

## ATTACHMENT 2

### EXCERPT FROM PLANNING AND ZONING COMMISSION MINUTES OCTOBER 26, 2010 MEETING DRAFT MINUTES NOT YET APPROVED BY THE COMMISSION

#### **6c. 423 San Pablo. Planning Application #09-031. Conditional Use Permit. Design Review**

The applicant requests City approval to allow the replacement of four existing wireless communication antennas with new antennas located on an existing 65-foot high monopole.

*Recommendation: direction to staff and applicant and continue to November 9 2010 Commission meeting.*

Planning Manager Bond delivered the staff report. Vice Chair Moss opened the public hearing and invited the applicant to make a presentation. Joe Parker, attorney representing the applicant stated that the original application did add antenna but the application was modified when Verizon determined that new antennas are not necessary for the network. Mr. Parker stated that the applicant felt the proposed work was authorized by the Municipal Code and likens the work to replacement of tires on a car, and the FCC regulates technologies and frequencies. He also agreed to submit an RF study at the end of the project. He also stated that the applicant intends to install new mounting bracket and paint the pole to improve appearance. He also stated that original authority was for panels 6 ½ feet in height and the size was reduced to 48 inches five or six years ago.

Ed Fields, Albany resident spoke stating that there are multiple antennas in each fixture and that the application is not about appearance but about adding new technology to a non-conforming site. Maureen Crowley, Albany resident spoke, expressing concern about the tower leading. She also stated that the tower is very close to the apartment next door and said that El Cerrito Plaza may be a better location. Francis Chapman, Albany resident disagreed with the analogy to tires, and compared the proposal to an upgrade of computer components that changes the performance of a computer. Clay Larsen, Albany resident, stated that he believes there is not enough detail to understand whether there is an upgrade in service.

Joe Parker, attorney representing the applicant, said that the intent was to improve performance. He also stated that there might be an opportunity in the future to talk about removal of the pole if there is new development nearby. Vice Chair Moss asked question about the size of the antennas. Joe Parker and Jason Osborn, representing the applicant responded. No one else wished to speak. Vice Chair Moss closed the public hearing.

Commissioner Panion stated that he does not see a trigger in the code that requires an elimination of grandfather use and that the proposal is close to the threshold of maintenance. Commissioner Maass expressed concern about cavalier actions by the contractors to begin to install the antennas, but stated that work strike him more as maintenance. Vice Chair Moss expressed concern that the work is an alteration. Greg Stepanicich, Legal Counsel for the City noted for the record that the application for six antennas has been withdrawn by the applicant.

Vice Chair Moss briefly re-opened the public hearing. Mr. Parker stated that the comment to modify the brackets was intended to do harm, and can be withdrawn. Ed Fields reiterated that they are adding new antennas, which represents an enlargement in non-conforming use.

Commissioner Panion requested clarification regarding action to be taken. City's legal counsel stated that action to authorize staff to approve is different from motion to approve a conditional use permit. Vice Chair Moss noted that have not heard from the applicant regarding the withdrawal of the conditional use permit application. Jason Osborne, representing the applicant, stated for the record that they formally withdraw the conditional use permit application for two additional antennas.

Commission Panion made a motion for staff to resolve the application with the explicit direction that an RF emission study be done on the new equipment to ensure operating within limits and that a geotechnical report and structure report be prepared. Commissioner Panion also stated that the ordinance should be revisited to address these issues. Commissioner Maass seconded the motion.

Vote item **6c**:

Ayes: Maass, Moss, Panian

Nays: None

Motion passed, 3-0.