

CORRESPONDENCE

Jomsky, Mark

From: Gretchen Brickson <jgbrickson@sbcglobal.net>
Sent: Monday, November 28, 2011 12:57 PM
To: Jomsky, Mark
Cc: Christopher Sutton; ostenson.brandt@sbcglobal.net; gabriel yeung
Subject: Appeal Hearing Notes
Attachments: Appeal Hearing Notes 11-14-2011.pdf

Mr. Jomsky,

I have attached the Appeal Hearing Notes for 11-14-11. Please add these to the case correspondence.

Please respond so I know that you have received this information. Thanks.

Regards,

Gretchen

Pasadena City Council Meeting
Continued Public Hearing: Appeal T-Mobile Antenna at Grand Ave. & California Blvd.
Monday, November 14, 2011
8:30 p.m.-11:00 p.m.

City Clerk Mark Jomsky

Mr. Jomsky reported on the correspondence received regarding the wireless telecommunication facility at Grand Ave. and California Blvd. He reported that five correspondents opposed it and 14 supported it (*Attachment* D*).

Richard Yee, Principal Engineer for the City of Pasadena

Mr. Yee summarized the proposed project and the process it has gone through. (*Staff Report Attachment*) He referred to Chapter 12.22 of the Pasadena Municipal Code (PMC) regarding process. As follows:

- The applicant (T-Mobile) supplied the required documents and met with city staff.
- Staff approved the project on May 2, 2011
- Gretchen Brickson filed an appeal on May 16, 2011 which came before Council on July 11. (*Attachment; Correspondence, Parts 1, 2, 3, July 11, 2011*).
- A field meeting was held on July 18 at the site (*Attachment B*).
- A community meeting was held on July 27 at La Casita del Arroyo Clubhouse. Approximately 35 people attended.

Mr. Yee presented a slide show that went over the constraints of placement of telecommunications facilities based on PMC 12.22. He reported that city staff looked at 11 alternatives to the site at Grand and California (subject site). The area surveyed is bounded by Palmetto, Orange Grove, La Loma, and the Arroyo. (*Attachment E*) Of these 11 sites, Mr. Yee said only one presents a viable alternative to the subject site. Sites and disqualifications are:

1. Arroyo and California: overhead power lines
2. Orange Grove and California, northwest corner: viable but has difficulties
3. California east of Orange Grove: already in use
4. California and La Loma: two existing power poles
5. Grand and Bradford, west side: in front of a residence
6. California and Arroyo (different corner): two poles, on with overhead power lines and one shorter than required height of 25'
7. Grand and Palmetto, northeast corner: post op light, shorter than 25'
8. Arroyo and La Loma, southwest corner: meets some constraints but it is at a lower elevation
9. Grand and California: subject site, with replacement of wooden pole with 30' cobra streetlight, which would be different from the post ops in the neighborhood
10. Orange Grove and California: overhead power lines would require replacement of the streetlight
11. Arroyo and La Loma: same as #8 but replacing pole with 50'-70' streetlight

Mr. Yee said the only two viable locations are the subject site and Orange Grove and California. He said the subject site:

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- needs only a 7.9” diameter by 74.1” high antenna
- is a guy pole only
- has no overhead conflicts
- provides the greatest coverage
- will use a standard radome.

T-Mobile has mitigated the installation at the subject site by

- flush-mounting the riser
- rotating the riser assembly away from the intersection
- removing the proposed GPS unit
- replacing the existing pole (*Attachments F, G*).

Site #2 (Orange Grove and California) (*Attachment H*) meets the site criteria, but with these limitations:

- it will provide less coverage due to the topography
- it is in front of multi-family dwellings
- the pole diameter would have to be increased to 16” at the base and also increase at the top (from 8” at base and 4” at top)
- radome would be 18” in diameter rather than 7.9”

Mr. Yee noted that the city hired Jonathan Kramer as an outside consultant, who recommended the approval of the subject site. He commented on the lessons learned in the appeal process: processing of the application, notification time and process, involving the public, reliance on outside consultant with radio frequency (RF) expertise.

Steve Madison, City Council Member, said that since the subject site is in a hollow, the sight line from the homes is higher and more affected. The multi-family homes at Site #2 are two stories, with sight lines below the top of the 30’ pole. He also noted that Site #2 would bring revenue to the City.

Jonathan Kramer, Consultant to the Department of Public Works

Mr. Kramer analyzed the subject site and alternative sites (*Attachment I*.) He said it was important to knock out most of the alternative sites due to code compliance issues. He also met with T-Mobile.

He said piecing together coverage is a jigsaw puzzle and cited the following issues:

- by moving the antenna to the edge of the desired coverage area (Site #2), to direct signal in a wedge pattern rather than a circular pattern
- because of the higher elevation at Site #2, the signal will have to shine down on buildings, shine down toward adjacent homes to get down to the Arroyo
- T-Mobile had the opportunity to change the design (at subject site), which significantly reduced the aesthetic impact
- if the Orange Grove site (Site #2) is approved. T-Mobile will have to apply for another site to get the desired coverage, so there will be two intrusive sites
- The subject site is the least intrusive, though it may not be the most popular.

Councilmember Madison commented that Kramer’s report “really throws a curve ball at us that we can’t evaluate.” He asked how to weigh the possibility of the second site, and he didn’t know what to do with the information.

Mr. Kramer said he spent a good deal of time exploring with T-Mobile. Coverage of the southern portion of the area using Site #2 isn’t good. T-Mobile indicated they would immediately look for a site to the south.

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Discussion regarding possible need for second site if Site #2 is approved ensued.

Mayor Bill Bogaard asked Mr. Kramer about the distance of a second site from Site #2. Mr. Kramer said he estimated it would be at the bottom of the “dogleg” (the shape of the desired coverage area) in the white and gray area of the coverage map.

Councilmember Victor Gordo asked if T-Mobile would apply for a second site. Mr. Kramer said that T-Mobile has indicated they would, and “I believe, based on my analysis, that would be right.” Councilmember Gordo asked if Site #2 would need a second site. Mr. Kramer said there would be no immediate need. Councilmember Gordo clarified, “No immediate need, but there could be a future need.” Mr. Kramer said, “Correct.”

PUBLIC COMMENT PERIOD

Rob Searcy, T-Mobile

Mr. Searcy thanked the City staff for the detailed analysis.

He said that the permit is a ministerial permit and the application was submitted with the required information. The proposed site is the most robust and would mean T-Mobile would not have to come back for a second site.

The area has three tiers [topographical]: California and Orange Grove, Grand, and the Arroyo. The proposed site is optimum and would preclude T-Mobile from having to come back and apply for a second site.

Mr. Searcy reviewed the improvements to the design of the installation. He said the appearance on the more diminutive structure is better.

Councilmember Chris Holden pointed out that on west side of the map, there are two antenna locations that are very close to each other. He asked if utilizing two smaller sites might provide a solution. He wondered if two smaller sites might be less obtrusive and would give the coverage needed.

Dan Rix, City Engineer, said they didn’t look at the [alternative] sites for that.

Councilmember Holden suggested that since the Grand Ave. site is problematic, if they go to the other location, they might have to go to two locations anyway. He thought they should look at multiple sites. Mr. Rix indicated that larger equipment necessary for the Orange Grove site.

Councilmember Gordo asked if that would be the case if there were two sites. He said they should plan ahead and look for two sites to give T-Mobile the sites they need. He asked Mr. Searcy if there would be an objection to looking for a second site now.

Mr. Searcy said there is a misunderstanding. If Orange Grove and California is approved, T-Mobile would have to look for a second site in the future. At this time, since the subject site produces the needed coverage, they would not be interested in the option of looking at two sites.

Mr. Holden said that the consultant said that T-Mobile could come back two or three years down the road and ask for another site, and asked, “So why not look at two sites now?”

Mr. Searcy said that at the Grand and California site, they would not be looking for another site in the foreseeable future.

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Mr. Gordo responded that [City Council] is looking further ahead than two or three years.

Chris Sutton, Attorney

Mr. Sutton said:

1. the ordinance is inadequate and favors companies
2. T-Mobile's [coverage] maps are deceptive

He said the hills have no impact and the maps are fundamentally misleading, fundamentally dishonest. The right thing is to use the site at Orange Grove and California and look for a second site later.

Mr. Sutton said the motivation is money and Mr. Searcy is hired to keep T-Mobile from paying the City a yearly fee.

He said the maps are fundamentally dishonest because no RF meter was used in determining coverage. In addition, the yellow areas [outdoor coverage] on the Orange Grove map are in the Arroyo Seco where there are no houses.

Gretchen Brickson, Appellant

(Attachment, Correspondence 1 and 2)

Ms. Brickson thanked the mayor, city council, staff, petition signers, and West Pasadena Residents Association (WPRA).

She said the main objections to the Grand and California site have been made:

- the elimination of the fee to the city [by using a pole owned by the Joint Pole Association]
- the aged wooden pole place in front of a residence.

Ms. Brickson said the base of the antenna will be below the roofs of the houses around it, which is a violation of the code that says it should be 25' above roof level. The ordinance says the installation should be on the side of the home, but in two cases, it's immediately in front of homes.

Ms. Brickson said they should consider the site at California and Orange Grove, coupled with a second site at La Loma and Arroyo.

Councilmember Madison asked the staff to respond to Ms. Brickson's points. Mr. Rix referenced the photo and said that the house [belonging to Mr. Gabriel Yeung] faces Grand and the pole is not in front. The 25' regulation was one the city added to ensure that installations would not be placed on any of the post ops.

Councilmember Madison noted that if there were issues involving setbacks or zoning issues, "We would take the position that the proposed site is in the front yard." The pole is on Grand. Mr. Rix said the code requires the installation to be "placed on the side yard, if possible. This is close to the side yard." Councilmember Madison said to be intellectually honest the city would consider this to be the front yard.

A comment was made that there is good tree screening on the houses to the west and east. Councilmember Madison responded that the real house in question is not the corner house [owned by Mr. Gabriel Yeung]. He said that he had seen photos taken from other properties, and the pole is a problem. Councilmember Madison also noted that the maps only show T-Mobile coverage, not coverage for *all* carriers. He said AT&T and Verizon would be overlaid, and that there should be a comprehensive approach. He asked if the city could require that carriers share poles.

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Dana Ostenson, Resident of 555 S. Grand Ave.

Mr. Ostenson said he supports having an antenna but, "this antenna is fundamentally unfair." He noted that it impacts the neighbors and there is an issue about whether it is in the front or side yard.

He referred to photos of his house taken from the pole and noted his residence does not sit square to Grand and California. He said tree coverage is not relevant because the pictures were taken when the trees were full. Mr. Ostenson said that because this is a violation of code, and because this is his home, "this is the beginning of my opposition."

Russ Selvidge, Resident

Mr. Selvidge held up a circle of paper the diameter of the tower and a pen, and noted the modest size of the proposed antenna's diameter. He said that from most locations the visibility of the antenna will be equivalent to the size of holding an arm out straight and viewing the pen. He said that most people want the antenna and are being held hostage for one neighbor. He said that if it goes down, all carriers will not want to deal with Pasadena.

Mr. Selvidge said, "No matter where you put the pole, it's going to be where someone could see it from the front window."

Councilmember Madison noted the fiscal impact to the city of the proposed location. Mr. Selvidge said it is overridden by the time it has taken, 260 days plus. He said, "We're going to drive cell phone providers out."

Joan Hearst, West Pasadena Resident Association (WPRA)

Ms. Hearst said WPRA was concerned about the process prior to the appeal. She thanked the city staff. She said, "We appreciate that you all stepped back from the process and looked at the appeal and hired an outside consultant."

Speaking as an individual, Ms. Hearst said she is concerned that, "we are not looking at the larger picture" of cell tower placement and coordination among cell phone providers.

Gabriel Yeung, Resident

Mr. Yeung lives in the corner home [that fronts the pole]. "When I look out of my living room and dining room, I do see the pole," he said.

Dr. Raymond Quan, Resident

Dr. Quan addressed the coverage maps and noted that the light gray area [indicating poor coverage] to the south was about the same on the map for the Orange Grove site and the map for the Grand Ave. site. He said since they are the same, the choice is whether to put the antenna in a single-family residential neighborhood or a multi-family neighborhood, on a quiet intersection or a busy intersection.

Dr. Quan said it will impact people's view shed or above view. It will impact property values in a residential area multi-family area. It's not just deciding on aesthetics.

He said he documented the opinions of the residents in the 300' circle from the pole. He said 14 people live there, and 13 oppose it; moreover Ms. Brickson's petition had more than 120 signatures.

Miriam Quan

Ms. Quan noted that generating city revenue is not a criterion for selecting a site.

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She said a 20-year lease is involved with sitting these installations. She showed a document substantiating that T-Mobile submitted three applications for three sites in April of 2008. One of these was at Grand and California.

She said that she has been involved in seven cases regarding cell phone towers; six of them were with T-Mobile. She said T-Mobile “misrepresents themselves” and “misleads.” City staff are made responsible to avoid the issue coming to council. City staff should notify residents sooner. More efficient [planning] is needed, and more standardization. Also the council should consider upcoming undergrounding.

Ms. Quan concluded that there is nothing wrong with having multiple smaller sites as opposed to one larger site.

The public hearing was closed.

Council member Jacque Robinson asked if the city is allowed to consider revenue.

Michelle Bagneris, City Attorney said that the standards have nothing to support using revenue, but nothing specifically prohibiting it. But noted that the Federal Communications Commission (FCC) may have prohibitions and would need to be checked.

A staff member, citing a case in Riverside, said the ordinance doesn’t allow for it, and he would be concerned with an amendment to the code. He is concerned about the FCC regulations.

Mayor Bogaard asked how much the fees would be that the city could collect on the Orange Grove site. Mr. Rix said it was \$8,000 a year for a similar site, but fees can go up based on CPI.

Councilmember Robinson asked if Site #2 and a third site would have residential sight lines that would be affected. Mr. Rix said if the California and Grand site is not approved, the applicant would have to start over and it would be discussed at that time. He said anyone who lives on that corner [Site #2] could see it from their window.

Councilmember Madison asked how many subscribers will be covered. Mr. Searcy responded that he does not have that number.

Councilmember Madison asked for the options to vote. Mayor Bogaard replied that the project is already approved so it requires a vote of five to overturn. [Council members present at this point were Bogaard, Masuda, Robinson, Gordo, Madison, and Holden.]

Mayor Bogaard commented regarding the controversy that the City is entitled to protect itself from intrusiveness, but he was having difficulty justifying additional time on the part of staff. Neighbors are waiting for coverage. He said Grand and California is OK with him, it works and it complies.

Councilmember Robinson said she is prepared to support the staff recommendation. She is not convinced if they started the process at Site #2, it would get the opposite reaction. Revenue should not be used as a reason to approve or disapprove. It should be one of the criteria considered, but not the only criterion. Moving to Site #2 would run into the same problems.

Councilmember Masuda said, “I, too struggle with this. With the antenna being 7.9” wide and 72.4” tall, it is not a problem for me.” He noted that T-Mobile is willing to paint it to match, do a flush mount. Site #2 would be larger and need a second pole. He accepted the recommendation of staff.

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Councilmember Madison conceded that there were not enough votes to override approval of the project, but said he did not think it had been a waste of time for the staff or anyone else. "It was a time of introspection," he said. He said he could not support the project because it ignores the ordinance, the pole is in a front yard, is in view, has no revenue, and "looks horrible." "Our job is to protect the community," he said. He said productive meetings had come out of the process. He said. "We should see every cell tower that's sited, not just one."

Councilmember Gordo said, "This is one of those complicated issues that causes me to feel helpless." He expressed concern about the City's land use being preempted by the Federal Government. He said, "But it's up to us to mitigate, even if it's for one person. Especially if it's for one person."

He asked what was driving the use of the pole there. Mr. Yee responded that it is a guy pole that is in use. The ordinance directs that existing poles be used.

Councilmember Gordo asked if that pole could be located differently. Mr. Rix said that T-Mobile originally asked to be put on the telephone pole immediately to the south in front of Mr. Yeung's deck. "I suggested the [guy] pole as the least intrusive," he said.

Councilmember Gordo said, "I appreciate that, but did you check with the homeowner to see if moving it east on California would be more acceptable?" Mr. Rix said, "I did not." Councilmember Gordo said that [the City] has a responsibility.

He said it is problematic that we can't demand that a carrier co-locate equipment. He said the City should ask carriers to think ahead, consider the master plan, to mitigate potential impact. If there's a way to mitigate impact to homeowners by moving from the front yard to the side yard, it should be considered

The public hearing was reopened to get responses.

Mr. Yeung said he would have to look at it, because Mr. Ostenson is impacted also. Mr. Ostenson said if Yeung would support it, he would, too. He also suggested consideration be given that lines are going to be undergrounded soon.

Councilmember Robinson said that there are two homeowners at the meeting, but by moving it, other homeowners will be impacted.

Councilmember Gordo observed that what makes the difference is the grade of the house. The house on the corner sits higher than the house on the south side of California.

Mr. Searcy said they may just be moving the problem up the street. He does not know the site, the height of the pole, the propagation of the signal. The pole might be in front of the house to the east.

Councilmember Madison said "The fact we put time into it doesn't mean we throw in the towel." He suggested giving it a few more weeks.

Councilmember Holden observed that five votes are needed to overturn the decision, and there were not five votes. He said the process has not been wasted; something's come out of it. Impact can be minimized in intersections that are more robust [busier]. "My vote would be to move it to a different location." He said that looking at the maps "makes you think it's really an inexact science."

Councilmember Gordo said, "Maybe it's time to look at our process." He said he is struggling with federal preemptions, but he would like to investigate if there could be more flexibility in the process.

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Mayor Bogaard asked if it would require a new application to move 50 feet to the east. Mr. Rix said the pole to the east is short and would have to be replaced. The City didn't want to make a higher pole.

Mr. Ostenson said he doesn't want the neighborhood to be the victim of the process. "Please don't say 'the process wasn't the best and we would like to change it later—not now.' Find a way now."

Councilmember Gordo asked about the best scenario to approve a new application. Mr. Rix started to explain about a new application with coverage maps and a new design. Councilmember Gordo said it's just the same size pole moved over, why does it have to be redone. Mr. Rix said it requires co-locating and the pole has to be the same height as the existing pole.

Councilmember Madison said getting the location right is more important than other matters, and suggested that the hearing be continued one week.

Ms. Bagneris said there has to be time for appeals and a notice period and so on. Councilmember Gordo suggested going out and talking to the neighbors. Ms. Bagneris said they have to live with federal rules. The applicant agreed to the extensions that were made.

Mr. Rix noted he did not know how long it would take T-Mobile to submit a new application, maybe one month. After the application is received, there's a few weeks for review, a 30-day notice, a decision, 14-day appeal period. He mentioned two to three months after the application is received.

Councilmember Gordo said he would support holding off for a week to see if the neighbors would support moving the antenna. "If we come back in a week and Jacque is correct, there wouldn't be the votes to overturn" the approval. "But we owe it to these homeowners."

Councilmember Gordo asked if the requirement to use an existing pole was Pasadena's ordinance. Councilmember Madison asked if the pole could be extended. Mr. Rix said that the ordinance was the City's, to mitigate impact.

Mr. Searcy said he was amenable to a two-week extension to investigate the new location. He noted that this is the twelfth alternate location and he would not want to go back again. Mayor Bogaard asked if he needed more than a week. "Absolutely, to vet the location," Mr. Searcy replied.

Councilmember Gordo said that the City should not limit itself to an existing pole when it's two or three feet too short. He asked if the application for the California site could be done on the existing application as an alternate location. Mr. Rix said he would look at it and the ordinance.

Councilmember Robinson asked if it has to be a taller pole, and if they have to use the existing height.

Councilmember Gordo said, "I can't believe that was our intent. If it is tying our hands needlessly, we have to change that. There is no reason why the council shouldn't have the ability to change." Michael Beck, Pasadena City Manager, said it is specific in the ordinance.

Mayor Bogaard entertained a motion to continue the matter until December 5. It required a vote of five. The motion carried.

The next hearing will be held on December 5, 2011.

*All *Attachments* refer to attachments to item #12 of the 11-14-11 City Council Agenda, accessed on-line at the City of Pasadena website: http://www.cityofpasadena.net/councilagendas/council_agenda.asp