

City of Albany

1000 San Pablo Avenue • Albany, California 94706
(510) 528-5710 • www.albanyca.org

February 18, 2011

Gary Gochberg
Crown Castle
5820 Stoneridge Mall Rd, #300
Pleasanton, CA 94588

Subject: Application at 423 San Pablo for Use Permit for Wireless Antenna Installation

Dear Gary,

Thank you for submitting your application on January 20, 2011.

As discussed at the December 13, 2010 City Council meeting, Section 20.20.100F5.a.(3) of the Planning and Zoning Code allows Crown Castle to seek an exception to the height limitation that otherwise makes an upgrade to the wireless facility at 423 San Pablo nonconforming. In order for the Commission to take such action, information in the record is required to support the finding that no feasible alternative solutions that to meet the city's standards.

In particular, we will need Crown Castle and Verizon's cooperation to evaluate whether alternatives exist to the upgrade of the nonconforming facility that would allow Verizon to obtain adequate radio frequency signal reception. I would like to confirm that the City will be utilizing the consultant services of the Center for Municipal Solutions (CMS) to assist staff in the evaluation of this information. I know that Rusty has been in touch with you and your cooperation in this analysis with Rusty Monroe of CMS will be appreciated.

In addition, last year a structural analysis of the pole was provided to the City. In order to evaluate the analysis, we will need to confirm that the engineer is aware of local soil conditions and that the existing facility is not plumb. The most expedient way to resolve these questions would be to provide us the contact information for the registered California engineer that reviewed the structural analysis of the pole so that we can contact them directly.

Until the required information is provided to the City, we will consider your application incomplete.

Regards,

Jeff Bond

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CITY OF ALBANY

MAR 01 2011

COMMUNITY DEVELOPMENT
DEPARTMENT

email@shufirm.com
www.shufirm.com

February 28, 2011

VIA OVERNIGHT MAIL

Jeff Bond, Planning and Building Manager
City of Albany Community Development
1000 San Pablo Avenue
Albany, CA 94706

Rusty Monroe
The Center for Municipal Solutions
3113 Billiard Ct.
Wake Forest, NC 27587

**Re: *Crown Castle*
Albany - BUN 814025**

Gentlemen:

On behalf of my client, Crown Castle, this letter shall confirm that more than 30 days have passed since Crown Castle's submission of the application to the City of Albany on January 20, 2011. The application has therefore been deemed "complete" by operation of law pursuant to the Permit Streamlining Act (California Government Code §65920 et. seq). Pursuant to the Act, upon receipt of a project application containing a statement identifying the application as being for a "development permit," an agency has **30 calendar days** to notify the applicant, in writing, of whether or not the project application is complete enough for processing. If the agency fails to notify the applicant of completeness within the 30-day period, the application is deemed to be complete (§65943, *Orsi v City Council* (1990) 219 Cal. App. 3d 1576). This letter shall also serve as formal demand that the City comply with its obligation to process the application to hearing within 90 days of the filing of the application pursuant to the FCC "Shot Clock Doctrine."

If you have any questions, please give me a call

Very truly yours,



Joseph M. Parker

SHUSTAK FROST & PARTNERS

Jeff Bond and Rusty Monroe
February 28, 2011
Page 2 of 2

cc. Jon Dohm, Zoning Manager, West Area,
Gary Gochberg, Zoning Specialist;
Cynthia Qualtre, District Manager, SFO (all are Crown employees)



<http://www.crowncastle.com>

Gary Gochberg (Contractor)
Zoning Specialist
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CITY OF ALBANY

APR 11 2011

COMMUNITY DEVELOPMENT
DEPARTMENT

April 11, 2011

Jeff Bond, Planning and Building Manager
City of Albany Community Development Department
1000 San Pablo Avenue
Albany, CA 94706

Subject: Application at 423 San Pablo for Use Permit for Wireless Antenna Replacement

Dear Mr. Bond,

In your letter of February 18, 2011, you asked us to address three issues: 1) feasible alternative solutions relating to the height standard; 2) confirmation that the structural engineer deployed by Crown is aware of local soil conditions; and 3) confirmation of the engineer's awareness that the monopole is not plumb. We respond as follows:

1. Feasible Alternative Solutions: On December 13, 2010, Crown Castle was directed by City Council to apply for the CUP requested in this application. This directive occurred in connection with City Council's granting of its own appeal of the Planning and Zoning Commission's (the "Commission") unanimous approval of the proposed activity which was heard by the Commission on October 26, 2010. Similar to the Commission, Crown Castle disagrees that a CUP is required for the proposed activity. Crown Castle is also of the opinion that the CPUC has original and primary jurisdiction over this project, and such original approval includes authorization to perform the proposed activity. Nevertheless, in the spirit of cooperation, Crown Castle filed the requested application, but did so under protest for this reason, and for reasons related to jurisdictional issues germane to the PUC's original approval of this project.

On behalf of Verizon Wireless, Crown Castle has concluded that there are no feasible alternative solutions that satisfy the specific goal of Verizon's project request and achieves conformance with the existing height standard. This project is not a request to construct a new site but is a simple "like for like antenna swap" on the existing monopole. The specific "project" is a request to replace existing antennas at this site, as opposed to the search for a new service location in the immediate area. The project has been found to be exempt from CEQA and consists of routine replacement of existing antennas, which involves no negative visual impact to the surrounding neighborhood. The height cannot be reduced without substantially impairing or negating the existing coverage provided by both Verizon and Metro who operate at this facility. If the height was reduced to the current standard, additional facilities for both carriers would have to be constructed in the neighborhood to replace the coverage currently being provided. We have also determined that there are no additional Verizon sites located within the vicinity of this monopole which would accommodate the installation of additional antennas to replace this loss of coverage. Accordingly,

constructing additional infrastructure for two carriers to accommodate this simple "like for like" replacement of Verizon's existing antennas is not practical, nor a feasible alternative solution for the proposed activity.

2. Confirmation Regarding Knowledge of Local Soil Conditions: Per your request, we have confirmed that the engineer is aware of the local soil conditions. The Geotechnical Report referenced in the Structural Analysis (see #3, Analysis Procedure) is attached for your review.

3. Confirmation Regarding Knowledge that the Facility is not plumb: Per your request, we have confirmed that the engineer is aware that the facility is not plumb. For your convenience, we have attached a revised structural analysis addressing your inquiry. Please refer to assumption #6 on page 4 and the p-delta comment on page 10. We also note that Joe Parker, the attorney representing the applicant, stated at the October 26, 2010 Commission hearing and at the December 13, 2010 appeal hearing that Crown Castle would be willing to re-design the monopole, which would not only improve its current appearance but also address the plumb issue for the city.

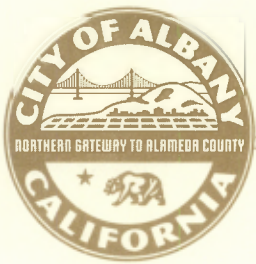
We trust this resolves your questions and that the city can deem the application complete for processing and set the matter for hearing.

Thank you,



Gary Gochberg

cc: Cynthia Qualtire (District Manager)
Jon Dohm (Zoning Manager)
Joseph M. Parker, Esq. (Crown Castle Counsel)
Peter Maushardt (Verizon)



City of Albany

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May 10, 2011

Gary Gochberg
Crown Castle
5820 Stoneridge Mall Rd, #300
Pleasanton, CA 94588

Subject: Application at 423 San Pablo for Use Permit for Wireless Antenna Installation

Dear Gary,

Thank you for submitting your correspondence dated April 11, 2011.

In order for the City to take action on your application, the contents of your application need to be complete. In particular, as mentioned in my previous letter dated February 18, 2011, for the Commission to consider approval of your project, factual information needs to be in the administrative record in order to support a finding that no feasible alternative solutions meet the city's standards. Specifically, an analysis of the area around the existing facility should be prepared evaluating whether or not a feasible alternative exists. In addition, an analysis should be prepared showing whether or not the desired coverage can be achieved by placing the antenna installation lower on the existing pole.

I would recommend that our technical consultant, Center for Municipal Solutions (CMS), be consulted in advance of preparing a response to this request. This approach will help ensure that the information provided addresses our needs and allows us to process your application in the most timely manner possible.

Regarding the structural report, there is a minor issue in that the structural report refers to the 2009 California Build Code. There has never been a 2009 California Building Code, and the engineer should be applying the 2010 California Building code to reach their conclusions.

Until we have information, we will need to continue to consider your application incomplete. I would be happy to discuss this in more detail at your convenience.

Regards,

Jeff Bond

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<http://www.crowncastle.com>

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gary.gochberg.contractor@crowncastle.com

CITY OF ALBANY

JUN 02 2011

**COMMUNITY DEVELOPMENT
DEPARTMENT**

June 2, 2011

Jeff Bond, Planning and Building Manager
City of Albany Community Development Department
1000 San Pablo Avenue
Albany, CA 94706

Subject: Application at 423 San Pablo for Use Permit for Wireless Antenna Replacement

Dear Mr. Bond,

In your second incomplete letter of May 10, 2011, you asked that we provide feasible alternative analysis around the existing facility and suggested that we contact the Center for Municipal Solutions ("CMS") for this purpose. You also asked that we supply a revised structural report applying the 2010 California Building code. We respond as follows:

Feasible Alternative Solutions around the existing facility: Conducting an alternative site analysis for this project is an unnecessary and impractical requirement for the application to be deemed complete. Nevertheless, we did provide a response to this question in our first response letter. This issue has been addressed. This project is not a request to construct a new site. It is merely a request to replace existing antennas with new antennas of a similar shape and size for Verizon Wireless, one of two carriers operating at the existing facility. The antennas cannot be installed at a different location without having to relocate the entire facility. Nonetheless, in the spirit of cooperation, Verizon did evaluate the three additional wireless facilities that it owns and operates within the vicinity of the Albany facility. None of these sites are in close proximity to the subject site, and relocating 4G antennas to these facilities is not a feasible option for either coverage or capacity purposes. These sites are too far away to fill the gap in 4G coverage that now exists at the Albany site. Moreover, any suggestion that relocating this wireless facility to another location also completely discounts the fact that MetroPCS is currently installed on this facility and is also not willing to relocate. Thus, requiring relocation of the entire facility to accommodate a "like for like" swap-out of antennas is simply not a "feasible alternative solution".

Further, please be advised that the height of the current facility cannot be reduced without substantially impairing or negating the existing coverage and capacity for Verizon. The same is also true for Metro, who is already operating at its minimum allowable height below the Verizon antennas. Thus, any change in the height of Verizon's antennas would require lowering of Metro's antennas which would negate Metro's coverage in its entirety.

Contact with the Center for Municipal Solutions (CMS): We appreciate your suggestion, but consulting with CMS for this simple "like for like" swap of antennas is unnecessary since relocation of the facility is not feasible. As noted above, the concept of alternative site analysis, while perhaps applicable to new sites, does not apply to the proposed project. Therefore, we see no need to expend additional time and money consulting with CMS.

Supply a revised structural report applying the 2010 California Building Code: We have attached a revised structural report applying the 2010 California Building code provided.

We trust our letter this adequately responds to your inquiry. We ask that you deem the application complete and set the matter for hearing without any further delay. Time is of the essence--the gap in coverage that currently exists is affecting the quality of service being provided to the residents and merchants of Albany, and therefore we wish to move to hearing as soon as possible.

Thank you for your anticipated cooperation. If you have any questions, please give me a call.



Gary Gochberg

cc: Cynthia Qualtire, Crown Castle
Jon Dohm, Crown Castle
Joseph M. Parker, Esq., Counsel for Crown Castle
Peter Maushardt, Verizon Wireless



City of Albany

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June 21, 2011

Gary Gochberg
Crown Castle
5820 Stoneridge Mall Rd, #300
Pleasanton, CA 94588

Subject: Application at 423 San Pablo for Use Permit for Wireless Antenna Installation

Dear Gary,

I have reviewed your letter, dated June 2, 2011, which was written in response to my letter of May 10, 2011 advising you that your application remained incomplete. In particular, I asked that a survey of the area around the existing facility be prepared evaluating whether or not a feasible alternative exists to the current legal nonconforming antenna site and that an analysis be prepared showing whether or not the desired coverage can be achieved by placing the antenna installation lower on the existing pole. Your letter makes it clear that Crown Castle is not willing to conduct these additional studies and instead will rely upon the information submitted to date.

In order for the Planning and Zoning Commission to grant an exception to the Development Standards, Crown Castle has the burden of showing that strict compliance with the development standards would not provide for adequate radio-frequency signal reception and that no other alternative solutions that would meet the Development Standards are feasible. Although I continue to believe that the additional requested information is necessary to fully address the criteria for the granting of an exception, pursuant to your request the City will accept the above-referenced application as complete as of today's date under the state Permit Streamlining Act and the FCC ruling regarding the time period for acting upon wireless siting applications. By the City accepting the application as complete, neither the Planning and Zoning Commission nor the City Council are waiving any rights they may have to determine that such studies are necessary in order to grant your application.

I will notify when a hearing date has been scheduled before the Planning Commission on the application.

Regards,

Jeff Bond
Planning and Building Manager

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July 26, 2011

RE: Opposing upgrade of cellular antennas at 423 San Pablo Ave. (Planning Application #11-004 for 7/26/11 Planning & Zoning Commission agenda)

To the Members of the Planning and Zoning Commission:

This letter is in reference to Planning Application #11-004. The applicant, Crown Castle, seeks to upgrade cellular antennas on the legally non-conforming monopole at 423 San Pablo Avenue.

We believe the Planning and Zoning Commission should deny this application based on:

- the requirements of Section 20.20.100 of the city's Planning and Zoning Code for wireless telecommunications facilities
- the City Council's denial of the same application on December 13, 2010 based on the determination that the application is not for routine maintenance but an upgrade of a legally non-conforming cell tower.

The monopole is legally non-conforming because it exceeds the height limit for the zoning district and does not meet the code's requirements for aesthetic screening of cellular antenna sites. In addition, the pole does not meet the code's intent of a minimum setback of 50' from a residential use (it is located less than 15' from an apartment building).

Crown Castle's requested upgrade would expand the number of Verizon antennas from 4 to 6 (although the new installation would be designed to look like only 4 antennas through the use of antenna housings that appear single but contain two antennas). The new antennas would provide an entirely new service, long-term evolution (LTE), as shown in the coverage maps accompanying the application. One seemingly minor detail of the application that makes clear that the applicant is seeking an upgrade is the proposal to add 8 new coaxial cables to serve the additional antennas. This is clearly not a "like for like" replacement of antennas, as asserted by the applicant in correspondence in the packet for tonight's meeting.

Under the wireless telecommunications portion of the city code, only routine maintenance is allowable on a legally non-conforming cell tower that was in use at the time the ordinance was passed, as is this case with this monopole. Modifications and upgrades are not permitted.

Verizon is entitled to provide its new LTE service to Albany but is not entitled to locate the new LTE antennas on this legally non-conforming (and aesthetically offensive) monopole. The antennas must be located at a site that conforms to code requirements.

As the staff report for this application notes, and as the City Council made clear when it voted to deny this application last December, the only way an applicant could seek an exemption from the wireless ordinance's prohibition of an upgrade at this site would be to demonstrate, through a thorough, factual analysis of alternative solutions, that there are no other feasible sites from which cellular service could be provided.

The applicant has not preformed this required study. The assertion (in the applicant's correspondence that is part of tonight's packet) that the applicant has determined that other nearby existing Verizon could not house the new antennas is not a sufficient analysis of alternative sites. As laid out in detail in Section 20.20.100F4.b.(2) of the wireless telecommunications portion of the city's planning and zoning code, an alternatives analysis must, among other things:

Identify and indicate on a map, at a minimum, two (2) viable technically feasible, and potentially environmentally equivalent or superior alternative locations outside the prohibited and restricted areas which could eliminate or substantially reduce the need to locate in a restricted area. If there are fewer than two such alternative locations, the applicant must provide evidence establishing that fact. The map shall also identify all locations where an unimpaired signal can be received to eliminate or substantially reduce the need for such a location..."

and

"Document good faith and diligent attempts to rent, lease, purchase or otherwise obtain the use of at least two (2) of the viable, technically feasible alternative sites which may be environmentally equivalent or superior to the proposed project site."

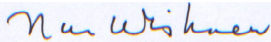
In the words of one experienced wireless consultant: "there is *always* an alternative location."

The roof of El Cerrito Plaza, for example, is an appropriate commercial site that is very close to and appears at least equivalent if not higher in elevation than the location of this tower, and hosts other cellular antennas. This is only one example of a reasonable alternative site that should have been examined in a thorough alternatives analysis. The Plaza site would be especially appropriate to consider because the 423 San Pablo tower, although located in Albany, is extremely close to the El Cerrito border and at least some of the coverage from the antennas on this tower is clearly directed into El Cerrito. Albany's wireless telecommunications ordinance requires that facilities located in Albany be for the purpose of serving Albany residents.

Why would Crown Castle refuse to do the alternatives analysis that the city code requires? One logical answer is that Crown Castle has no interest in performing an analysis that would show that its current tenant, Verizon, could feasibly locate the new antennas at other sites not owned by Crown Castle.

I regret that I cannot attend tonight's meeting. Please contact me if you have questions.

On behalf of ARROW:


Nan Wishner

From: [Francis Cebulski](#)
To: [Leo Panian](#); [Phillip Moss](#); [David Arkin](#); [Peter Maass](#); [Stacy Eisenmann](#)
Cc: [Jeff Bond](#)
Subject: Re: Crown Castle Application to Upgrade Antennas at 423 San Pablo Avenue Cell Tower
Date: Monday, July 25, 2011 1:27:43 PM

Dear Planning and Zoning Commissioners:

I am writing regarding item 6A on your July 26, 2011 agenda, to urge you to deny Planning Application 11-004, a request by Crown Castle to upgrade antennas on the non-conforming monopole at 423 San Pablo Avenue for the following reasons:

- This application seeks to upgrade Verizon's installation on this pole from 4 to 6 antennas (using two devices that appear to be a single device but contain "two antennas in one"). This upgrade would provide an entirely new service, Long Term Evolution (LTE), as indicated in the coverage maps accompanying the application. Although Crown Castle states that this is a "like for like" replacement of antennas, it is, in fact, a significant upgrade that would extend for years or even decades, the life of this non-conforming monopole.
- This application is identical to the application previously denied by the City Council at its appeal hearing in December 2010. The Council determined at that time that the proposed upgrade and modification of the Verizon antennas is not "routine maintenance," which would be the only alteration that the city's wireless telecommunications ordinance allows on this monopole, which is non-conforming because it exceeds the height limit for this zoning district.
- Under the city's wireless ordinance, the only way Crown Castle/Verizon could obtain a permit to upgrade the antennas on this monopole would be, as the staff report points out, to prove, by means of a detailed, complete, and factual alternatives analysis, that there is no other feasible location from which Verizon could provide service to residents of Albany.
- Crown Castle's correspondence indicates that the company has refused to prepare the required alternatives analysis, insisting that the application is not an upgrade despite the City Council's previous determination that it is.
- In the absence of the required analysis, the Commission has no choice but to deny the application. Verizon is entitled to provide its new LTE service to Albany residents but is not entitled to upgrade its facilities to provide that service on this particular non-conforming pole.
- Other wireless carriers have antennas on the roof of El Cerrito Plaza a few hundred feet from this tower. This is only one reasonable alternative site that should have been examined in a viable alternatives analysis, particularly because at least a portion of the coverage from this tower, which is at the Albany-El Cerrito border, is clearly aimed at El Cerrito, and our ordinance requires that facilities located in Albany be for the purpose of serving Albany residents.
- It is worth noting that Crown Castle, which owns the monopole, is the applicant for this permit and logically has little or no interest in performing an analysis that would show viable alternative sites not owned by Crown Castle where the Verizon antennas could be located in compliance with the requirements of our ordinance.
- This tower is visibly leaning; its out of plumb status raises safety questions that do not appear to be addressed in the engineering reports provided by Crown Castle in response to the city's inquiries regarding the tower's structural integrity and safety

Thank you for upholding the provisions of our wireless ordinance, which are intended to mitigate the visual, aesthetic, and public safety impacts of towers such as this one. My wife and I are longtime Albany residents and homeowners, having lived in Albany since 1980, where all our children attended schools.

Sincerely,

Frank Cebulski

627 Talbot Avenue

Albany, CA 94706-1307

510.526.6061 home

510.334.3195 mobile

Email: cebulski@pacbell.net

From: mpbridgeway@comcast.net
To: [Jeff Bond](#)
Cc: [Chris Hunter](#)
Subject: Verizon Tower at 423 San Pablo Ave
Date: Friday, July 22, 2011 5:50:14 PM

Hi Jeff,

We received the notice regarding the cellular telephone tower proposed changes. We can understand this construction companies and Verizons need to upgrade the tower. Still, we would like to understand how Crown Castle, LLC plans to access the tower for construction and maintenance of the existing cellphone tower adjacent to our parking lot and building? Will their construction crew park their vehicles on the street? How will they manage their time and equipment? Will their work cause egress or a disruption to our business and privacy problems for our patient care needs?

We may have trouble attending this meeting Tues evening.

Patricia & Michael Doucet

MP Bridgeway Properties

From: efields@berkeley.edu
To: [Leo Panian](#); [Phillip Moss](#); [David Arkin](#); [Peter Maass](#); [Stacy Eisenmann](#)
Cc: [Jeff Bond](#)
Subject: 423 San Pablo, #11-004 Crown Castle for Verizon Wireless
Date: Monday, July 25, 2011 9:06:40 PM
Attachments: [423SPA-Review425PM.doc](#)
[423SPA-Letter-11-09-10.doc](#)
[DBXLH-6565A-VTM.pdf](#)

Members of the Planning and Zoning Commission,

I am attaching letters written to the City Council at the end of 2010 for your consideration in regards to this item on tomorrow night's agenda.

Thank you,

Ed Fields

November 9, 2010

To: Albany City Council

Re: Council Review of Planning Application #09-031

Crown Castle/Verizon-423 San Pablo Avenue

From: Ed Fields and Nan Wishner

The new proposal by Verizon/Crown Castle to replace the 4 existing antennas on the monopole at 423 San Pablo avenue with 4 new antennas must still be considered an upgrade, as described in Verizon/Crown Castle's original application for installation of six antennas: two for cellular (800 Mhz) coverage, two for PCS (1,900 MHz) coverage, and two for new "long-term evolution" (LTE) service. [From 6-22-09 Application for Conditional Use Permit: "Verizon Wireless proposes to install (2) additional antennas mounted to (E) monopole. No change to azimuths. Also add (8) new coax."]

Two of the currently proposed antennas are the same model as proposed previously, to provide new LTE data communications services. The other two newly proposed antennas are dual band antennas, and each antenna will replace the function of a pair of existing antennas—to provide cellular and PCS coverage. The manufacturer describes these dual band antennas as "Two DualPol antennas under one radome."

Each of the dual band antennas requires 4 cables, whereas the two currently installed antennas that each dual band antenna would replace each require only two cables. All the antennas are "dual polarized," but these new two are dual band, and each band is dual polarized. All of these details clearly indicate that the "dual band" antennas are two antennas in one. The manufacturer emphasizes on one of its publicity sheets that these dual band antennas are, among other things, designed "for ease in obtaining zoning approvals."

In other words, under the current proposal, six antennas would still be installed where there are now four; Verizon has simply revised the antenna models so that what would appear to be two new antennas would actually contain four antennas.

The nonconforming monopole may still have a similar appearance with the four new Verizon antenna radomes, but the effect will be to extend the life of a nonconforming structure by providing new antennas for a new technology on a new frequency band, in addition to the existing technologies and frequency bands. This is essentially a 50% increase in capability.

Now that Crown Castle has been advised that only maintenance is allowed on a nonconforming facility, they are referring to what they previously described as an upgrade as "routine maintenance."

The following are all quotes from the information provided by Crown Castle:

"The purpose of these 'antennas' will be to enhance the overall Verizon network."

"The proposed equipment modification will be located on an (e) Cellular facility. Therefore, the 'usage' is allowed, as we are merely 'upgrading' the facility to eliminate the need for an additional cell site in the area."

"This is a request to upgrade the existing facility, installation of 'LTE' (long term evolution) which will support the data services on your Verizon Wireless phone."

"We did not seek alternatives, as we are upgrading our existing network at this location, the purpose is to upgrade the facility with LTE, which is a direction all our facilities are moving towards."

"Alternative locations are not feasible, as we are 'upgrading' this existing facilities, [sic] not expanding or increasing the number of cell sites, merely enhancing our network."

"This is technological advancement with each individual facility, this is not a 'new build' site, we are enhancing the "data" capability services for this location."

Note that basis of our concern is not a question of Verizon's right to upgrade its facilities, enhance its network, or provide new technologies or services in Albany, but rather that this particular existing facility does not conform with our Zoning Ordinance and does not allow those upgrades.

A court decision, T-Mobile vs. Anacortes, has been mentioned as applicable to the 423 San Pablo Avenue situation. However, that decision refers to closing a significant gap in coverage and the need to rebut the provider's alternatives analysis by showing "the existence of some potentially available and technologically feasible alternative to the proposed location." In contrast, Crown Castle has done no alternatives analysis and has not alleged any significant gap in coverage. We have stated in previous correspondence regarding this application that the facility is legally nonconforming, and cannot be upgraded due to the following issues of nonconformance with our current Zoning Code, all of which the T-Mobile vs. Anacortes decision states are "legitimate concerns for a locality": "height of tower," (the existing tower is 17 feet higher than the 48 foot height allowed by the current ordinance), "proximity to residential structures," and "aesthetic concerns."

Also mentioned in our previous correspondence regarding this application, Albany's Wireless Telecommunications Facility ordinance clearly states that only "routine maintenance" is allowed on legal nonconforming structures (Section I3, "Existing Uses"). Our ordinance makes clear in Section F1 that the following activities are not routine maintenance but "upgrades" or "modifications" (and are subject to major or minor use permits, design review, and a building permit): "...any change in the specifications or conditions stipulated in the approved permit, including but not limited to, changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit, repositioning of antennas, increase in proposed dimensions of tower or support structure, or any other facility upgrades." This application entails changes in power output, increase in number of antennas, and changes in antenna type and model.

December 7, 2010

From Ed Fields

Mayor and Members of the City Council,

Here are some thoughts and questions I would like you to consider in your review of Planning Application #09-031 for wireless communication antennas at 423 San Pablo Avenue.

Is the Wireless Communications Facility at 423 San Pablo Avenue nonconforming according to Albany Municipal Code Chapter XX Planning and Zoning?

It is 17 feet taller than the 48-foot height limit for wireless towers in the SPC district, and it does not meet the aesthetic and screening requirements. It is also located within ten feet of an apartment building. See staff reports dated April 27 and October 26, 2010.

Section 20.20.100, I. 3. of the Planning and Zoning Code states that only routine maintenance is allowed on nonconforming uses. Section 20.20.100, F.1. lists "changes in power input or output, number of antennas, antenna type or model, number of channels per antenna above the maximum specified in a use permit" among others, as modifications or upgrades requiring a use permit.

If it is nonconforming, then upgrades or enlargement of use are not permitted. Is this project an upgrade?

In their application for a Conditional Use Permit and in their letters, Crown Castle consistently refers to the project as an "upgrade." In addition to its existing services, as the result of this project, Verizon would provide a new wireless LTE service using new antennas on an additional new (700 Megahertz) frequency band, with new channels in addition to the existing ones. No Verizon cell phone on the market before December 2010 has the capability to utilize this LTE service.

The City cannot regulate the technologies which Verizon can use, but can enforce the limitation on upgrading and expansion of use of nonconforming facilities. Verizon is free to request to add LTE antennas elsewhere in the City, in conformance with our current zoning code.

Will there be new antennas?

Verizon currently operates 2 Cell and 2 PCS antennas on this monopole. The application requests installation of 2 new Cell, 2 new PCS, and 2 LTE antennas. The Cell and PCS antennas would be combined in a "dual band" antenna that is under a single housing. See attached Andrew product specifications.

What additional upgrades are needed to serve the new antennas? Are additional cables needed?

Yes. At least four new coaxial cables would be added. See the original application and the revised plans dated 10/7/10 which request eight additional coaxial cables.

Each of the four existing antennas requires 2 cables for a total of 8. Each of the two proposed dual band antennas which would replace the four existing antennas requires 4 cables, (2 for each of the antennas within the housing). These are equivalent to the 8 cables required to provide the existing services.

Additionally, the two new LTE antennas each require 2 cables. The net result would be (six) antennas which require 12 cables in total.

This proposal for additional cables makes it clear that there would be more antennas installed and more services provided than there are currently.

Is additional ground-mounted equipment needed? Yes. See Kramer report.

Will there be additional output power? Yes, one LTE channel at 400 watts (for each sector). See Hammett & Edison report.

Can the City regulate the location/placement of wireless antennas?

The Telecommunications Act gives local government authority "over decisions regarding the placement, construction, and modification of personal wireless service facilities." Section 332(c)(7).

"Nothing in the Telecommunications Act forbids local authorities from applying general and nondiscriminatory standards derived from their zoning codes."

[*Aegerter v. City of Delafield*, 174 F.3d 886, 891 \(7th Cir.1999\)](#)

What does the Telecommunications Act of 1996 prohibit the City from doing?

Unreasonably discriminating among providers.

Prohibiting or having the effect of prohibiting the provision of personal wireless services.

Regulating on the basis of environmental effects to the extent that facilities comply with FCC regulations.

Denying the application at 423 San Pablo Avenue would not discriminate; the prohibition against upgrades of nonconforming facilities applies to all providers, as does the right to apply for new antennas at any site that conforms with our ordinance's requirements. Denying the antennas on this monopole would not prohibit Verizon from providing wireless service; they operate another site in the city and, as noted above, are free to apply to locate these new antennas in conformance with our ordinance. For this application, there is no issue regarding regulating environmental effects beyond what the FCC regulations require.

What procedures must be followed under the Telecom Act?

Local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.

Decision to deny a request to place, construct, or modify personal wireless service facilities shall be in writing

[A]nd supported by substantial evidence contained in a written record.

Regarding the substantial evidence requirement, the court in *U.S. Cellular v. City of Broken Arrow, Oklahoma*, ruled that the court's only concern is (emphasis added) "whether the [local authority's] decision, **as guided by local law**, is supported by substantial evidence." In other words, the local authority must document in writing how its decision conforms to its local laws.

Crown Castle/Verizon has not provided an alternatives analysis as requested by the City's planning department on July 21, 2009 and as required by our ordinance.

"For a telecommunications provider to argue that a permit denial is impermissible because there are no alternative sites, it must develop a record demonstrating that it has made a full effort to evaluate the other available alternatives and that the alternatives are not feasible to serve its customers." ([Todd, 244 F.3d at 63](#))