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September 15, 2009

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

Agenda No. 2
06/23/09

The Honorable Board of Supervisors #15 SEPTEMBER 15, 2009
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

**Re: PROJECT NO. R2006-03164-(2)
CONDITIONAL USE PERMIT NO. 2007-00020-(2)
SECOND SUPERVISORIAL DISTRICT/THREE-VOTE MATTER**

Dear Supervisors:

Your Board previously conducted a hearing regarding the above-referenced permit which sought to authorize the installation, operation, and maintenance of a wireless telecommunication facility. At the completion of the hearing you indicated an intent to deny the permit and instructed us to prepare findings for denial. Enclosed are findings for your consideration.

Very truly yours,

ROBERT E. KALUNIAN
Acting County Counsel

By *Elaine M. Lemke*
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APPROVED AND RELEASED:

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EML:vn
Enclosure

**FINDINGS OF THE BOARD OF SUPERVISORS
AND ORDER
PROJECT NUMBER R2006-03164-(2)
CONDITIONAL USE PERMIT NUMBER 2007-00020-(2)**

1. The Los Angeles County ("County") Board of Supervisors ("Board") conducted a duly-noticed public hearing in the matter of Project No. R2006-03164-(2), consisting of Conditional Use Permit No. 2007-00020-(2) ("CUP") on June 23, 2009. The County Regional Planning Commission ("Commission") previously conducted a duly-noticed public hearing on the CUP on December 17, 2008 and February 18, 2009.
2. The applicant, T-Mobile, USA, Inc. ("T-Mobile"), requested the CUP to authorize construction, operation, and maintenance of an unmanned wireless telecommunications facility consisting of five panel antennas and one GPS antenna to be attached to two existing 14-foot-high trellises with a seven-foot height extension, four separate antenna panels to be attached to an existing parapet, and six BTS equipment cabinets. The trellises and parapet are located on the roof of an existing CVS Pharmacy building. The equipment cabinets were proposed to be located in a 304-square-foot area at ground level on the subject property, adjacent to the northern wall of the building under an extended portion of the rooftop parking area.
3. The subject property is located at 4501 West Slauson Avenue in the unincorporated area of the County in the View Park Zoned District. The property is located on the corner of Overhill Drive and West Slauson Avenue.
4. The subject property is designated as "Major Commercial" in the Los Angeles County General Plan ("General Plan"). Typical land uses for this classification include central business districts, regional office complexes, major shopping malls and centers, and a range of mixed commercial retail and service activities. The intent of this classification is to situate commercial activities in viable clusters that conveniently serve their market areas and provide sufficient commercial lands to accommodate the projected work force.
5. There are no specific policies related to unmanned wireless telecommunication facilities in the General Plan. The Land Use element of the General Plan, however, identifies among its goals: the maintenance and enhancement of existing residential neighborhoods and encouragement of high quality design in projects to be compatible with, and sensitive to, the natural and manmade environment.
6. The subject property is zoned C-2 (Neighborhood Business).

7. Surrounding properties are zoned as follows:

North:	C-2 and R-1 (Single-Family Residence)
South:	C-2
West:	C-2
East:	C-2 and R-3-P (Limited Multiple Residence – Parking)
8. The subject property is a 33,810-square-foot lot developed with the aforementioned CVS Pharmacy ("CVS") building with a total of 61 parking spaces. The property is located within an urban area surrounded in all directions by primarily single-family residential properties, including some adjacent parcels, and commercial properties to the east and to the west.
9. Title 22 (Zoning Ordinance) of the Los Angeles County Code ("County Code") does not specify wireless telecommunications facility as a use. Therefore, the Department of Regional Planning ("Regional Planning") has determined that the most similar use specified in the Zoning Ordinance is "radio or television tower," which may be allowed in the C-2 zone with a CUP. Accordingly, a CUP is likewise required for all wireless telecommunication facilities in the C-2 zone.
10. A conditional use permit for the same property at issue in this case, which authorized the sale of beer and wine for off-site consumption ("Alcohol CUP"), was approved on April 24, 2000, for what was then a Sav-on Pharmacy. Said Alcohol CUP remains in effect. One of its conditions requires: "Trellis structures shall be erected along the perimeter of the rooftop parking area in order to provide screening and aesthetics. The trellises and the northerly, easterly, and westerly faces of the building shall be planted with fast growing vines to soften the walls of the building and to provide relief from abutting streets and from the adjacent residential properties."
11. Prior to the above-referenced Board and Commission hearings, an initial hearing was held by a hearing officer on January 17, 2008, who approved the CUP. Pursuant to section 22.60.200 of the County Code, the Commission timely called up that approval for review and a public hearing thereon was held on April 9, 2008 and June 18, 2008, when the Commission closed the public hearing and approved the project. The Board then timely called up that Commission decision for review and a hearing was held before the Board on September 23, 2008. After hearing public testimony and closing the public hearing, the Board referred the case back to the Commission for further review and directed consideration of certain issues, leading to the hearings identified in Finding No. 1 above.
12. Proper and legal notice was provided by the County for all of the public hearings held regarding the CUP.

13. At the initial Commission hearing on April 9, 2008, three representatives of T-Mobile testified in favor of the CUP. Thirteen residents testified in opposition to the project and a petition with 300 signatures opposing the CUP was submitted. Among issues raised by project opponents were assertions that adequate wireless coverage existed in the proposed coverage area and that T-Mobile failed to consider alternative sites or co-location at other wireless facility sites.
14. The Commission continued this public hearing to June 18, 2008, and requested T-Mobile to meet with residents regarding their concerns and issues, provide a study of the property values of homes on the nearby hillside, and provide a study on radio frequency emissions. T-Mobile held a meeting in the community attended by a limited number of individuals and provided an updated study on anticipated radio frequency emissions from the proposed project, but did not provide the requested property values study. Instead, T-Mobile offered to provide an evaluation of properties outside of the area, comparing values before and after the installation of a wireless facility, which concluded that the installation of wireless facilities would not impact property values.
15. At the continued Commission hearing on June 18, 2008, all commissioners were present. Three T-Mobile representatives presented testimony in favor of the request and answered questions presented by the Commission. Among the information provide by T-Mobile was the importance of wireless with respect to "911" emergency calls and that the area had a significant number of such calls. One member of the public testified in favor of the project. Seven members of the public testified in opposition to the project. The opposition raised issues regarding the legitimacy of the applicant's claim regarding 911 calls in the area, improper notification for the community meeting, and failure to provide the requested hillside view property values study. They also testified and presented evidence showing that the proposed CUP did not meet the zoning height requirement. The opposition also took issue with the Radio Frequency-Electromagnetic Energy Compliance ("RF-EME") Report presented by T-Mobile and submitted their own information showing a lack of compliance with Federal Communications Commission Guidelines. Correspondence opposed to the CUP was also received expressing the same or similar concerns.
16. After closing public testimony, one commissioner made a motion stating that the CUP was incompatible with the existing character of the neighborhood, that the CUP would be detrimental to the community, that the concerns of the community greatly outweighed the need for this type of development, and that staff be instructed to return with findings for denial. The motion was seconded, but failed due to lack of majority vote. Thereafter, a second motion was made, and approved on a 3-2 vote, to grant the CUP with changes to Regional Planning's proposed findings and conditions as agreed to by T-Mobile.

17. The Board then called up that Commission decision for review and held a public hearing thereon on September 23, 2008. At the public hearing, the Board received support testimony from three T-Mobile representatives and opposition testimony from 10 residents, including one representing the Windsor Hills Homeowners Association and the United Homeowners Association.
18. At this first Board hearing, T-Mobile testified that there was a coverage gap and that it had explored four alternatives to the proposed site, all within two blocks of that site, including three other commercial buildings, but that the owners of those buildings were not interested. T-Mobile testified that these other options all would have included disguised monopoles, which T-Mobile asserted made the sites more intrusive than the proposed CVS site. The fourth option was an existing utility pole located in the right-of-way at the same corner as the CVS. T-Mobile indicated the pole was not a viable option because their equipment did not fit nor did it meet the coverage objectives of T-Mobile's engineer. T-Mobile's engineer identified criteria used in selecting a site, which was: (1) customer complaints; (2) a drive test; (3) current site performance; and (4) in certain areas, co-location. T-Mobile further testified that the site "was a prime location for the facility as it will provide and meet the coverage objections of our R.F. Engineer."
19. Opponents objected that T-Mobile had not considered other possible sites and had placed its coverage needs above the community's request for a less intrusive site. Testimony was also given regarding the negative impact of the proposed facility on the views for adjacent and nearby hillside homes. One resident testified that the antennas would be immediately across from their breakfast and dining rooms and that raising the trellises another seven feet would obstruct that view.
20. Opponents also contested T-Mobile's claim of a coverage gap. The evidence received on this issue included written comments which described coverage tests conducted by residents in six areas where T-Mobile's coverage map showed no coverage. Those resident tests revealed that calls were successfully made and received in such areas in buildings, in vehicles, and outside with no dropped calls when driving from one location to another.
21. Opponents testified that despite the aforementioned condition of the Alcohol CUP regarding visual screening, no vines were ever grown on the trellises. Submitted photos verified that claim. They testified that adding antennas and raising the height of the trellises would further blight the view.
22. Opponents testified that prior to T-Mobile's application to the County, a permit for a site only four to five blocks away was denied by the City of Los Angeles, the written decision for which also identified other sites that T-Mobile could consider. T-Mobile testified it did not have information available to respond to this claim at the hearing. T-Mobile never provided a response on that issue during the administrative process.

23. Opponents also suggested that T-Mobile should explore as a site alternative the intersection of La Brea and Stocker, which is not surrounded by homes. T-Mobile did not respond to this suggestion at any time during the administrative process. Opponents also testified, and provided documents in support thereof, to bolster their contention that the raised trellises would exceed the County's height limits. Finally, a representative for CVS stated that CVS opposed the installation and asserted that such an installation would be a violation of their lease with the property owner.
24. After all testimony, the Board closed the September 23, 2008 public hearing, and referred the matter back to the Commission with instructions to the Commission related to clarification, information, and evaluation regarding view impacts on the surrounding neighborhood, co-location opportunities, alternative sites, and impact on 911 emergency call service.
25. The Commission held a de novo public hearing on December 17, 2008. All Commissioners were present. No changes had been made to the proposed CUP that was initially approved by the Commission on June 18, 2008. At the de novo hearing, the applicant failed to submit all of the additional information that had been requested by Regional Planning after the Board hearing.
26. The Commission continued the hearing to February 18, 2009, to allow the applicant to submit requested additional information. The requested additional information included: a response from the Public Utilities Commission regarding possible investigation of T-Mobile related to this site and a response from the property owner regarding lease issues. From T-Mobile, it requested a view impact-property value study, additional simulation of view impacts, an updated service coverage map, a list of possible co-location sites and alternatives, and an explanation of industry standards for co-location.
27. The applicant submitted materials in response to the Commission's request on February 5, 2009. The Commission considered the additional information submitted by the applicant, including the property impact appraisal and height analyses. The Regional Planning staff report for the February 18, 2009 hearing concluded that the proposed trellises would exceed the 35-foot height limit of the zoning code.
28. At the February 18, 2009 continued public hearing, all Commissioners were present. Three T-Mobile representatives presented testimony in favor of the request. The testimony in favor included the following: the wireless telecommunications facility is proposed in response to customer demand, the view impact of the proposed antenna is similar to existing light poles, and the applicant is willing to reduce the height of the proposed trellises by 1.7 feet to meet the height limit after staff determined that the proposed height did exceed the limit.

29. Twelve persons, including representatives of the Windsor Hills Homeowners Association and the Baldwin Hills Homeowners Association, testified in opposition to the project. The opposition testimony included the following issues: locating antennas on the trellises would violate conditions of approval of the prior Alcohol CUP; the proposal does not meet the height limit; the case has created conflict within the community and thus disturbed the peace, comfort, and welfare of the community; the Commission has the authority to deny the case; a similar wireless site was proposed by T-Mobile only four blocks from the proposed site in the City of Los Angeles and denied; CVS is opposed to this case and is losing business as a result of this case; T-Mobile has adequate coverage in the area; 911 emergency service is available even without a carrier; and a 16-member consortium is organized against T-Mobile's proposals.
30. There being no further testimony, one of the Commissioners made a motion to close the hearing and to deny the CUP for the following reasons: the CUP may have a negative impact on property values, the conclusions in the value impact analysis presented by T-Mobile were provided by a San Diego appraisal firm who may not adequately understand the real estate market in the neighborhood impacted by this site, CVS opposes the CUP and may take legal action to enforce the terms of its lease, and CVS may close its business leaving a vacant site leading to blight. The Commission voted 3-2 to approve the motion and thus deny the CUP.
31. T-Mobile timely appealed the Commission's denial to the Board. A de novo hearing was held by the Board on June 23, 2009. Regional Planning staff identified the procedural status of the case and briefly identified the main issues claimed by both T-Mobile and project opponents. Twelve people testified, three on behalf of, and in support of, T-Mobile and nine in opposition.
32. T-Mobile representatives testified that there was a "significant gap" in coverage in the area, described as "spotty" coverage and advised that calls will be dropped, there was no view impact; an appraisal showed no impact on home values, and T-Mobile had agreed to lower the trellises to comply with the height limit as determined by Regional Planning. T-Mobile had submitted coverage maps, as it had at previous hearings, as well as other documents.
33. Opposition testimony focused on: (1) T-Mobile's claim of a coverage gap, which opponents disputed; (2) violation of the existing Alcohol CUP condition; (3) view impacts; (4) existence of unexplored other options; and (5) CVS' opposition to the project. In addition to oral testimony, the opponents noted that nearly 900 signatures had been gathered on petitions opposing the CUP.
34. More specifically as to coverage, testimony was presented along with written evidence that people with T-Mobile wireless phone service were able to consistently make and receive calls both inside buildings (homes) and outside in areas where T-Mobile's coverage maps had indicated no coverage existed. Testimony also was given that the coverage maps submitted by T-Mobile were

incomplete and misleading, identifying inconsistencies between maps submitted at different times, including that some existing wireless facility sites appeared to have been in different locations on the different maps and that the coverage area shown had decreased in later-submitted maps. One witness testified that T-Mobile's own website showed "the entire surrounding area with perfect voice and data coverage," which conflicted with the coverage maps submitted to the County by T-Mobile.

35. Opponents testified that increasing the height of the unadorned trellises and attaching antennas to them would negatively impact views. Increasing the height of the already 14-foot-tall trellises would only worsen their negative appearance and make them even more noticeable. Photographs from area homes were submitted in support of these statements.
36. Opponents again identified the condition of the Alcohol CUP requiring vines to be grown on the trellises and testified that there had not been compliance with that condition. The purpose of the foregoing trellises was to improve the aesthetics of the building and screen the rooftop parking. It was further stated that allowing installation of antennas on the trellises would effectively prohibit compliance with the condition requiring vines.
37. The Board finds that the proposed project exceeds the 35-foot height limit specified in section 22.28.170 of the County Code for structures in the C-2 zone.
38. The Board finds that the proposed project as a whole is out of character with the surrounding neighborhood and will result in visual blight for the surrounding community.
39. The Board finds that the proposed project, even if its height were limited to 35 feet, would still significantly increase the height of the trellises resulting in a negative visual impact for the surrounding community.
40. The Board finds that the property is not in compliance with the conditions of its Alcohol CUP because the trellises on the building are not planted with fast growing vines, or any vines, as required by the CUP. Thus, the Board finds that section 22.04.110 of the County Code, which prohibits approval of a project if the property is being operated in violation of a land use permit, is applicable.
41. The Board finds that placement of antennas on the trellises would preclude compliance with the vine-growing condition in the Alcohol CUP.
42. The Board finds that there is not a significant gap in T-Mobile coverage in the area surrounding the proposed site. The Board alternatively finds that if there is a significant gap in coverage that T-Mobile failed to present adequate evidence to make such a showing, that T-Mobile's own website aimed at signing up customers shows the area to have complete coverage, and that the contrary evidence submitted by project opponents, which showed no gap, was credible and much of that evidence was not responded to by T-Mobile.

43. The Board finds that T-Mobile failed to conduct a meaningful comparison of alternative sites, only analyzing four other possible sites that met T-Mobile's needs, rather than the community's interest in selecting the least intrusive site.
44. The Board finds that the evidence showed that T-Mobile did not examine suggested alternative sites that could have provided additional coverage while being less intrusive in terms of visual and aesthetic impacts on the community.
45. The Board finds that none of the four alternatives examined by T-Mobile were feasible.
46. The Board finds that the proposed project is inconsistent with the following goals of the General Plan, Land Use Element: maintenance and enhancement of existing residential neighborhoods and encouragement of high quality design in projects to be compatible with, and sensitive to, the manmade environment.
47. The Board finds that the appraisal provided by T-Mobile does not prove that the proposed wireless telecommunication facility will not have a negative impact on property values because the analysis is based on discussion of four properties, most of which are located in lesser neighborhoods.
48. The Board finds that CVS, the lessee of the building on which the antennas would be erected, opposes the CUP and has indicated that it may take legal action against the property owner to enforce the terms of its lease.
49. The Board finds that CVS has been negatively impacted by the proposed CUP and would be further impacted if the CUP were approved, which could lead to its closure and site vacancy leading to blight.

BASED ON THE FOREGOING, THE BOARD OF SUPERVISORS CONCLUDES:

1. The proposed use is not consistent with the adopted general plan for the area;
2. That the requested use at the proposed location will adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area; and
3. That the requested use will be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the site.

THEREFORE, THE BOARD OF SUPERVISORS:

1. Denies Project No. R2006-03164-(2) consisting of Conditional Use Permit No. 2007-00020-(2).