



Legislation Text

File #: CPC CM1 17-00141, **Version:** 2

An appeal of the City Planning Commission's approval of the Conditional Use Development Plan for a Commercial Mobile Radio Service (CMRS) Cell Tower located southeast of the North Circle Drive and East San Miguel intersection.

(Quasi-Judicial)

Presenter:

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Summary:

Applicant: Selective Site Consultants

Owner: DWB Pioneers LLC

Location: Southeast of North Circle Drive and East San Miguel Street intersection

An appeal was filed by Tony & Lori Nieves, Harold Hopkins, Jr. and the residents of Diana Lane, Edith Lane, Bates Drive and Marion Drive regarding the City Planning Commission's approval of a Commercial Mobile Radio Service (CMRS), or cell tower, conditional use development plan application.

The conditional use supports the installation of a 55-foot freestanding stealth cellular communications tower with associated supporting ground equipment located at 1225 North Circle Drive behind the Ace Hardware building and south of East San Miguel Street.

Previous Council Action:

No previous City Council has been taken at this location.

Background:

The residents of the adjacent residential neighborhood have filed an appeal of the cellular tower installation at 1225 North Circle Drive; specifically to be located behind the existing Ace Hardware building. The CMRS tower is proposed to be designed as a 55-foot stealth monopine structure with ground based facilities situated on the property 51 feet away from East San Miguel Street and over 20 feet away from the existing Ace Hardware building. This monopine proposal is a mobile phone tower designed to look like a pine tree; it is fitted with antennas that resemble branches and the tower is synthetic bark.

The appellant has stated in the appeal letter that staff has not considered property values based on compatibility measures; including being architecturally compatible with the design, materials, color and location and that the cellular tower devalues the neighborhood quality. The appellant also states that the monopine cell tower does not provide other cellular carriers with co-location opportunity and

that the conditional use is not in conformance with the City Comprehensive Plan in that it does not further a positive relationship between the built environment and natural settings, and is not maintaining character, compatibility and minimizing of visual impact. The appeal letter is attached as Exhibit 1.

The City's zoning code does not address property values when projects are considered for land use development. Zoning only regulates the visual impact, the location, and the height and type of cellular telecommunications facilities. The applicant designed this particular tower based on the location that was agreed upon between the property owner of 1225 North Circle Drive and the applicant. Other sites were considered in this general area, however, Radio Frequency (RF) Engineers preferred this location to provide optimal coverage.

The cell tower company determined that cellular coverage was poor in home coverage for most of this residential area and average in vehicle coverage. This 55-foot stealth tower and ground based facilities installation are to improve the existing service coverage and to add capacity and service quality to existing service coverage for this neighborhood. The project will also allow for two other network carriers to collocate and provide service to cellular phone users in this area.

The monopine's designed is intended to match the adjacent trees and shrubs, and to locate the equipment away from the street view. The design has incorporated additional landscaping shrubs adjacent to the base of the tower to further screen the tower base from public view. This 55-foot stealth monopine is to include twelve panel antennas and related equipment at a centerline height of 48 feet. The stealth tower is situated 12 feet outside of the ground equipment facility area and the 6 foot high equipment compound is screened with a chain-link fence with vinyl green slats. Additional staff analysis is included in the City Planning Commission staff report.

Other concerns from the appellant is the setback distance per Section 7.4.606.B.2 and the comprehensive plan goals and objectives of maintaining a positive relationship between the built environment and natural settings. However, the applicant has designed the cellular tower facilities with the existing site conditions in mind. The existing vegetation, mature trees and shrubs, is what buffers the tower structure and the additional landscaping provided by the applicant for the site.

Section 7.4.606.B.2 states "Freestanding CMRS facilities shall comply with the side and rear yard setback requirements for principal structures of the zone district in which they are located or the setback shall be twenty percent (20%) of the height of the antenna support and associated equipment, whichever is greater. This section of the zoning code is not applicable; the cell tower fronts on East San Miguel Street which is a front yard setback, not a side or rear setback.

Several CMRS facilities have been approved by the City Planning Commission including, 2520 Arlington Drive, a 60' freestanding bell tower on a church site; 640 Manitou Boulevard, a 40' bell tower on a church site; 4280 Hopeful Drive, a 55' bell tower on a church site, and 5370 Cracker Barrel Circle, on 65' flag pole on a school site. These sites are all residentially zoned properties and are located within residential neighborhoods. Another cellular facility was approved by the City Planning Commission on 5119 Galley Road, a 65' unipole tower on an industrial site which is across the street from a residential neighborhood.

The zoning code section 7.4.604 includes a note number 4 that indicates within residential zones applications for freestanding CMRS conditional use applications allow for stealth and non-stealth

freestanding facilities within residential zones on multi-family, institutional, or nonresidential sites including churches, schools, museums, (etc.) per the City's Zoning Code Section 7.4.604. It does not permit CMRS freestanding facilities in conjunction with a single-family or two-family residential building.

Again, City zoning can only regulate the visual impact, the location, and the height and type of the cellular telecommunications facilities. The Federal Communications Commission (FCC) has the exclusive power to set the standards for radio frequency emission. The City is prohibited from denying CMRS telecommunications facilities on the basis of health concerns. The wireless providers operate within the strict frequencies and guidelines established by the FCC under the Telecommunications Act of 1996.

A "stealth freestanding CMRS facility" or a cellular tower designed to blend into the surroundings, is permitted in all commercial zone districts. However, when the request is that the CMRS stealth facility exceeds the height for the zone district a conditional use approval from the City Planning Commission is required. This C5 (Commercial) zoned property has a maximum building height of 45 feet and the project proposes a 55-foot stealth monopine tower with ground based facilities. As a comparison, the Ace Hardware building is approximately 30 feet in height.

Financial Implications:

Not Applicable

Board/Commission Recommendation:

At their regular meeting on February 15, 2018, the City Planning Commission voted 5-1, to grant the request for the CMRS conditional use development plan application. Commissioner Markewich voted in opposition, due to the location of the cellular tower in proximity to the residential neighborhood. See the minutes from the Planning Commission hearing for a full record of the discussion and decision.

Stakeholder Process:

Upon submittal of the requests; public notice was mailed to 431 property owners within a 1,000-foot radius of the subject site, and the property was posted with application and staff contact information. Twelve e-mails opposing the proposal were received in response to the postcard mailing and the property posting. A neighborhood meeting was held on January 8, 2018 and over thirty property owners and neighbors were in attendance. The neighborhood's comments are noted above in the Background discussion.

The twelve letters in opposition were received by the City Planning Staff from the residential property owners to the north of the cell tower location. A neighborhood meeting was held on January 8, 2018 to discuss the project, provide additional information for the residential neighbors.

Concerns voiced by the neighbors included health implications for neighborhood, negative effects from the towers' electromagnetic radiation, better location for the tower; view of Pikes Peak obstructed; It's an eyesore, negative effects on property value(s), interference with pace maker, loss of jobs with Ace Hardware and Cheers Liquor Mart, increase traffic in the neighborhood, and don't want a cellular tower in the neighborhood. The attached Figure 2 from the City Planning Commission staff report responses to these concerns, and also submitted additional information on radio frequency and interference control and standards compliance (Figure 5 of the City Planning

Commission staff report).

Staff sent plans to the standard internal review agencies for comments including; Colorado Springs Utilities, City Engineering, Traffic Engineering, and Water Resources Engineering. At this time, all comments received from the review agencies have been satisfied.

Alternatives:

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Grant the appeal and reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration.

Proposed Motion:

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Deny the appeal and uphold the City Planning Commission's decision to approve the CMRS conditional use development plan based upon the finding that the appellant did not substantiate that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.B, and that the conditional use meets the review criteria in City Code Section 7.5.704, and the CMRS location and design criteria as set forth in City Code Sections 7.4.607 and 7.4.608.

Not Applicable.