN COMMUNICATIONS: None.

V. PUBLIC HEARINGS:

A. CONTINUED HEARINGS: None.

B. NEW HEARINGS: None.

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS:

1. ADMINISTRATIVE SITE DEVELOPMENT REVIEW, ASD-20-03, Initiated by Andrew R. Miner, on behalf of Cingular Wireless, the applicant is requesting approval of an Administrative Site Development Review Permit, ASD-20-03, to allow the installation of three (3) fifty-five foot monopole antennas to be camouflaged as flag poles, and ground mounted equipment to be screened by a new monument sign at Cesar Chavez Middle School. The project site is located at 2758 Hop Ranch Road at the end of Hop Ranch Road, in the City of Union City, and is identified as Assessor's Parcel Number APN 475-0153-070. The project is located within a PF (Public Facility) zoning district and has a General Plan designation of CF (Civic Facility).

Aki Honda, Associate Planner, presented the staff report.

Commissioner Lew asked if the school district is being compensated for having the poles located on their property.

Ms. Honda believes that they are but should confirm with the school district official.

Commissioner Lew asked if the applicant is responsible for the cost of the requirements of condition #8.

Ms. Honda stated that the applicant is responsible for all costs.

Chairperson Sweeney asked if the noise ordinance has been violated.

Mark Leonard, Director, Economic and Community Development, stated that in the 511 Area before the Sprint equipment was activated south of Turk island, a sound reading of ambient noise was taken, then the equipment was activated and they took another sound reading. There was very little difference between the two readings. Mr. Leonard stated that they could do the same thing for this project.

Chairperson Sweeney asked if the condition of approval could be made more specific to require that kind of testing.

Mr. Leonard stated that could be done.

Commissioner Lew asked if the proposed parking area for the technicians is going to require a new curb cut and be paved.

Ms. Honda stated that it will be a new paved area.

Commissioner Lew asked how long will applicant be responsible for the maintenance and irrigation per condition #19.

Ms. Honda stated that would be between the applicant and the property owner.

Mr. Leonard suggested that the question be addressed to the applicant or the property owner.

Commissioner Lew stated that there is existing equipment that is not screened and wanted to know why it had not been screened.

Mr. Leonard stated that there is not a blanket requirement to screen equipment although where the equipment may prove to be unsightly then staff would require it to be screened.

Commissioner Lew asked why staff did not ask the applicant to choose another site.

Mr. Leonard stated that the equipment needs to be placed in specific areas to be of service to the wireless provider.

Commissioner Kelley asked what size are flagpoles in the City of Union City.

Mr. Leonard stated that the typical flagpole is thirty-five feet (35') high and utility poles are forty-five feet (45') high.

Commissioner Anderson asked if there are any health hazards from the antennas.

Mr. Leonard stated that there has been no evidence that the antennas are a health hazard.

Commissioner Anderson why staff used this particular section of the California Environmental Quality Act (CEQA) to make this project exempt.

Ms. Honda stated that it is because this project is an accessory structure on the site.

Commissioner Anderson stated that he does not believe that this project is categorically exempt per that particular section of the guidelines and he cannot make that finding.

Ms. Honda stated that that particular section of the CEQA Guidelines covers this type of projects.

Commissioner Anderson stated that he does not believe that the section covers this antenna installation.

Commissioner Anderson stated that the antennas are not accessory structures.

Commissioner Anderson asked if it would be appropriate to condition this project to require additional environmental studies.

Mr. Leonard stated that if the Planning Commission believes that a categorical exemption is not appropriate for this application, then they can ask the City Attorney for an opinion, or continue the project so that an Initial Study can be prepared and either a Negative Declaration or an Environmental Impact Report can be completed.

Commissioner Anderson stated that in specific finding #3, the section referring to homes should be removed.

Mr. Leonard stated that the finding should be modified.

Commissioner Kelley asked if the school or wireless company have plans for additional towers in the area.

Ms. Honda stated that the question should be referred to the applicant.

Chairperson Sweeney asked how condition #15 would be enforced if there is interference with Police and Fire radio transmission.

Mr. Leonard stated that the condition could be changed to require the issuance of an agreement between the City and the Cingular Wireless that stated that the equipment could not be activated if it is found after testing that it interferes with the emergency radio transmissions.

Chairperson Sweeney stated that condition #2 does not prohibit mounting of external antennas in the future.

Ms. Honda stated that is correct.

Mr. Leonard stated that the Planning Commission is approving a specific design and any future changes to the equipment would be subject to approval from City.

Chairperson Sweeney asked what control the city has over future requests for co-location at this site.

Mr. Leonard stated that usually when this occurs they need more ground equipment and this project should be conditioned to say that should a co-location request be received that it would be subject to Administrative Site Development approval.

Andy Miner, Cingular Wireless 4435 Rosewood Drive, Pleasanton, CA, stated that they chose this site because there is a hole in the coverage in this residential area. The poles are state of the art and they chose to use three smaller poles rather than one large pole. Mr. Miner stated that they can't move the SBC vault but he would be willing to provide additional landscaping around it. Mr. Miner stated that the school will be doing maintenance at the site and that the school is being compensated for the placement of the poles. Mr. Miner stated that the FCC does prohibit making decisions on these projects based on health issues. Mr. Miner stated that the school board has already approved this project and that there was a public meeting to which the neighbors and parents of the children attending that school were invited. Cingular Wireless did an EMF study with negative results. Cingular Wireless also offered to go to the neighborhood homes and do an EMF test. Mr. Miner stated that these particular antennas will allow for one other carrier's antennas to be co-located below theirs. Mr. Miner stated that they understand that there can be no interference with the City emergency radio system.

Commissioner Lew asked the amount of compensation to the school district.

Mr. Miner referred the question to the school district representative.

Commissioner Lew asked what color the flagpoles would be.

Mr. Miner stated that they would be off-white in color.

Commissioner Lew asked what flags would be flown from these flagpoles.

Mr. Miner stated that it would be up to the school district to decide.

Commissioner Lew asked if they have done tests yet for radio interference.

Mr. Miner stated that they have not been tested.

Commissioner Lew asked if any other areas have been considered for locations for the antennas.

Mr. Miner showed Commissioner Lew a map that shows coverage areas and where there is a hole in the residential area.

Commissioner Lew asked why they did not chose to place the antennas closer to the business district.

Mr. Miner stated that they usually try to avoid placing antennas in residential areas but this site was the best site to cover the area.

Commissioner Lew asked if the antennas could be located further into the lot.

Mr. Miner replied that then they would not be covering the area that they are trying to cover.

Commissioner Lew asked who would be responsible for maintenance of the landscaping.

Mr. Miner stated that the school district would be responsible for all landscape maintenance.

Commissioner Kelley asked if the antennas will be mounted externally on the flagpoles.

Mr. Miner stated that the antennas will be behind a fiberglass screen.

Commissioner Anderson asked how many customers are under served in this area.

Mr. Miner stated that he did not know exact numbers but would attempt to get the numbers from Cingular Wireless.

Commissioner Anderson stated that he would prefer to have this application continued so that an Initial Study can be done.

Chairperson Sweeney asked if there will be an onsite back up generator for the equipment.

Mr. Miner stated that there would not be an onsite back up generator.

Chairperson Sweeney asked why the fenced area is so large.

Mr. Miner stated it was a request from the school district.

Chairperson Sweeney asked how another wireless service would add cabinets in such a small area.

Mr. Miner replied that the next carrier in would have to answer that question.

Paul Chafer, New Haven Unified School District, 3636 Smith Street, Union City, stated that Cingular Wireless approached the school district about a year ago. The school district will receive \$2,250 a month to start with a five-year agreement that is renewable for five-year periods for up to twenty years. The fencing is designed so that Cingular can access the equipment during the day without coming onto the campus and coming into contact with the students. They are going to move the fence from along Hop Ranch Road to behind the new monument sign so that it does not obstruct the sign. The back fence is to keep the technicians and students from coming into contact. This is so the technicians do not have to be fingerprinted and have background investigations done per the Education Code for persons coming into contact with students. The school district engaged an independent consultant to answer questions regarding the health issues. The school district did hold an outreach program and notified neighbors on both sides of the school property.

Chairperson Sweeney asked if it was possible to make the front fencing less prominent.

Mr. Chafer stated that some of the spacing was considered for anticipated additional equipment.

Commissioner Lew asked what flags will be flown.

Mr. Chafer stated that one would be the California flag and then any flags that the school may be awarded.

Commissioner Kelley asked about the safety of the children if they hop the fence into the enclosure.

Mr. Chafer replied that he is satisfied that the equipment will be installed in such a manner that it will be safe.

Charls Fosterwhite, 33000 Marshhawk Road, Union City, stated his opposition to the project especially to the fence and the flagpoles. He feels that it will add to the already unsightly equipment in front of the school.

Mark McGlaughlin, 33012 Marshhawk Road, Union City, stated his opposition to the project. He feels the flagpoles do not look like flagpoles, flags wont be flying all the time, and the tree that they say is supposed to provide cover loses its leaves every winter. He would prefer that it be moved to Union City parkland instead of on the school property. He believes that it would provide better coverage to the south. He stated that he did not receive any notice from the school about this project. He asked if a Federal Communications Commission permit is required? He spoke of his concerns that the radio frequency would interfere with other personal devic es in the area. He see only two benefits from this project, one to the school district monetarily and the company in profitability.

Mona Fosterwhite, 33000 Marshhawk Road, Union City, stated that they did not receive any notices from the school district. She also asked if it's not part of the General Plan then why is it being considered. She is worried about the number of conditions on the project. She asked what other drive tests have been done. Ms. Fosterwhite spoke of her concerns about the noise level. They currently hear a constant low buzz from the SBC equipment from across the street. She asked if the school district has considered the amount that they are going to have to pay in maintenance costs for the poles. She is concerned about the impact on their electronic devices in their home. She asked if they could be co-located with some other facility in the area. She won't mention her worry about the health impact of these antennas.

Jerry Catanzano, 33125 7th Street, Union City, wants to know if anything from these antennas will affect the homeowner's personal computers.

Mr. Miner stated that it is not an option to use higher gain antennas and there has been no evidence of the antennas interfering with homeowner's appliances or devices. He stated that alternative sites at the school site were not desirable. He can't do anything about the existing SBC vault.

Chairperson Sweeney asked about the appearance of the poles.

Mr. Miner stated that they will be pole shaped made of fiberglass and they can take off the ball at the top.

Chairperson Sweeney asked if there is an application pending with the Federal Communications Commission.

Mr. Miner stated that it has already been approved.

Commissioner Lew asked who will be responsible for raising or lowering the flags.

Mr. Miner stated that it would be the school district's responsibility.

Commissioner Lew spoke of her concern with the noise from flagpole.

Mr. Chafer stated he was not sure what can be done. It is usually the metal clip that is banging against the pole, but something could be done.

Commissioner Lew asked whom the neighbors would contact if they have a complaint on the weekends.

Mr. Chafer replied that they don't get a lot of graffiti at the school, however, the Police Department can respond and has numbers to call for the staff to respond if necessary.

Commissioner Lew asked who would respond for equipment failures.

Mr. Miner stated that would be Cingular Wireless' responsibility.

Mr. Miner stated that at the outreach meeting approximately 10 people showed up. Mr. Miner gave staff a report about EMF study.

Commissioner Kelley spoke of his concern about unsightly poles in this area and the size of these flagpoles.

Mr. Chafer replied that flagpoles are usually 10 – 12" in diameter and diameter is in relation to the height of the pole.

Mr. Miner stated that is they are this size so they would not be 24 – 30" in diameter.

Commissioner Kelley asked about the co-location of another cell company.

Mr. Miner stated they would be using the same poles and just need to add new ground equipment.

Commissioner Lew asked if there is an inventory of the number of cell site antennas in the City of Union City.

Mr. Leonard replied that we don't keep an inventory of the number of sites.

Commissioner Lew asked how many are in residential areas.

Richard Sealana, Public Works Superintendent, stated that there are some on streetlights, one on top of this building and there are some in residential areas.

Commissioner Lew asked how are they mounted.

Mr. Sealana replied that some are mounted on existing poles and some are on top of buildings.

Commissioner Lew asked if they could be mounted on streetlights in the area.

Mr. Sealana was not sure if that was possible.

Commissioner Anderson spoke about continuing this project subject to further environmental review.

Chairperson Sweeney stated the changes to conditions of approval as follows:

Condition #2 adding language to cover design of future co-location of additional equipment is to be reviewed and approved by the City.

Condition #3 add a requirement that flags be flown daily while school is in session and design the poles to minimize noise impacts.

Condition #8 add sound testing be done before and after activation of equipment.

Condition #15 add an agreement with the city that equipment would not be activated if it interferes with City radio systems.

Add a new condition that future co-location would require separate Administrative Site Development review approval.

Add a new condition to accept the offer by applicant to do landscaping around the existing SBC equipment cabinet.

Add a new condition to change the location of the fence to eliminate parallel fences along Hop Ranch Road.

Clarify the interpretation of finding #1 and whether this project is exempt from CEQA.

Delete from finding #3 references to homes.

Commissioner Lew asked to add to condition #19 that the school district is responsible for maintaining all landscaping at the site.

Commissioner Kelley stated that he is not in favor of this application.

Commissioner Kelley moved to deny Administrative Site Development Review ASD-20-03 on the basis that it does not meet the purpose of Section 18.72.01 of the Zoning Ordinance.

Commissioner Lew seconded the motion.

AYES:	3 (Anderson, Kelley, Lew)
NOES:	2 (Sweeney, Savage)
ABSENT:	0
ABSTAINED:	0

Mr. Leonard stated that if the applicant wishes to appeal they should see Planning Staff for the appeal process.

2. ADMINISTRATIVE SITE DEVELOPMENT REVIEW, ASD-24-03, Initiated by Jose Manuel Valdes, as applicant, on behalf of property owner, Eulalia Ortiz, the applicant is requesting approval of an Administrative Site Development Review Permit, ASD-24-03, to allow the demolition and construction of a new two-story, 2,612 square foot single-family residence and addition of a 519 square foot second unit above the new two-car garage. The project site is located at 33305 3rd Street on the south side of 3rd Street, west of Decoto Road, in the city of Union City, and is identified as Assessor's Parcel Number APN 486-0003-008-00. The project is located within a R 5000 (Single Family Residential, minimum 5,000 square foot lot size) zoning district and has a General Plan designation of R 6-10 (6 to 10 residential units per acre). The project is considered Categorical Exempt per the California Environmental Quality Act (CEQA) per Sections 15302 and 15303, Class 3(a) of the CEQA Guidelines.

Tina Gallegos, Assistant Planner, presented the staff report.

Commissioner Anderson asked if the city has design guidelines for basements.

Mr. Leonard stated that the same rules apply to basements as well as 1st and 2nd floors

Commissioner Anderson asked how there can be a continuous slab foundation if there is a basement as implied in condition #19.

Mr. Leonard stated he was not aware of a requirement for a continuous slab foundation.

Commissioner Anderson stated it is in the condition #19.

Mr. Leonard stated that this condition does not apply in this case and should be removed.

Commissioner Anderson asked why condition #13 was included.

Ms. Gallegos stated that it was included because of past code enforcement issues.

Chairperson Sweeney asked to have the condition changed to "...will not be used as living space at anytime".

Commissioner Kelley spoke of his concern that some of the conditions don't apply to a single family home for example condition #36.

Mr. Leonard stated that it could be removed, as it is not applicable.

Commissioner Kelley asked whether condition #46 is applicable as there is not much landscaping proposed.

Mr. Leonard stated that it is applicable as there will be some landscaping.

Commissioner Kelley asked if condition #49 is applicable.

Ms. Gallegos stated that it was included as Environmental Programs has concerns about demolition of the house.

Chairperson Sweeney asked in reference to conditions # 31 and #49 how can the house be demolished without any grading.

Mr. Leonard stated that condition #31 can be removed although it does say "...if deemed necessary by the City Engineer".

Commissioner Kelley asked in reference to condition #40, how many trees are currently on the site.

Ms. Gallegos replied that there maybe a couple of trees and referred the question to the applicant.

Rick Sealana, Public Works Superintendent, stated that if in the process of building it adversely impacts the vegetation on the site then this condition would be used if needed.

Commissioner Kelley asked how much it costs to hire a certified arborist.

Mr. Sealana stated from \$46.00 to \$130.00 an hour.

Commissioner Kelley asked why condition #62 is included.

Mr. Leonard stated that it is for information only and doesn't impose anything that isn't already law.

Commissioner Savage spoke of her concern that this will be the only 2-story home in the area.

Commissioner Lew believes that the conditions of approval are fine they way they are because she feels that they protect the City.

Jerry Catanzano, 33125 7th Street, Union City, CA 94587, spoke of his opposition to this project. He spoke of his involvement with this house. Mr. Catanzano spoke of the eleven years of code enforcement violations. He feels that two large structures on this 5,000 square foot lot will totally change the neighborhood. Mr. Catanzano stated that these new buildings will cut off the light and air circulation to the adjacent property belonging to his sister-in-law, Mrs. Soto. Mr. Catanzano did not feel that the City properly notified neighbors of this project. Mr. Catanzano is concerned that the basement will be used as a third living unit. Mr. Catanzano feels that condition #11 is unacceptable to the neighbors because the fence was installed without a permit and looks terrible. Mr. Catanzano spoke of the problem of parking that will occur if this project is built. Mr. Catanzano would like a deed restriction put on the property so that they cannot park in front of Mrs. Soto's home. Mr. Catanzano stated that there are unlicensed businesses being run from this home. Mr. Catanzano feels that the applicant and staff should have visited with Mrs. Soto prior to this project going forward. Mr. Catanzano stated that Mrs. Soto is afraid of reprisal due to previous complaints about this property. Mr. Catanzano suggests that the project should be changed in the following ways: The main house should be modified so that the garage moved to a new location, the second living unit be restricted to one story, the basement be eliminated, that they be restricted from taking the disabled parking space next door, that the businesses being run from the home be licensed. Mr. Catanzano wants a date set for the demolition of the home. He is concerned about the possible health issues from the demolition of the property. He feels that if the Planning Commission approves this project they will destroy the character of the neighborhood and set a dangerous precedent.

Jose Manuel Valdes, Architect, 705 Canonbury Way #383, Hayward, CA 94544, stated that the intention is to build a new house to take care of the numerous code violations. He spoke of the fact that there are several 2-story houses in the Decoto area. There is a lack of housing in the area and the second unit will help with that. Mr. Valdes stated that the basement will be used only for storage and there will be no exterior access to basement. Mr. Valdes feels that the conditions of approval are excessive for the project.

Chairperson Sweeney asked how the basement will be finished.

Mr. Valdes stated that basement will be finished with concrete.

Chairperson Sweeney asked how drainage will be handled in the basement.

Mr. Valdes stated there is no drainage proposed to be installed in the basement.

Commissioner Anderson asked if there will be electricity in the basement.

Mr. Valdes stated there will be electricity for lights and safety.

Commissioner Anderson asked how the basement is being built.

Mr. Valdes stated that there will be a concrete retaining wall system for the basement, the house will have a raised floor with wood framing.

Commissioner Anderson asked if there is any part of the house above the basement.

Mr. Valdes stated that there will be.

Commissioner Anderson asked what they will store in the basement.

Mr. Valdes stated that they plan to store luggage and things that they don't need in the house.

Commissioner Kelley asked how the new large size will affect parking in the neighborhood with all the additional living space and bathrooms being put in.

Mr. Valdes stated that he worked within the current design guidelines and having more bathrooms does not mean that there will be more people living in the house. They have proposed a 2-car garage to help with the parking issue.

Commissioner Kelley spoke of being bound by the Zoning Ordinance for orderly harmonious development and this house is nothing like it's surroundings.

Mr. Valdes stated that he recessed the second story back from the street to create the impression of a one-story building.

Commissioner Lew asked what it would take to install a sprinkler system in the basement since there is only one route out of the basement in the case of emergency.

Mr. Valdes stated that the light well would also be used as an escape route.

Commissioner Lew asked if it would be possible to scale back the size of the house, move the garage, taking second unit out

Mr. Valdes stated that it would be difficult to do and he could only scale it back by a small percentage.

Mr. Catanzano made the following additional comments requesting the reduction of the second building to a single story. He still wants a target date for demolition. He feels that not to have 2 entrances/exits from a basement is a death trap. Mr. Catanzano stated there is a creek that occasionally overflows and will fill the basement. There have still been no comments about the fence.

Barry Ferrier, 32212 Allison Way, Union City, CA, stated that in light of the Decoto standards, he feels this house covers more land space than is allowed.

Commissioner Kelley asked if the Fire Department made any comments in regards to the basement.

Mr. Leonard stated that the Fire Department did review the project and had no problem with it.

Commissioner Anderson stated that the project doesn't break the rules so he would approve it.

Commissioner Kelley has concerns about whether this would be harmonious development in the area and the impact on parking for the neighbors and the possibility of facilitating higher occupancy and the impact on the neighbors.

Commissioner Anderson moved to approve Administrative Site Development Review ASD-24-03.

Chairperson Sweeney stated motion dies for lack of second.

Commissioner Lew asked the applicant that if the application was continued would he be able to come back with a new design.

Mr. Valdes stated that the owner wants to proceed with this design with no changes.

Commissioner Kelley moved to deny Administrative Site Development Review ASD-24-03 on the basis that it does not meet recommendation #4 that the project is not well designed and will not enhance the neighborhood.

Chairperson Sweeney seconded the motion stating that even though this application does meet all the zoning requirements this particular neighborhood has a very different size and massing from what is being proposed by this particular development. The second story over the garage does not relate well to the properties around it.

- AYES: 4 (Kelley, Lew, Savage, Sweeney)
- NOES: 1 (Anderson)
- ABSENT: 0
- ABSTAINED: 0

Mr. Leonard stated that the applicant has the right to appeal to the City Council and should see the Planning Staff before the end of next week.

Chairperson Sweeney adjourned for a break at 10:35 p.m.
Chairperson Sweeney called the meeting back to order at 10:44 p.m.

VII. COMMISSION MATTERS:

- A. Richard Sealana, Public Works Superintendent, gave a presentation on the tree replacement ordinance at the request of the Planning Commission.
- B. The staff reviewed the Planning items from the September 23, 2003 City Council meeting.
- C. The staff listed the upcoming applications for the Regular Planning Commission meeting for October 16, 2003.

X. GOOD OF THE ORDER: None.

XI. ADJOURNMENT:

The meeting adjourned at 11:30 p.m.

APPROVED:

CATHI SWEENEY, CHAIRPERSON

ATTEST:

MARK LEONARD, SECRETARY