

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

**FROM: BRUCE BUCKINGHAM, COMMUNITY DEVELOPMENT DIRECTOR
JANET REESE, PLANNER II**

SUBJECT: APPEAL OF PLANNING COMMISSION NON-ACTION FOR DEVELOPMENT PERMIT APPLICATION NO. 10-023 (170 WEST GRAND AVENUE, APN 060-206-026)

BACKGROUND

On November 8, 2011, the Planning Commission held a public hearing to consider the proposed cellular antenna facility (reference Attachment 4). The project would modify the existing cupola by increasing the height by two feet and placing the antennas within the cupola. A motion to approve the project failed on a 3-3 vote, Commissioners Laferriere, Roberson and Evans in favor, Commissioners Long, Blum and Alex against, with Commissioner Coleman absent (reference Attachment 5). The primary concern of the dissenting Commissioners was related to human exposure to radio frequency electromagnetic fields.

The applicant was given the option to present the project before the full Planning Commission or appeal to the City Council. The applicant chose to present the project before the full Planning Commission and the hearing was scheduled for the January 10, 2012 meeting, however, two Commissioners were absent, and therefore, the hearing was continued to the February 15, 2012 meeting.

Prior to the February meeting, Chair Roberson resigned from the Commission, leaving six Commissioners to consider the project. At the public hearing on February 15, 2012, the Commission again voted 3-3, Commissioners Laferriere, Coleman and Evans in favor, Commissioners Long, Blum and Alex against (reference Attachments 6 and 7). Therefore, the final Commission action was a non-action (i.e., neither an approval nor a denial). The primary concerns of the dissenting Commissioners were the consistency of the proposed use in the Coastal Visitor Serving zone and human exposure to radio frequency electromagnetic fields.

The applicant has appealed the Planning Commission's non-action on the proposed project to the City Council. The public hearing has been continued from the April 2 and May 7 Council meetings at the request of the applicant. It is requested that the City Council review the project and adopt the resolutions approving the project.

APPROVED FOR FORWARDING



**ROBERT PERRAULT
CITY MANAGER**

Please Review for the Possibility of a Potential Conflict of Interest:

- | | |
|--------------------------------------------------------------|----------------------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright |
| <input type="checkbox"/> Shoals | <input type="checkbox"/> Molnar |
| <input type="checkbox"/> Nicolls | <input checked="" type="checkbox"/> Peterson |

Meeting Date: May 21, 2012

Agenda Item No. 3

DISCUSSION

The applicant is proposing to increase the height of the existing cupola by two feet and install cellular antennas within the cupola. The cellular antennas would be located entirely within the cupola and, therefore, not visible from the exterior of the building. Related equipment would be located within the building and cooled by an air conditioning system with two ground mounted condensers located on the west side of the building adjacent. A complete discussion of the proposed project is contained in the November 8, 2011 Planning Commission staff report (reference Attachment 4).

During discussion at both Planning Commission meetings, concerns were raised regarding human exposure to radio frequency electromagnetic emissions. The applicant has submitted a report prepared by Hammett & Edison, Inc. on compliance with the Federal Communications Commission (FCC) guidelines for human exposure to radio frequency (RF) electromagnetic fields that would be generated by the proposed project (reference Attachment 8). The Report concludes (reference Page 2, "Study Results") that based on the proposed location, setup of the antennas, and calculations that include several worst-case assumptions, the general public will not be exposed to radio frequency electromagnetic fields greater than the FCC established limits. Specifically, at ground level the maximum calculated level is 0.60% of the public exposure limit; at any nearby building the maximum calculated level is 1.4% of the public exposure limit; and, inside the building the maximum calculated level is 0.12% of the public exposure limit.

Therefore, based on the RF Report all of the exposure levels for radio frequency electromagnetic emissions for the proposed project are significantly below the FCC established maximum levels. The Federal Telecommunications Act of 1996 specifically preempts cities from imposing stricter exposure levels of radio frequency electromagnetic emissions. Therefore, denial of the project based on the exposure levels would expose the City to legal liability.

The Planning Commissioners who voted against the project also indicated concerns about the compatibility of the use in the Coastal Visitor Serving zone. The primary issue associated with cellular facilities is typically related to aesthetics. The project has been integrated into an existing architectural feature and would not be visible from the exterior of the building. The proposed project is an unmanned facility and does not generate traffic and would not affect surrounding businesses or properties by way of its use. The air conditioning condensers have been designed and located to meet the City's maximum noise levels. Therefore, it does not appear that the proposed use would be incompatible with the surrounding uses.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Conduct the public hearing and receive testimony; adopt the Resolution granting the appeal and approving the Coastal Development Permit; adopt the Resolution granting the appeal and approving the Site and Architectural Plans; and, adopt the Resolution granting the appeal and approving the Use Permit; or
2. Direct staff to prepare Resolutions to deny the project; or
3. Provide additional direction to staff.

RECOMMENDED ACTION

It is recommended that the City Council take the following actions:

1. Conduct the public hearing and receive testimony;
2. Adopt the Resolution granting the appeal and approving the Coastal Development Permit;
3. Adopt the Resolution granting the appeal and approving the Site and Architectural Plans; and
4. Adopt the Resolution granting the appeal and approving the Use Permit.

FISCAL IMPACT

None identified.

PUBLIC NOTIFICATION

On March 23, 2012, the public hearing notice was published in The Tribune, property owners within 300 feet of the property and residents within 100 feet of the property were mailed a notice of the public hearing and a public hearing notice was posted at the project site. On April 2, 2012, the City Council opened the public hearing and continued the item to the May 7, 2012 Council meeting at the request of the applicant. On May 7, 2012, the City Council continued the item to the May 21, 2012 Council meeting at the request of the applicant. Notices regarding the continued public hearings were posted at the door of the meeting room and on bulletin boards located at City Hall on April 3, 2012 and May 8, 2012. The agenda was posted in accordance with the Brown Act. The City has received two letters regarding the proposed project (reference Attachments 11 and 12).

ATTACHMENTS

1. Draft Resolution 12-__ - Approving a Coastal Development Permit
2. Draft Resolution 12-__ - Approving the Site and Architectural Plans
3. Draft Resolution 12-__ - Approving the Use Permit
4. Planning Commission Staff Report Dated November 8, 2011 (without attachments)
5. Planning Commission Meeting Minutes From November 8, 2011 (excerpt)
6. Planning Commission Staff Report Dated February 15, 2012 (without attachments)
7. Planning Commission Meeting Minutes From February 15, 2012 (excerpt)
8. Hammett & Edison, Inc. RF Study Dated March 14, 2011
9. Photo Simulations
10. Air Conditioner Condenser Specifications
11. Audrey Sewell Letter Dated December 6, 2011
12. John Koepf Letter Dated January 4, 2012
13. Conceptual Plans (full-sized under separate cover)