



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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File #: 20-0161, Version: 1

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### REPORT TO PLANNING COMMISSION

#### SUBJECT

**Proposed Project:** Appeal of a decision by the Director of Community Development to approve a Design Review (DR) for a Verizon wireless telecommunications facility on a replacement PG&E pole in the right-of-way of Richelieu Place near 574 Fort Laramie Drive. The associated ground equipment is 36' north of the replacement pole.

**Location:** PG&E pole in the right-of-way of Richelieu Place near 574 Fort Laramie Drive

**File #:** 2019-7756

**Zoning:** R-1

**Applicant / Owner:** Verizon Wireless C/O The CBR Group/ Right-of Way

**Appellant:** Chong Wang, property owner of 576 Endicott Drive

**Environmental Review:** Class 3 Categorical Exemption relieves this project from the California Environmental Quality Act (CEQA) provisions that includes installation of small new equipment and facilities in small structures (CEQA Guidelines Section 15303).

**Project Planner:** Teresa Zarrin, (408) 730-7429, tzarrin@sunnyvale.ca.gov

#### REPORT IN BRIEF

**General Plan:** Low Density Residential

**Existing Site Conditions:** PG&E pole in the right-of-way of Richelieu Place

#### **Surrounding Land Uses**

**North:** Single-family Residential

**South:** Duplex

**East:** Single-family Residential

**West:** Single-family Residential

**Issues:** Aesthetics and Neighborhood Compatibility

**Staff Recommendation:** Deny the appeal and affirm the Director of Community Development's determination to approve the Design Review, subject to the Conditions of Approval in the original approval (See Attachment 1 - DR Approval with COAs and SDRs.)

#### **SUMMARY**

Verizon proposes to install a wireless telecommunications small cell facility (wireless telecommunication facility) on a replacement PG&E wood utility pole in the public right-of-way of Richelieu Place near 574 Fort Laramie Drive. The associated ground equipment is 36 feet north of the replacement pole. The applicant provided necessary information and demonstrated compliance with the Federal Communication Commission (FCC) limit for radiofrequency (RF) emission (See Attachment 10 - RF EME Report and Attachment 11 - Revised EME Report.) In reviewing the application, staff determined that the project meets current standards of the Sunnyvale Municipal Code (SMC) and adopted Design Criteria. This project was approved by the Director of Community Development on November 22, 2019 and the decision was appealed on December 9, 2019 by the nearby property owner of 576 Endicott Drive. (See Attachment 3 - Appeal Letter.) The applicant

provided a response to the appeal. (See Attachment 4 - Applicant Response to Appeal.)

### **BACKGROUND**

Verizon Wireless (Verizon) is seeking to improve wireless voice and data coverage in the City of Sunnyvale. Verizon has applied to install 36 small cell telecommunications facilities in the right-of-way in Sunnyvale since June of 2015:

- 21 Projects Approved
  - ✓ 17 Staff-level
  - ✓ 4 Planning Commission
- 9 Pending Projects
- 6 Withdrawn Projects

There have been four appeals (to PC or CC), not including this appeal. The decision on three appeals was to uphold the original approval and one appeal is on hold. (See Attachment 13 - Right-of-Way Telecommunications Projects Since 2015.)

### **Previous Actions Taken**

**Application** - Verizon applied for a Design Review on September 19, 2019, to install a wireless telecommunication facility in the public right-of-way of Richelieu Place near 574 Fort Laramie Drive.

**14-Day Comment Period** - Staff notified property owners and tenants within a 300-foot radius of the project site and posted the notice on the proposed pole on November 6, 2019. (See Attachment 2 for the Site, Vicinity, and Noticing Map.) Per City Code requirements, the public was allowed 14 days to comment on the application and the comment period ended on November 20, 2019. Staff received comments from 13 neighbors regarding this proposal. (See Attachment 8 - Neighbors Comments-Staff and Verizon Responses.) Nine expressed concern, three were neutral (requesting more information), and one supported the project.

- The main concerns of the nine neighbors are:
  - ✓ Increased RF-EME exposure
  - ✓ Design of the equipment\*
  - ✓ Graffiti on the ground equipment
  - ✓ Pedestrian access
  - ✓ The facility should be located in a park, not in a neighborhood (the neighbors inadvertently used the design requirements from 19.54.040, for non-right-of-way projects, to critique the project instead of the City Council adopted Design Criteria in Resolution 951-19).
- One neighbor submitted a petition with 41 signatures. There were 19 signatures from Sunnyvale residents (no addresses were given). The other signatures were from other parts of the Bay Area and the U.S.A. (See Attachment 9 - Petition.)

**Approval** - Staff reviewed the application package including the proposed plans, site location and photosimulations, RF-EME Reports, the Alternative Site Analysis, and considered the neighbors' comments (See Attachments 10 and 11 for the RF-EME Reports and Attachment 12 for the Alternate Site Analysis). On November 22, 2019, staff approved the design review determining that the proposal meets the Design Criteria for a wireless telecommunication facility on utility pole in the

public right-of-way. The neighbors and applicant were notified of the approval on November 22, 2019. Staff responded to each of the neighbor's concerns either before or with the approval letter.

### **EXISTING POLICY**

(i) **Council Policy 7.2.16 - Telecommunications** : The purpose of this policy is to enable the City to retain and maintain regulatory authority within the confines of the state and federal legislation.

(ii) **SMC 19.54.160 - Telecommunication Facilities in the Public ROW:** The wireless telecommunication facilities ordinance (SMC 19.54) adopted by the City Council in 2013 includes SMC 19.54.160 which regulates telecommunication facilities in the public right-of-way. The regulations adopted by the City Council in 2012 require applications for wireless telecommunications facilities within the public right-of-way to be submitted to the Planning Division. This changed the practice prior to 2012, where all such applications were processed by the Department of Public Works through consideration of an encroachment permit.

(iii) **Resolution 951-19 (updated Resolution 626-13)** - Section (a) of the telecommunication facilities in the public right-of-way ordinance (19.54.160, above) states that the Council shall adopt by resolution Design Criteria for design review of wireless telecommunication facilities on utility poles in the public right-of-way. Resolution 626-13 was adopted in 2013 establishing the criteria for design review of wireless telecommunication facilities located in the public right-of-way and updated the criteria with Resolution 951-19 on July 16<sup>th</sup>, 2019. (See Attachment 14 - Design Criteria Resolution 951-19.)

### **ENVIRONMENTAL REVIEW**

A Class 3 Categorical Exemption relieves this project from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15303 that includes installation of small new equipment and facilities in small structures.

### **DISCUSSION**

Applications for wireless telecommunications facilities in the public ROW are reviewed using the policies and code requirements adopted by the City Council in 2013 and updated in 2019. These policies control how the applications would be reviewed (staff level or Planning Commission) and include Design Criteria. If the Design Criteria are met, the application is reviewed at the staff level (with appeal possible to the Planning Commission). If the design criteria are not met, the application is considered by the Planning Commission (with appeal or call-up possible to the City Council).

### **Design Criteria**

The Design Criteria were considered in analysis of the proposed wireless project (facility). The proposal meets the following requirements:

- **Primary View** - The facility is not in a primary view as defined by the Design Criteria.
- **Over Concentration** - The facility is not within 300 ft. of another wireless facility.
- **Visibility/Screening** - The facility is:
  - ✓ is more than 50 ft. from the corner of Fort Laramie Dr. and Alberta Avenue;
  - ✓ is next to the reducible front yards near the shared property line;
  - ✓ more than 5 ft. from a primary driveway of the residence; and,
  - ✓ adjacent to trees or foliage that provide screening.

- **Future Undergrounding** - The facility is not placed on a pole that is planned for undergrounding by the City.
- **Antennas** - The antenna is the smallest size that is technically feasible, less than 4.5 cu. ft. in volume, and streamlined to match the shape, width, and color of the pole. The 23.6" antenna appears to be an extension of the pole and has little visual impact. Given the 42' - 44' height of the antenna and the small size of the antenna, this is the least obvious component of the wireless installation.
- **Pole Height** - The facility has a pole height that is less than 65' in height (44'11") with an increase in height which is less than 12' (11'3").
- **Overhead Lines** - The proposal does not include new overhead lines.
- **Equipment Cabinets** - The ground equipment has less visual impact than pole equipment would have in this location. The mesh-style ground equipment is 42" tall, 21" wide, and 32" deep which is the smallest size that is technically feasible for ground equipment. The mesh-style is less visually intrusive and not as inviting to graffiti as a solid-style equipment box. The fence along Richelieu Place screens the ground equipment from view from the houses on the west side of Richelieu Place. The Design Criteria does not address the views from the houses across the streets from proposed project.

### **RF Emission**

The project is within in FCC general public limit for exposure to radio frequency fields. If a proposal meets the FCC standards, the City is not permitted to make additional judgments on health and safety issues. The Federal Communications Commission (FCC) is the final authority on safety of telecommunications facilities. An RF-EME Report was prepared on July 31, 2019 for the proposed facility by RF Global Safety Consultants, a consultant for Verizon. The report includes information about the resulting radio frequency emissions of the proposed facility. Per the report, the proposed facility will emit, "approximately 20.9% of the FCC's general public limit" (measured above the roof of the closest building - about 40 feet from the pole and 20 feet below the antenna face level) and therefore meets the FCC standards. The report also states that these results are, "based on worst-case scenario". (See Attachment 10 - RF EME Report.) The RF-EME Report was revised to respond to a neighbor's comment. The power density calculation method was clarified but the overall result remained unchanged. (See Attachment 11 - RF-EME Report Revised.)

The Sunnyvale Municipal Code requires the permit for the facility must be renewed with the City of Sunnyvale every 10 years. The 10-year renewal procedure includes submitting an RF study showing the facility meets the current RF emission requirements.

### **Noise**

The City did not require a noise study for the proposed site because the proposal does not include any noise emitting equipment. Equipment located on the pole does not include air handlers (such as air conditioning units), which typically create the noise from wireless telecommunications facilities located on the ground, which is not a part of the subject application. The conditions of approval in the original Design Review approval reiterate that the facility must comply with the City's noise standards (SMC 19.54.050 and 19.42.030) at all times and to prevent any unauthorized addition of noise emitting equipment in the future. (See Attachment 1 - DR Approval with COAs and SDRs.)

### **Appeal**

The property owner of 576 Endicott Drive filed an appeal of the Director of Community

Development's approval on December 9, 2019. No other appeals were received during the 15-day appeal period. The appellant's reasons for the appeal are summarized below with staff's and Verizon's comments. See Attachment 3 - Appeal Letter. See Attachment 4 - Applicant Response to Appeal.

- **Property Values** - The appellant expressed concern that the property values will decline due to the installation of the wireless facility, citing several studies that support his position.

Staff Response:

Property values are not a part of the City's review and consideration because there are no accepted criteria to determine the impact a wireless facility has on property values.

Verizon Response (Summary):

*...Some studies suggest that proximity to a wireless facility actually increases property values and cited two supporting studies: 1) "The Surprising Thing Home Buyers Care About More than Schools", Money.com, June 2, 2015. and 2) Wireless Facilities Impact on Property Values by Joint Venture Silicon Valley Network, November 2012.*

(See Attachment 16 - Wireless Facilities Impact on Property Values by Joint Venture Silicon Valley Network)

- **Co-location Requirement** - The appellant expressed concern about the design of the facility and inadvertently used the design requirements from 19.54.140 (for non-right-of-way facilities) to do an analysis on the design of this facility that is in the right-of-way.

Staff Response:

The design requirements of 19.54.140 apply to facilities on private property and do not apply to facilities in the right-of-way. The facility meets the Council-adopted Design Criteria of Resolution 951-19 for telecommunication facilities in the right-of-way. See discussion in above in the *Design Criteria* section.

Verizon Response (Summary):

*...Appellant cites Code Section 19.54.140 which applies to private property, but is inapplicable to right-of-way facilities... The Design Guidelines apply specifically to right-of-way facilities, and they do not impose collocation requirements.*

- **Public Contact**

No Communication about Design Criteria Resolution to Affected Residents: The appellant stated that during the adoption process, there was no communication about the newly adopted Resolution 951-19 to the residents who would be affected by the Design Criteria Resolution.

Staff Response: Before the City Council considered Resolution 951-19, the Planning Commission reviewed the Resolution at its June 24, 2019 meeting. The Planning Commission voted 7-0 to forward to the City Council the staff recommendation to update the Design Criteria with a modification.

Public contact regarding this item was made through the following ways:

1. Posting the Agenda for the Planning Commission on the City's official notice bulletin board outside City Hall and by making the agenda and report available at the Sunnyvale Public Library and on the City's website;
2. Publication in the *Sun* newspaper at least 10 days prior to the hearings;
3. E-mail notification of the hearing dates sent to interested parties;
4. 180 notices mailed to interested parties;
5. A Study Session with the Planning Commission held on March 25, 2019; and
6. Two outreach meetings held in the afternoon and evening on April 2, 2019.

Public contact for the Resolution approved by the City Council on July 16, 2019 was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

Design Criteria Not on the Website - The appellant stated that the Design Criteria is not on the City website. Design Criteria is posted on the City website in the in the Business and Development page in the Design Guidelines, Standards and Specific Plans Citywide Design Guidelines <<https://sunnyvale.ca.gov/business/planning/permit/standards.htm>> section at the following link:

<https://sunnyvale.ca.gov/business/planning/permit/standards.htm>

## **FISCAL IMPACT**

The City does not obtain rental income from wireless telecommunication facilities installed on joint power poles; no fiscal impacts other than normal fees and taxes are expected.

## **PUBLIC CONTACT**

### **Notice of Public Hearing**

- 242 notices and elevations were mailed to property owners and residents within 300 ft. of the project site.

### **Staff Report**

- Posted on the City's website.
- Provided at the Reference Section of the City's Public Library.

### **Agenda**

- Posted on the City's official notice bulletin board.
- Posted on the City's website.

### **Public Contact**

- Comments from Neighbors - Staff received 10 emails and 3 letters from neighbors for the original Design Review. See discussion in the, *Previous Action Taken - 14-Day Comment Period* section of this report. No additional letters have been received about this project since the appeal as of the writing of this report.

- Support of Small Cell Facilities - Staff received a letter from the Verizon Marketing Director showing the results of a text message sent to customers (on 3/23/2018) with billing addresses within ZIP codes 94085, 94086 and 94087 to tell the City,

*They support small cell facilities on existing utility poles and light standards on City streets.*

There were 418 supporters of Verizon Wireless Small Cell in the City of Sunnyvale.  
(See Attachment 15 - Verizon Customers Supporting Survey.)

## **ALTERNATIVES**

1. Deny the appeal and affirm the Director of Community Development's determination to approve the DR, subject to Conditions of Approval in the original DR #2019-7756 approval. (See Attachment 1 - DR Approval with COAs and SDRs).
2. Deny the appeal and affirm the Director of Community Development's determination to approve the DR, subject to modified Conditions of Approval.
3. Grant the appeal and reverse the Director of Community Development's determination to approve the MPP.

## **STAFF RECOMMENDATION**

Alternative 1: Deny the appeal and affirm the Director of Community Development's determination to approve the Design Review (DR), subject to Conditions of Approval in the original DR #2019-7756 approval. See Attachment 1 to the report.

Staff has determined the application meets the Design Criteria adopted by the City Council and meets the federal thresholds for RF emissions. The fence behind the ground equipment blocks the views of the ground equipment from the nearby houses. The antenna on top of the pole appears to be an extension of the pole and is the least visible element of the project at the 42'11"- 44'11" height.

The Planning Commission's action on this appeal would be final.

Prepared by: Teresa Zarrin, Associate Planner

Approved by: Andrew Miner, Assistant Director of Community Development

## **ATTACHMENTS**

1. Conditions of Approval
2. Site, Vicinity and Noticing Map
3. Appeal Letter
4. Applicant Response to Appeal
5. Applicant Cover Letter
6. Project Plans
7. Photosimulations
8. Neighbors Comments-Staff and Verizon Responses
9. Petition
10. RF-EME Report
11. RF-EME Report Revised
12. Alternative Site Analysis

- 13. ROW Projects Since 2015
- 14. Design Criteria Resolution
- 15. Verizon Customers Supporting Survey
- 16. Property Value Impact Analysis Report