




## CITY COUNCIL

## AGENDA REPORT

**TO:** Honorable Mayor and Members of the City Council

**VIA:** James DeStefano, City Manager 

**TITLE:** Resolution Denying the Appeal and Affirming the Planning Commission's Decision to Deny Conditional Use Permit (CUP) No. PL2014-518 (Cell Site at Maple Hill Park)

**APPELLANT/  
APPLICANT:** Len Jensen, Cortel (for T-Mobile West Corporation)  
29039 Oak Creek Road, Menifee, CA 92584

**PROJECT LOCATION:** 1355 S. Maple Hill Road (Maple Hill Park), Diamond Bar, CA 91765 (Los Angeles County Assessor's Parcel Number 8293-030-900)

**SUMMARY:**

On June 2, 2015, the City Council conducted a duly noticed public hearing regarding an appeal of the Planning Commission's decision to deny a request for a Conditional Use Permit to allow the installation of a new wireless telecommunications facility at a public park.

The City Council received public comments, discussed the matter, and voted 5-0 to direct staff to prepare a resolution to deny the appeal and affirm the Planning Commission's decision to deny the request based on prescribed findings.

The attached resolution contains written findings for denial of the appeal and affirms the Planning Commission's denial of a request to allow the installation of a new wireless telecommunications facility at Maple Hill Park.

Staff recommends the City Council adopt the attached resolution denying the appeal and affirming the Planning Commission's decision to deny Conditional Use Permit No. PL2014-518 based on the findings contained therein.

Prepared by:



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Josue Espino  
Assistant Planner

Reviewed by:



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Greg Gubman, AICP  
Community Development Director

**Attachment:**

1. City Council Resolution No. 2015-XX

**CITY COUNCIL  
RESOLUTION NO. 2015-XX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DIAMOND BAR, CALIFORNIA ("CITY"), DENYING THE APPEAL AND AFFIRMING THE PLANNING COMMISSION'S DECISION TO DENY CONDITIONAL USE PERMIT NO. PL 2014-518, A REQUEST TO ALLOW THE INSTALLATION OF A NEW WIRELESS TELECOMMUNICATIONS FACILITY CONSISTING OF 12 PANEL ANTENNAS, THREE (3) REMOTE RADIO UNITS, AND A 24-INCH DIAMETER MICROWAVE DISH ANTENNA ON A 65-FOOT HIGH ARTIFICIAL TREE (MONOPINE) AND ASSOCIATED ABOVE-GROUND EQUIPMENT CABINETS WITHIN A 220 SQUARE-FOOT ENCLOSURE AT A PUBLIC PARK (MAPLE HILL PARK), LOCATED AT 1355 MAPLE HILL ROAD, DIAMOND BAR, CA 91765 (APN: 8293-030-900).**

**A. RECITALS**

1. Cortell, LLC, agent for T-Mobile West Corporation, filed an application for a Conditional Use Permit No. PL 2014-518 to allow the installation of a new wireless telecommunications facility at a public park (Maple Hill Park), Diamond Bar, County of Los Angeles, California. The proposed wireless telecommunications facility would consist of 12 panel antennas, three (3) remote radio units (RRUs), and a 24-inch diameter microwave dish antenna on a 65-foot tall monopine structure and associated above-ground equipment cabinets proposed to be located within a 288 square-foot area consisting of a 9'-5" high, 220 square-foot split face block enclosure structure. The proposed 65-foot tall monopine structure would be located on top of a landscaped knoll on the southeast side of the tennis courts within the park. Improved picnic areas are located to the east of the tennis courts near the proposed locations of the monopine and equipment cabinet structure. When viewed from the street, the proposed monopine would appear to be located within a cluster of existing deciduous trees. Hereinafter in this Resolution, the proposed Conditional Use Permit and new wireless telecommunications facility are collectively referred to as the "Project."
2. The subject site is a 5.43 gross acre public park (Maple Hill Park) owned by the City of Diamond Bar. The property is legally described as a Portion of Lot 93 of Tract 31038, and the Assessor's Parcel Number (APN) is 8293-030-900. It is located in the Low Medium Density Residential (RLM) zone with an underlying General Plan land use designation of Park. Maple Hill Park is surrounded on three sides by single-family residential homes and by Maple Hill Elementary School to the east, and its amenities are frequently used by residents of the surrounding residential neighborhoods and students from Maple Hill Elementary School.
3. The applicant has no legal interest in the property on which the proposed Project would be located. The City Manager of the City of Diamond Bar initially consented to the filing and processing of the Project by the applicant, upon

condition that, should the proposed Project be approved, the applicant would still need to obtain the City Council's consent for use of Maple Hill Park and to enter into a mutually acceptable license with the City.

4. On March 10, 2015, the Planning Commission of the City of Diamond Bar conducted a duly noticed public hearing, solicited testimony from all interested individuals, discussed the matter, concluded said hearing on that date, and voted unanimously to direct City staff to prepare a Resolution denying the application for Conditional Use Permit No. PL 2014-518 based on the facts and information contained in the oral and written record.
5. On March 24, 2015, the Planning Commission of the City of Diamond Bar adopted Resolution No. 2015-06, denying the requested Project. A copy of Planning Commission Resolution No. 2015-06 is on file in the office of the City Clerk, was concurrently submitted in the agenda materials for this matter, and is included within the administrative record of the proceedings reviewed by the City Council.
6. By letter to the applicant, on April 2, 2015, executed by the City Manager, the City, as property owner of the park, rescinded its consent for authorization to pursue the Project.
7. On April 3, 2015, the applicant filed an appeal of the Planning Commission's decision to deny the Project.
8. On May 21, 2015, public hearing notices were mailed to property owners within a 1,000-foot radius of the project site, and on May 22, 2015, the notice was published in the San Gabriel Valley Tribune and Inland Valley Daily Bulletin newspapers. A notice display board was posted at the site, and a copy of the notice was posted at the City's three designated community posting sites.
9. On June 2, 2015, the City Council of the City of Diamond Bar conducted a duly noticed public hearing, solicited testimony from all interested individuals, and concluded said hearing on that date.
10. The documents and materials constituting the administrative record of the proceedings upon which the City's decision is based are located at the City of Diamond Bar, Community Development Department, Planning Division, 21810 Copley Drive, Diamond Bar, CA 91765.

## **B. RESOLUTIONS**

NOW, THEREFORE, it is found, determined and resolved by the City Council of the City of Diamond Bar as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based on the findings and conclusions set forth below, and upon the facts findings and reasons set forth in Planning Commission Resolution No. 2015-06,

the Applicant's appeal is hereby denied, the Planning Commission's decision is affirmed, and Conditional Use Permit No. PL 2014-518 is hereby denied.

3. Because the application is denied, the Project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the provisions of Article 19, Section 15270(a) of the CEQA Guidelines.

### **C. FINDINGS OF FACT AND CONCLUSIONS.**

Based upon the totality of the information provided and substantial evidence in the administrative record, the City Council finds and determines as follows:

1. The City Manager has withdrawn the City's consent for the applicant to process the application. The City Manager was authorized to withdraw that consent and the City Council hereby affirms and ratifies the City's withdrawal of consent. The City of Diamond Bar owns the subject site on which the Project is proposed to be located and without the property owner's consent and without a license agreement as between the City and the Applicant for the use of City property, the Applicant has no authority to construct the Project. The Applicant is not an owner of the property, is not a lessee of the property, and has not contracted to purchase or lease the property contingent upon acquisition of necessary permits from the City. Accordingly, the Applicant is no longer within the categories of persons authorized to pursue an application for a land use permit pursuant to Diamond Bar Municipal Code (DBMC) Section 22.44.030 or real property law. On this basis alone the Project is denied.
2. The City Council concurs with the Planning Commission's determination and comments received during the public hearing, that due to its size, type and location, the proposed wireless telecommunications facility will not be compatible with the public's use of Maple Hill Park for park purposes or with the surrounding residential land uses. Maple Hill Park was acquired by the City with a deed restriction that it be used solely for park purposes. While permitting cell towers in public parks may further a park purpose, for instance, the revenue generated is used to help maintain the park, cell towers should be sited so that they don't interfere with the use of the park by the public. The City Council concludes that the proposed type and size of wireless telecommunications facility proposed is inappropriate for the proposed location within Maple Hill Park and inconsistent with the deed restricting the City's use of Maple Hill Park for park purposes due to the relative small size of Maple Hill Park and testimony from the public during the hearing that the area proposed for the Project is used by the public. On this basis alone the Project is denied.
3. The Applicant's evidence that there was a significant gap in the ability of remote users of Applicant's service to access the national telephone network was rebutted by the public testimony. In particular, the public presented maps from Applicant's own website which contradicted the coverage maps presented by the Applicant. The coverage maps produced during the public testimony show that the Applicant is representing on its website that it has connectivity in most homes as verified by customer data. The Applicant did not produce any evidence of the call failure rate within its alleged significant

gap area. Therefore, the evidence was inconclusive as to whether there was in fact a significant gap in Applicant's coverage.

4. Based on the above, the following three (3) findings required for approval of a Conditional Use Permit pursuant to DBMC Section 22.58 cannot be made:
  - "3. The design, location, size and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity;"
  - "4. The subject site is physically suitable for the type and density/intensity of use being proposed including access, provision of utilities, compatibility with adjoining land uses and the absence of physical constraints;" and
  - "5. Granting the Conditional Use Permit will not be detrimental to the public interest, health, safety, convenience or welfare, or materially injurious to persons, property or improvements in the vicinity and zoning district in which the property is located."

The facts and reasons supporting this determination include the following:

*The proposed new freestanding wireless telecommunications facility would be located in Maple Hill Park. Maple Hill Park is a relatively small, but intensively used, 5.43-acre Public Park containing many amenities, including tennis courts, picnic areas, playground equipment and open fields. Maple Hill Park is surrounded on three sides by single-family residential homes and by Maple Hill Elementary School to the east, and, according to testimony provided at the public hearing, its amenities are frequently used by residents of the surrounding residential neighborhoods and students from Maple Hill Elementary School. The proposed 65-foot monopine would be highly visible to users within the park and some of the residential properties adjacent to the park.*

*Although the proposed monopine would appear to be located within a cluster of existing natural trees when viewed from the street, these trees are of deciduous varieties and there are no existing pine trees or other trees of an evergreen variety located near the location of the proposed monopine to act as screening material during periods when the surrounding trees have no leaves. As a result, the proposed 65-foot monopine would stand out, especially in winter months, and would not blend into the surroundings or be adequately screened from the view of park users or surrounding residential properties. In addition, the location of the proposed monopine and block wall enclosure structure would be near to areas at which people congregate and that are frequently used by the public, including a picnic area frequently used by park patrons for birthday parties and other gatherings. The proposed facilities would be highly visible from these areas. In sum, the Project is not the least intrusive feasible means for the provision of cell service.*

*The proposed monopine is too prominent to be located in Maple Hill Park, which is a relatively small neighborhood park immediately adjacent to*

residential uses. The City has previously approved the installation of wireless telecommunications facilities in three other public parks within the City: Peterson Park, Pantera Park, and Diamond Bar Center; but each of these three other parks are larger than Maple Hill Park and the types of wireless telecommunications facilities approved are of a different character than the proposed Project. For instance, the wireless telecommunications facilities located in Peterson Park (16.5 gross acres) and Pantera Park (23 gross acres) are co-located near the top of sports field light poles, 80 feet tall or higher, at the perimeter of associated ball fields and do not involve artificial tree structures. Additionally, the equipment enclosures are located in secluded areas, away from intensively used space at the respective parks. As noted, these parks are over triple and quadruple the size of Maple Hill Park and are capable of aesthetically integrating wireless facilities. At Diamond Bar Center, there are two 45-foot tall "monoelms" containing co-located facilities located at the northern edge of a far-off parking area, not adjacent to high volume usage areas. The proposed 65-foot mono-pine is significantly taller than the monoelms located at the Diamond Bar Center and would have a significantly greater visual impact than the facilities co-located on light poles at Peterson Park and Pantera Park, as well as the monoelms at the Diamond Bar Center.

Residents in the neighborhood and/or active users of Maple Hill Park indicated the Project would spoil the aesthetics of the neighborhood park and would interfere with the use of the park by the public because the Project is proposed in areas currently used by the public and are not set off in remote locations.

Pursuant to DBMC Section 22.42.130, "the extent to which the proposed facility blends into the surrounding environment," "the extent to which the proposed facility is screened or camouflaged by existing or proposed topography, vegetation, buildings, or other structures," and "the total size of the proposed facility, particularly in relation to surrounding and supporting structures" are all factors the City is required to consider in evaluating an application for a Conditional Use Permit for a wireless telecommunications facility. Based on the facts stated above, the City Council concurs with the Planning Commission's determination that all three of these factors suggest that the proposed type and size of wireless telecommunications facility proposed is inappropriate for the proposed location within Maple Hill Park and dictate against approving the proposed Conditional Use Permit.

The City Council shall:

- (a) Certify to the adoption of this Resolution; and
- (b) Forthwith transmit a certified copy of this Resolution, by certified mail to the Appellant: Len Jensen, Cortel (for T-Mobile West Corporation), 29039 Oak Creek Road, Menifee, CA 92584

**D. RELIANCE ON RECORD.**

Unless otherwise provided, each and every one of the findings and conclusions in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and conclusions constitute the independent findings and conclusions of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole. Unless otherwise provided, all summaries of information in this Resolution are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

APPROVED AND ADOPTED THIS 16th DAY OF JUNE 2015, BY THE CITY COUNCIL OF THE CITY OF DIAMOND BAR.

BY: \_\_\_\_\_  
Steve Tye, Mayor

I, Tommye Cribbins, City Clerk of the City of Diamond Bar, do hereby certify that the foregoing Resolution was duly introduced, passed, and adopted by the City Council of the City of Diamond Bar, at a regular meeting of the City Council held on the 16th day of June 2015, by the following vote:

AYES: Council Member:

NOES: Council Member:

ABSENT: Council Member:

ABSTAIN: Council Member:

ATTEST: \_\_\_\_\_  
Tommye Cribbins, City Clerk  
City of Diamond Bar