



Staff Report

File #: 23-0044

REQUEST FOR CITY COUNCIL ACTION

DATE: 01/04/2023

TO: Honorable Mayor and City Council Members

FROM: Planning and Development Department

SUBJECT:

CUPM2020-0004: An appeal of the Planning and Housing Commission's denial of an application to modify Conditional Use Permit 15-005, to increase the height of an existing wireless telecommunications facility, designed as a faux pine tree, from 60 feet to 75 feet. The facility is located at 638 Collett Avenue in Cresta Verde Park within the Northeast Corona Specific Plan.

EXECUTIVE SUMMARY:

This staff report asks the City Council to hold a public hearing on an appeal of the Planning & Housing Commission's denial of Conditional Use Permit Modification 2020-0004 (CUPM2020-0004), which is a request to modify a conditional use permit to increase the height of an existing telecommunications facility, which is designed as a faux pine tree, from 60 feet to 75 feet. The modification to the existing facility would accommodate the collocation of additional antennas to reduce service coverage gaps. The applicant is Smartlink LLC, on behalf of AT&T Wireless.

RECOMMENDED ACTION:

That the City Council:

- a. Uphold the Planning and Housing Commission's denial of CUPM2020-004, a conditional use permit modification to increase the height of an existing telecommunications facility from 60 feet to 75 feet located at 638 Collett Avenue in the Park Zone of the Northeast Corona Specific Plan.
- b. Adopt Resolution No. 2023-002 denying CUPM2020-0004.

BACKGROUND & HISTORY:

Smartlink, LLC, on behalf of AT&T Wireless, submitted an application to modify a conditional use permit that would increase the height of an existing telecommunications facility, designed as a faux pine tree (monopine) from 60 feet to 75 feet. The facility is located at 638 Collett Avenue, which is

within Cresta Verde Park. Cresta Verde Park is a 5.36-acre City Park. The property is within the Northeast Corona Specific Plan, and zoned Park (P).

The existing 60-foot high monopine was approved as Conditional Use Permit 15-005 (CUP15-005) by the Planning and Housing Commission on November 3, 2015. The service provider of the existing monopine is Verizon Wireless. It is the only telecommunications facility in the immediate area. The modification proposed by CUPM2020-0004 would allow AT&T Wireless to collocate antennas on top of the existing monopine. To support the collocation, the height of the existing monopine would need to be increased by 15 feet so that enough separation occurs between the antenna arrays for Verizon Wireless and AT&T Wireless to receive and transmit signals from other facilities without interference. AT&T Wireless is experiencing service gaps in the immediate area and the proposed antennas would provide the needed coverage for its customers.

Project Background

On April 12, 2021, the Planning & Housing Commission held a public hearing on CUPM2020-0004. The Commission expressed concerns about the weathered aesthetic appearance of the existing monopine, and indicated that the additional height would make the facility more noticeable and have an even more negative aesthetic impact on the surrounding residences that have views of the park site. The Commission requested that additional locations be explored, as the applicant had only evaluated two other locations. The Commission continued the public hearing on the project so that the applicant could explore other possible locations.

The applicant subsequently invited neighbors to a community meeting at Cresta Verde Park and evaluated 12 additional alternative locations. The applicant also reduced the number of proposed antennas on the monopine from 12 to 9.

On February 7, 2022, the Commission held another public hearing on the project. The Commission asked AT&T to contact the owner of Cresta Verde Golf Course, and inquire about leasing space for a telecommunication structure within the golf course. The Commission continued CUPM2020-0004 off calendar to allow AT&T time to explore this option.

In May 2022, AT&T informed City staff that they could not come to terms with the owner of the golf course and would be moving forward with their original request to modify the monopine at Cresta Verde Park.

On October 10, 2022, the Commission revisited the proposal. The Commission discussed the existing monopine's weathered condition and lack of maintenance, and expressed concern that extending the height of the existing tower could result in a more significant visual impact to the neighborhood. The Commission determined that it could not support the proposed modification due to its aesthetic visual impact on the neighborhood, and directed staff to prepare a resolution of denial for CUPM2020-0004.

On November 7, 2022, the Commission adopted Resolution 2596 denying CUPM2020-0004. The applicant subsequently submitted an appeal to the City Clerk's Office, which was filed on November 17, 2022.

ANALYSIS:

Cresta Verde Park is in a residential area, and surrounded by residential properties to the north, east, south, and west. The monopine is located within the northeastern portion of the park, approximately 51 feet from Collett Avenue and 105.5 feet from the east property line.

The photosimulations provided by the applicant depict the proposed 15-foot height extension, which rises above the surrounding trees. After multiple public hearings, the applicant was unable to provide the Commission with a project that is compatible with the surrounding neighborhood or Cresta Verde Park. At its scheduled public hearing on November 7, 2022, the Planning and Housing Commission adopted Resolution 2596 and determined that the findings necessary for granting a conditional use permit as set forth in Section 17.92.110 of the Corona Municipal Code cannot be made in reference to CUPM2020-0004.

As required by Section 17.93.020(D), upon receipt of an appeal, the Commission shall make a report to the City Council stating the factual and legal basis on which the Commission determined that the application failed to meet the criteria and requirements for granting a conditional use permit. The following findings were documented in Resolution 2596 stating the reasons the Planning and Housing Commission cannot grant CUPM2022-0004.

1. The findings necessary for the granting a Conditional Use Permit as set forth in Section 17.92.110 of the Corona Municipal Code cannot be made in reference to CUPM2020-0004 for the following reasons:
 - a. The proposal would be detrimental to public health, safety, convenience, and general welfare because the tower height extension associated with CUPM2020-0004 would result in an aesthetic visual impact to the residential neighborhood surrounding the project site. The tower is highly visible from Collett Avenue and nearby residential properties, and it has not been regularly maintained. Increasing the height of the tower would exacerbate the negative visual impact that the tower currently has on the neighborhood.
 - b. The proposed land use associated with CUPM2020-0004 would be detrimental to the existing single-family residential properties in the immediate area to the north and east. The tower is approximately 61 feet from the public right-of-way on Collett Avenue and is not screened behind any vegetation, buildings, or structures. Extending the height of the tower by 15 feet, as proposed by CUPM2020-0004, would further intensify the negative visual impact to the surrounding residential neighborhoods.
2. CUPM2020-0004 is not consistent with the City's General Plan for the following reasons:
 - a. The General Plan land use designation of the project site is Park and the surrounding properties are Low Density Residential. The proposal associated with CUPM2020-0004 needs to demonstrate compatibility with the Park designation and surrounding land uses to protect public health, safety, convenience, and general welfare in order not to diminish the quality of life for the residents. The tower is currently designed to resemble a pine tree so

that it is indistinguishable from its surrounding environment and does not create a negative visual impact to the surrounding residential land uses. Extending the height of the tower by 15 feet would make the tower more prominent, and distinguishable from its surroundings and make the fake appearance more noticeable. Its aesthetic visual impact would degrade the aesthetics of Cresta Verde Park and the quality of life for those visiting the park and the residents who live in the immediate area.

- b. General Plan Policy LU-8 is to assure the integrity, quality, and livability of Corona's existing residential neighborhoods preserving those elements that give them character, cohesion, and quality of life. The proposal associated with CUPM2020-0004 would create a negative aesthetic visual impact to the neighborhood because residents would have a direct line of sight from their outdoor and interior living spaces to the subject facility. The inability to screen the facility with trees or buildings would make the tower stand out from its surroundings, therefore, would contradict the residential character and quality of the surrounding neighborhoods.

Applicant's Reasons for Appeal to the City Council

The applicant filed an appeal of the Planning and Housing Commission decision on CUPM2020-0004 to the City Clerk on November 17, 2022, which is attached hereto. The appeal was filed within 10 working days of the Commission's decision pursuant to CMC Section 17.93.020. The applicant's reasons for filing the appeal to the City Council are noted below.

1. The applicant asserts that the proposed height extension to the existing monopine will retain the stealth aesthetic of the existing facility to the extent feasible. The applicant also claims that the Commission's criticism of the existing condition of the faux tree branches is Verizon's issue and is not based on AT&T's proposed modification. The applicant notes that a separate application from Verizon will remedy the maintenance concerns.
2. The applicant contends that the City is preempted from denying AT&T's application because it will effectively prohibit AT&T from providing telecommunication services and personal wireless services in violation of the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 253(a), 332 (c)(7)(B)(i)(II) ("Act"). The applicant claims that the requested telecommunications facility at Cresta Verde Park is needed to close a significant service coverage gap and that the proposed facility is the least intrusive means to do so.

Staff's Response

A decision to deny a permit for a telecommunications facility must be supported by substantial evidence contained in a written record (47 U.S.C. § 332(c)(7)(b)(iii).) Substantial evidence is less than a preponderance but more than a scintilla.

Aesthetics

Under the Act, the City is entitled to make an aesthetic judgment concerning a telecommunications facility as long as the judgment is grounded in the specifics of the case and is not based upon an aesthetic opposition to telecommunication towers in general. Federal courts have concluded that

substantial evidence exists if there are *reasonably-founded* concerns of the community. When the evidence specifically focuses on the adverse visual impact of the tower at the particular location at issue, courts have concluded that more than a mere scintilla of evidence will probably exist.

The Planning Commission's decision to deny CUPM2020-0004 was supported by substantial evidence that increasing the height of an existing telecommunications facility that is currently in disrepair will have a significant negative visual impact on the neighborhood surrounding Cresta Verde Park. The concerns regarding the aesthetic impacts of the proposed telecommunications facility that were expressed by the Planning Commission and members of the public pertained to the specific facility proposed by the applicant and does not reflect a generalized negative view concerning telecommunications facilities. Evidence was presented showing that increasing the existing telecommunications facility by 15 feet would result in a monopine that is significantly taller than any other tree in the vicinity. If the height of the tower is increased, residents in the adjacent neighborhood would have a direct line of sight of the tower from their exterior and interior living spaces.

The aesthetic impacts are directly related to the particular facility proposed by the applicant and are not based upon general opposition to telecommunications facilities. The City's history of permitting numerous telecommunications facilities throughout the City, including on City-owned property, demonstrates that the City does not have a generalized negative view of telecommunications facilities.

Service Coverage Gap

A determination whether there is a "significant gap" in service coverage is an extremely fact-specific inquiry that defies any bright-line legal rule. However, the Ninth Circuit Court of Appeals has concluded that a significant gap in service exists whenever a telecommunications provider is prevented from filling a significant gap in *its own* service coverage. In other words, it does not matter if other telecommunications providers have adequate service coverage in the area. The only relevant inquiry is whether there is a significant gap in the applicant's service coverage.

Once a telecommunications provider has demonstrated that the requisite significant gap in coverage exists, it must then show that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve, which in this case is aesthetics.

As indicated above, the Planning Commission requested that the applicant look at alternative locations to address the gap in service coverage. The applicant analyzed 14 alternative sites, 13 of which were determined to be infeasible because they would not address the applicant's service coverage gap due to the distance of the site from the service coverage area and the elevation of the sites. However, one alternative (to install a new freestanding tower in lieu of collocating on the existing Verizon tower) was summarily rejected by the applicant based solely on the City's preference for collocation. Admittedly, CMC §17.65.070(A)(5) requires applicants to pursue co-location if possible, but it is not an absolute standard. As the courts have articulated, in order to demonstrate that the applicant's proposed facility is the least intrusive, a meaningful comparison of alternative sites is needed. Based upon the Planning Commission's expressed concerns regarding the applicant's

proposal to increase the height of Verizon's tower by 15 feet, the applicant should have provided a more detailed analysis of the feasibility of constructing a new freestanding tower. Without such information, the Planning Commission was unable to conclude that the applicant's proposal was the least intrusive option.

Additionally, the Planning Commission suggested that the applicant consider small cell sites to address the gap in service coverage, especially since the City has established an administrative process for the review and approval of small cell sites. However, the applicant failed to consider this option. In fact, the applicant stated during the public hearing before the Planning Commission that they had not even reviewed the City's zoning to determine if small cell sites would be permitted.

Based on the foregoing, the applicant has failed to show that the facility proposed pursuant to CUPM2020-0004 is the least intrusive means of filling the gap in the applicant's service coverage and, therefore, the applicant's claim that the City has violated the Act is without merit.

FINANCIAL IMPACT:

There is no fiscal impact to the City, as the applicant has paid the application processing fees for the project.

ENVIRONMENTAL ANALYSIS:

The Planning and Housing Commission adopted a Negative Declaration on November 23, 2015, in conjunction with the approval of CUP15-005 for the existing telecommunications facility. Pursuant to CEQA Guidelines Section 15162(a), no additional environmental review is necessary for the proposed project, as the proposal is consistent with the environmental circumstances analyzed under the adopted Negative Declaration, and there are no substantial changes nor new information that would cause the involvement of new significant environmental effects. Additionally, CEQA Guidelines Section 15061(b)(4) exempts projects from CEQA that will be rejected or disapproved by a public agency.

PREPARED BY: JAY EASTMAN, PLANNING MANAGER

REVIEWED BY: JOANNE COLETTA, PLANNING AND DEVELOPMENT DIRECTOR

Attachments:

1. Exhibit 1 - Resolution No. 2023-002
2. Exhibit 2 - Appeal Letter - Smartlink LLC, on behalf of AT&T Wireless
3. Exhibit 3 - Planning & Housing Commission Resolution No. 2596
4. Exhibit 4 - Planning & Housing Commission Staff Report - November 7, 2022
5. Exhibit 5 - Planning & Housing Commission Minutes - November 7, 2022
6. Exhibit 6 - Planning & Housing Commission Staff Report - October 10, 2022
7. Exhibit 7 - Planning & Housing Commission Minutes - October 10, 2022
8. Exhibit 8 - Planning & Housing Commission Staff Report - February 7, 2022
9. Exhibit 9 - Planning & Housing Commission Minutes - February 7, 2022

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- 10. Exhibit 10 - Planning & Housing Commission Staff Report - April 12, 2021
- 11. Exhibit 11 - Planning & Housing Commission Minutes - April 12, 2021