

# Attention

November 10, 2009

Honorable Mayor and Members of the City Council

7. Adopt **Resolution No. 09-1532**; A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, GRANTING AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL, AND THEREBY DENYING, CONDITIONAL USE PERMIT CASE NO. 07-CUP-007, AN APPLICATION FOR A WIRELESS TELECOMMUNICATIONS FACILITY WITH ASSOCIATED GROUND MOUNTED EQUIPMENT CABINETS AND EQUIPMENT ENCLOSURES TO BE LOCATED AT LINDERO MIDDLE SCHOOL LOCATED AT 5844 LARBOARD LANE

STAFF REFERENCE:

DIRECTOR OF PLANNING AND  
COMMUNITY DEVELOPMENT KAMINO

*The above Resolution (No. 09-1532) was unavailable at the time of printing the Agenda packet.*

*A copy of the resolution was distributed today (emailed to the City Council, placed at the front counter for public review, and posted to the City's website), prior to the City Council meeting, and copies will be placed in the Council foyer and at the dais for Council consideration.*

## RESOLUTION NO. 09-1532

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, GRANTING AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL, AND THEREBY DENYING, CONDITIONAL USE PERMIT CASE NO. 07-CUP-007, AN APPLICATION FOR A WIRELESS TELECOMMUNICATIONS FACILITY WITH ASSOCIATED GROUND MOUNTED EQUIPMENT CABINETS AND EQUIPMENT ENCLOSURES TO BE LOCATED AT LINDERO MIDDLE SCHOOL AT 5844 LARBOARD LANE**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. An application was duly filed by Omnipoint Communications, Inc., for T-Mobile, with respect to the real property located at 5844 Larboard Lane (Lindero Middle School), requesting the approval of a Conditional Use Permit (Case No. 07-CUP-007) to construct an unmanned wireless telecommunication facility. The original plan consisted of three (3) new 40-foot and 45-foot high metal flag poles with three (3) antennas inside each pole and six (6) associated ground-mounted equipment cabinets, all surrounded by an eight- (8) foot high masonry equipment enclosure. Public hearings were held by the Planning Commission on February 5, 2009, and March 5, 2009. Notice of the time, date and place and purpose of the aforesaid was duly given. Evidence, both written and oral, was duly presented to and considered by the Planning Commission at the aforesaid public hearings. On March 5, 2009, the Planning Commission approved Conditional Use Permit Case No. 07-CUP-007 on a 3-1 vote (Commissioner Buckley Weber opposed and Vice Chair Zacuto was absent), subject to conditions, per Resolution 961.

Section 2. An appeal of the Planning Commission's approval of Conditional Use Permit Case No. 07-CUP-007 was filed with respect to the project described in Section 1, hereof. The appellant appealed the decision of the Planning Commission to allow the City Council the opportunity to review and consider this item at a scheduled public hearing. On appeal, the applicant submitted a revised plan proposing a single 45-foot high flag pole, instead of the original three (3), for review and consideration by the City Council. Public hearings on the appeal were held and public testimony was given on June 10, 2009 and September 23, 2009, and October 28, 2009 in the Council Chambers of City Hall, 30001 Ladyface Court, Agoura Hills, California. Notice of the time, date, place and purpose of the aforesaid public hearing was duly given. The applicant agreed to each continuance of the public hearing, but requested a final decision at the October 28, 2009 meeting.

Section 3. Evidence, both written and oral, was presented to and considered by the City Council at the aforesaid public hearings. The applicant was present at each public hearing with multiple representatives and gave lengthy testimony, both oral and written.

Section 4. In addition to the evidence presented during the public hearings the City Council requested, and T-Mobile constructed, an on-site mockup of the proposed antenna

structure for members of the City Council, public and staff to review. Photographic evidence was taken while the mockup was in place and presented to the City Council during the public hearing.

Section 5. Pursuant to Section 9673.2.E of the Agoura Hills Zoning Ordinance, the City Council hereby GRANTS the appeal and DENIES Conditional Use Permit Case No. 07-CUP-007 because, based on substantial evidence in the record of this proceeding, the City Council is unable to make all of the findings required to approve the application pursuant to Section 9673.2.E. Each of the following findings and statements of fact set forth herein, and independent of the others, provides legal and adequate grounds for the denial of this application, and the City Council resolves that the application is denied for any or all of the foregoing reasons. The City Council further resolves that the denial of this application would stand even if any individual finding of fact below is ultimately invalidated.

A. The proposed use, which would be constructed as an extremely tall flag pole structure on a school ground very near residential uses, is not consistent with the objectives of Article IX of the Agoura Hills Municipal Code or the purposes of the SH district in which the proposed use would be located.

1. The objectives of Article IX of the Municipal Code include fostering “a harmonious, convenient, workable relationship among land uses.” Evidence presented to the City Council indicated that the relationship between the proposed structure and adjacent land uses would be neither harmonious nor workable. A 45-foot high flag pole would cause unnecessary aesthetic impacts on the surrounding neighborhood, and could not be blended in with either the school site on which it was proposed to be located or the surrounding residences. Less intrusive alternative sites are available to meet T-Mobile’s objectives. Those alternatives include, without limitation, right-of-way locations along Thousand Oaks Boulevard that T-Mobile’s reports indicated would fill whatever coverage gap exists but were rejected by T-Mobile due to T-Mobile’s own assumption that because such locations might be more proximate to residences those right-of-way locations would be less desirable to the City. No evidence supports T-Mobile’s assumption in this regard. Further, the City Council made it clear to T-Mobile’s representatives on the record at the public hearing that less intrusive and technologically equal or superior locations were available and would be considered favorably by the City in lieu of the proposed site.

2. The proposed site is located on a school property in the SH (School) zoning district. The purpose of the SH District, pursuant to Section 9431 of the Agoura Hills Municipal Code, is to “provide for areas for public schools and playgrounds that are compatible with the neighborhood where they are located and the community as a whole.” Pursuant to Section 9432.1 of the Agoura Hills Municipal Code, the only permitted uses in the SH District are schools and their “appurtenant facilities” and “playgrounds with related uses.” There is no evidence that the proposed wireless telecommunications facility is consistent with the purposes of the SH district or even a permitted use in that district. The school and its playground are existing already. No wireless facility exists on the subject site. The only effect of this application on the school or playground would be to **reduce** the open space area on the school site itself. Further, as indicated by written correspondence from the Superintendent of Schools that was presented to the City Council, the only purpose for installing the facility on a school site is to produce revenue to the Las Virgenes Unified School District. Thus, there is no practical

“appurtenance” between the proposed wireless telecommunications facility and the school, and the proposed facility is not “related” to the playground.

B. The proposed use, as conditioned, is not compatible with the surrounding properties. The proposed antennas will be concealed within the top of an 18-inch wide galvanized steel flag pole “radome.” There being no other such structure in the vicinity of the school site, and no other structure of that height in the near vicinity, the shiny steel flag pole will literally stick out like the proverbial sore thumb in a largely residential area and on a school property without towers or poles of the same height. Evidence, including visual examination of the applicant’s mockup, indicated that the flag pole will not be fully screened by landscaping and will be visible to surrounding residents.

C. Consistent with the requirements of federal law, the City Council did not consider any oral testimony or written evidence regarding the potential health effects of emissions from this type of facility as a reason to deny the application. However, the proposed use will be detrimental to the public health, safety or welfare in that the construction of a new metal 45-foot tall flagpole structure on public property located in close proximity to residences will create a visual blight and will detract from the neighborhood character and general welfare due to the visibility of an unsightly structure from adjacent residences and public property such as the school. The applicant’s mock-up of the structure on-site as well as photo simulations amply demonstrated the potential for this visual blight.

D. The proposed use is not consistent with the goals, objectives and policies of the General Plan. The General Plan Community Design Element calls for an efficiently organized and aesthetically pleasing City. The proposed project would not meet this goal in that the construction of a 45-foot tall metal flagpole in a largely open area in close proximity to existing residences and a school is neither efficiently organized nor aesthetically pleasing. The school property on which the antenna is proposed to be located was not planned for the installation of a commercial antenna that has no relation to school activities. There is no comparable structure of the same or similar height in the near vicinity. Thus, this application would install a new and unusual structure in an area where little that is comparable exists and where planning for the use did not occur, producing significant aesthetic impacts in the surrounding neighborhood merely to meet the applicant’s optimal service wishes. The record indicated that other locations exist where an antenna would be more consistent aesthetically with its surroundings. The applicant made the sole decision not to pursue those locations despite being encouraged to do so by the City Council. Installation on existing poles in the right-of-way, unilaterally rejected by the applicant, could provide similar coverage with fewer aesthetic impacts since the poles exist already. Installation on a nearby water tower, as suggested by the City, would virtually eliminate aesthetic impacts and possibly provide superior technical coverage, yet the applicant refused to consider that alternative with the City. One or more viable alternative locations that could be less aesthetically intrusive were unilaterally rejected by the applicant. Further, the applicant did not demonstrate the “significance” of any gap in coverage this application was intended to fill. While there is some gap in T-Mobile’s coverage in a relatively small area, there was not a sufficient showing by T-Mobile that the gap is “significant.” Indeed, coverage maps show that some areas of the purported “gap” receive fair coverage in the existing condition, and some areas of the purported “gap” will still be underserved even with the installation of the proposed new antenna. Thus, the application represents a “piecemeal” approach to development of antenna

sites by the applicant. The applicant admitted at the hearing that even if this site were to be approved, T-Mobile would likely seek further approvals for additional locations in the future. Such a piecemeal approach is not an efficient approach to this type of development and suggests that T-Mobile's concerns regarding a "gap" in coverage are over-stated.

Section 6. All of the facts stated in this resolution are true and correct.

Section 7. Based on the foregoing findings, the City Council hereby grants the appeal and denies Conditional Use Permit Case No. 07-CUP-007.

PASSED, APPROVED AND ADOPTED this 10th day of November, 2009, by the following vote to wit:

AYES:            ()  
NOES:            ()  
ABSENT:         ()  
ABSTAIN:        ()

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Denis Weber, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk