



RESOLUTION NO. 2010-191

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DENYING THE APPEAL OF THE SUNNYSIDE PROPERTY OWNERS ASSOCIATION RELATED TO THE ENVIRONMENTAL ASSESSMENT NO. C-09-58 AND ADOPTING FINDINGS TO APPROVE ENVIRONMENTAL ASSESSMENT NO. C-09-58.

WHEREAS, Conditional Use Permit Application No. C-09-58 was filed by Complete Wireless Consulting, on behalf of Verizon Wireless (“Applicant”), and pertains to authorization to construct and operate an unmanned telecommunication facility (“Cell Tower”) consisting of 9 antennas mounted inside a radome enclosure on a 80-foot high slimline monopole designed as a faux pine tree (“Mono-Pine”) at 5339 East Butler Avenue, located on the north side of East Butler Avenue between South Peach and South Minnewawa Avenues, which is located in City Council District 5 (“Project”); and,

WHEREAS, the horizontal floor coverage of the ground equipment shelter and emergency diesel generator is approximately 240 square feet. The proposed facility will meet all FAA and FCC requirements; and,

WHEREAS, on April 28, 2009, pursuant Fresno Municipal Code, Section 12-406-C, the Interim Director of Planning and Development approved the finding of a Class 32 Categorical Exemption pursuant to CEQA Guidelines, Section 15332, and Conditional Use Permit Application No. C-09-058 filed by Applicant (“Director’s Action”) and provided the required written notice that commenced the 15-day appeal period; and,

WHEREAS, on May 13, 2009, the Sunnyside Property Owners Association (“Appellant”) filed with the Director a letter appealing the Director’s Action; and,

Adopted _____
Approved 8/26/10
Effective _____



WHEREAS, on July 15, 2009, the Planning Commission conducted a public hearing to consider the appeal of the Director's Action; and,

WHEREAS, at that hearing the Planning Commission received a Staff report, a presentation from Staff, received testimony from representatives of the Appellant, the Applicant and members of the public, and received into the administrative record various documents from representatives of the Appellant supporting its appeal; and,

WHEREAS, pursuant to Fresno Municipal Code ("FMC"), Section 12-401-D-2, the Planning Commission, using its own independent judgment, continued the public hearing to consider the testimony and analyze the written documents; and,

WHEREAS, pursuant to FMC Section 12-406-G, a continued hearing on the appeal of the Planning and Development Director's approval of C-09-058 was noticed for November 4, 2009, December 2, 2009, and January 13, 2010; and,

WHEREAS, on January 13, 2010, the Planning Commission resumed the hearing to consider the appeal of the Director's Action and received a Staff report, a Staff presentation and received testimony and documents from representatives of the Appellant, the Applicant and members of the public both in support and in opposition to the appeal; and,

WHEREAS, in its Staff report dated January 13, 2010, Staff recommended that the Planning Commission adopt Environmental Assessment No. C-09-58 which was a finding that this Project is Categorically Exempt from CEQA under CEQA Guidelines, Sections 15332 (In-fill Development Project) and 15303 (New Construction or Conversion of Small Structures) and to approve Conditional Use Permit Application No. C-09-58; and,



WHEREAS, after closing the January 13, 2010 public hearing on this appeal and deliberating on the matter, the Planning Commission voted 5 to 1 in favor of a motion to adopt Staff's recommendation as set forth in the January 13, 2010 Staff report to deny the appeal, adopt Environmental Assessment C-09-58 which is a Finding of a Categorical Exemption pursuant to CEQA Guidelines, Sections 15303 and 15332, and uphold the Director of Planning and Development approval of the project, to direct Staff to prepare a written resolution memorializing the Planning Commission's decision, and to place the following **additional** conditions on the approval of the Project: (1) The Cell tower shall be disguised using a Mono-Pine design as depicted in photo-simulations provided by the Applicant to the Planning Commission; and (2) The Applicant will inspect, repair and maintain the Mono-Pine pole to ensure that, during the time it is located at its current location, it maintains substantially the same appearance as it had upon initial installation. Staff shall draft the condition to ensure it complies with the intent of this condition and include the condition in the final Resolution presented to the Planning Commission for approval. It was not the purpose or intent of adding these two conditions of approval to address any potentially significant environmental impacts caused by the Project, but to accept a design option requested by a member of the public who favoured the project, and offered by the Applicant since filing the application for this Project, and,

WHEREAS, at its February 3, 2010 meeting, the Planning Commission adopted Planning Commission Resolution No. 12991 adopting Environmental Assessment No. C-09-58, which is the finding of a Categorical Exemption pursuant to CEQA Guidelines, Sections 15303 and 15332 and approving Conditional Use Permit Application No. C-09-58; and,



WHEREAS, on February 16, 2010, the attorney representing the Sunnyside Property Owners Association filed with the City Clerk and delivered to the offices of the Mayor and the Council District 5 a written appeal of the Planning Commission's approval and adoption of Environmental Assessment C-09-58 and decision, action and findings of Resolution No. 12991 adopted by the Planning Commission on February 3, 2010 Conditional Use Permit Application No. C-09-58; and,

WHEREAS, pursuant to Public Resources Code, Section 21151(c), the Planning Commission's determination to approve the finding of a Categorical Exemption pursuant to CEQA Guidelines, Sections 15303 and 15332 is automatically appealed to the City Council if an Appellant makes that request within the time period for filing an appeal. However, pursuant to FMC, Section 12-406-J, the City Council may consider the Planning Commission's action approving or denying a Conditional Use Permit only if the Mayor or the Councilmember in whose District the project is located makes a written request of the Planning Director within the time period for consideration of appeal of Planning Commission actions: and,

WHEREAS, neither the Mayor nor the Councilmember for Council District 5 requested that the City Council consider the Planning Commission's approval of Conditional Use Permit Application No. C-09-58 and,

WHEREAS, at its regularly scheduled meeting on August 19, 2010, the City Council conducted a noticed public hearing to consider the Appellant's appeal of the Planning Commission's approval of Environmental Assessment No. C-09-58, which is a finding of a Categorical Exemption pursuant to CEQA Guidelines, Sections 15303 and 15332.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:



After consideration of all of the documents and testimony received prior to or at the public hearing on this matter, including the Staff report to the City Council dated August 19, 2010 along with exhibits, the Staff presentation, the testimony and documents presented by representatives of the Appellant, the Applicant, and members of the public, the City Council makes the following findings and actions supported with substantial evidence in the Administrative Record:

1. Pursuant to CEQA Guidelines, Section 15303 the Project qualifies as new construction of a small structure as the Project consists of a commercial structure of less than 2,500 square feet in floor area on the site which does not involve the use of significant amounts of hazardous substances.
2. Alternatively, pursuant to CEQA Guidelines, Section 15332, the Project is an in-fill project as: (a) it is consistent with the applicable general plan designation and all applicable general plan policies as well as applicable zoning designation and regulations; (b) being a development within the city limits of the City of Fresno on a project site of no more than five acres substantially surrounded by urban uses; (c) the Project site has no value as habitat for endangered, rare or threatened species as it has already been developed for purposes of housing a City of Fresno water well; (d) the approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality, the project will generate minimal car trips, has been determined to comply with the City's noise ordinance, will have no impact on air quality, and operation of the Project requires little, if any, water usage; and (e) the City departments have confirmed the site can be adequately served by utilities and public services.
3. The Appellant has the burden of presenting substantial evidence that any of the



exceptions to these Categorical Exemptions, set forth in CEQA Guidelines, Section 15300.2 apply to this Project and has failed to present substantial evidence to establish that any of these exceptions apply.

4. The substantial evidence in the record established there is no reasonable possibility that the Project will have a significant effect on the environment due to unusual circumstances as no unusual circumstances that apply to this Project have been identified. This Project is being constructed on property currently housing a City well site, as has been done at numerous locations throughout the City and the Project design is consistent with the policies for such Projects adopted by the City of Fresno.

5. There is no substantial evidence in the record that this Project may cause a substantial adverse change in the significance of a historical resource. The City's Historic Preservation Officer, Karana Hattersley Drayton, stated in a memorandum dated January 10, 2010, in a letter to Verizon Wireless consultant URS dated February 13, 2009 and at the Planning Commission hearings on this Project, that this Project would not have any significant impacts on any historic resources as neither its construction nor operation involve the destruction, removal or displacement of any historic resource. This opinion was also reached by the California State Office of Historic Preservation in its Review of the Project dated June 30, 2010 in which it stated, "The Project as proposed will not adversely affect the potentially eligible historic property as the 80-foot tall Mono-Pine and associated equipment will not directly or indirectly affect the significant characteristics and features of the rows of olive trees."



6. No oral or written expert opinions supported with substantial evidence were presented to the City Council either before or at the hearing on this matter that contradicted the opinions of Ms. Hattersley Drayton or the California State Office of Historic Preservation. Appellants did submit the following letters addressing potential impacts to historic resources: Letter from Roger Taylor, dated July 15, 2009; Letter from Jeanette Jurkovich dated July 13, 2009 and; Letter from Peter J. Klassen, PhD dated August 16, 2010. However, none of the opinions constituted expert opinion supported by substantial evidence. The letter from Mr. Taylor failed to provide substantial evidence of his qualifications so as to establish himself as an expert architectural historian nor as an expert historian pursuant to the Secretary of Interior's minimum professional qualifications or pursuant to California law and fails to support his opinions in his letter with substantial evidence. Rather, his letter is filled with argument, speculation and unsubstantiated opinion. The letter from Ms. Jurkovich also failed to provide substantial evidence of her qualifications so as to establish herself as an expert architectural historian or as an expert historian either pursuant to the Secretary of Interior's minimum professional qualifications or under California law and fails to support her opinions in her letter with substantial evidence. Rather, her letter is filled with argument, speculation and unsubstantiated opinion. In addition, nowhere in her letter does Ms. Jurkovich state that this Project may or will cause a substantial adverse change in the significance of a historical resource. Finally, Dr. Klassen failed to support the opinions in his letter regarding the potential impacts of this Project on the olive trees lining Butler Avenue with substantial evidence. As with the other letters, his letter includes only argument, speculation and



unsubstantiated opinion. For these reasons, the City Council finds that the information and opinions contained in the letters from Mr. Taylor, Ms. Jurkovich and Dr. Klassen do not constitute Substantial Evidence as that term is defined by CEQA Guidelines, Section 15384.

7. City Council hereby denies the Appellant's appeal of the Planning Commission's approval of Environmental Assessment C-09-58, upholds the Planning Commissions' approval of Environmental Assessment No. C-09-58, and also approves Environmental Assessment No. C-09-58, which is a finding of a Categorical Exemption for this Project pursuant to CEQA Guidelines, Sections 15303,15332, and 15300.2.

* * * * *



STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 26th day of August, 2010.

AYES : Borgeas, Brand, Perea, Xiong, Westerlund
NOES : Dages
ABSENT : Sterling
ABSTAIN : None

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

BY: John W. Fox
JOHN W. FOX, Senior Deputy City Attorney

DATE: 8/25/2010

JWF: sah[53898sah/jwf] 08/25/10