



CITY OF ALBANY
AUG 08 2011
COMMUNITY DEVELOPMENT
DEPARTMENT

City of Albany

AUG 8 2011



PLANNING & ZONING APPEAL ALBANY CITY CLERK

GENERAL INFORMATION		Date of decision being appealed: <i>July 126/2011</i>	
Who: Any Applicant or party with standing may appeal an administrative decision by Planning staff or a Planning & Zoning Commission action		Type of decision: Please check one	
When: A written appeal must be filed within 14 calendar days of the administrative or Commission action		Administrative	<input type="checkbox"/>
Where: Appeals of administrative decisions are filed with the Community Development Department. Appeals of Planning & Zoning Commission actions are filed with the City Clerk		Planning & Zoning Commission	<input checked="" type="checkbox"/>
Cost: \$550.00 (non-refundable)		Municipal Code or Zoning Ordinance Section	<input type="checkbox"/>
Process: Appeals of Planning Staff decisions will be considered by the Planning & Zoning Commission. Appeals of Planning & Zoning Commission decisions will be heard before the City Council. For appeals of Planning & Zoning Commission decisions on items not requiring a Public Hearing, the appeal will be set for formal City Council consideration within 30 days. For items which required a Public Hearing, the City Council will schedule a Public Hearing within 30 days to consider the appeal.		If you have any questions regarding this procedure, please call the City Clerk at (510) 528-5720 or Planning Division at (510) 528-5760.	
Description of Project: <i>To allow the removal of four existing Verizon wireless communication antennas and replacement with four new Verizon antennas on an existing 65 ft monopole.</i>			
Applicant Name: <i>Crown Castle for Verizon GARY Gochberg</i>		Appellant Name: <i>Same</i>	
Address: <i>5820 Stoneridge Mall Rd #300 Pleasanton CA 94588</i>		Address:	
Phone Number: <i>707-364-5164</i>		Phone Number:	
Basis of Appeal: (Please be precise) <i>See Attached</i>			
Signature: <i>[Signature]</i>		Date: <i>8/8/2011</i>	
Date Filed: <i>8/8/2011</i>	Received by: <i>AA</i>	Fee: \$ <i>550.00</i>	Receipt #: <i>72000</i>
Appeal Agenda Date:		P & Z <input type="checkbox"/>	City Council <input type="checkbox"/>



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RECEIVED

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DEPARTMENT

ALBANY CITY CLERK

August 8, 2011

City of Albany City Council
1000 San Pablo Avenue
Albany, CA 94706

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

The California PUC ("CPUC") has original jurisdiction over this project which prohibits the City of Albany (the "City") from taking any action that unreasonably delays or renders the project infeasible. The current project, consisting of replacing four (4) existing panels with four (4) new panels of similar size and shape, is well within the scope of the CPUC's original grant. Applicant has exhausted all reasonable measures in seeking approval of the project, including filing the latest application for a Conditional Use Permit (as directed by City Council), which Applicant did under protest in an effort to cooperate with the local jurisdiction.

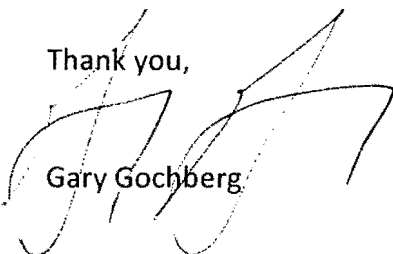
The most recent decision of the Planning and Zoning Commission (the "Commission") was not supported by substantial evidence and effectively prohibits the provision of wireless services in violation of federal law. Applicant presented substantial and compelling evidence supporting the finding that strict compliance with the City's Planning and Zoning Code ("Municipal Code") will not provide for adequate radio-frequency signal reception, and no other alternative solutions that would meet the development standards are feasible. Applicant also presented evidence that the Municipal Code encourages co-location of wireless facilities rather than the construction of new sites (see Section 20.20.100(A)(5)). Construction of an entirely new site to accommodate this maintenance request is not only inconsistent with the Municipal Code but, as demonstrated by Applicant, is infeasible due to the City's zoning height limit of 48 feet which is too low to maintain current coverage and capacity objectives for the site. The Municipal Code also characterizes the project as an "expansion" of the facility due to the proposed change of frequencies and specifications. This provision violates federal law which prohibits local agencies from regulating wireless technology and frequencies (See Section 20.20.100(f)).

Staff's handling of the application was also flawed. Staff repeatedly requested that Applicant conduct studies for construction of an entirely new site notwithstanding Staff's knowledge that the project was a simple swap-out of antennas which did not require any expansion of the existing facility. Applicant further advised Staff on multiple occasions that construction of an entirely new site was infeasible because 1) the site could not be relocated due to the existence of a second tenant on the tower; 2) the pole height could not be lowered to the maximum height of 48 feet without displacing the second tenant; and 3) existing sites in the area could not accommodate the installation of additional antennas due to coverage and capacity issues. Applicant requested that the application be deemed complete based upon the responses it provided, which Staff agreed to

do. At the hearing, Staff then took the position that the application was incomplete in an apparent attempt to prejudice Applicant's right to a fair and impartial hearing on the merits.

Applicant has presented the least intrusive means for closing the coverage gap in compliance with the enforceable provisions of the Municipal Code. Notwithstanding such reasonable measures, the City of Albany continues to thwart and delay approval of the project in violation of the CPUC's original jurisdiction, the original grant itself, the federal Telecommunications Act, and its own Municipal Code.

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
PLANNING AND ZONING COMMISSION
NOTICE OF ACTION

SUBJECT: **Planning Application #11-004. Conditional Use Permit. Design Review.**
The applicant requests City approval to allow the removal of the four existing wireless communication antennas and replacement with four new antennas on an existing 65-foot high monopole. The monopole is an existing legal non-conforming facility pursuant to the Wireless Communication Facility provisions of the City's Planning and Zoning Code.

SITE: **Wireless Antenna at 423 San Pablo**

APPLICANT/OWNER: **Crown Castle for Verizon Wireless**

ZONING: **SPC (San Pablo Commercial)**

DATE OF ACTION: **July 26, 2011**

APPEAL DEADLINE: **August 9, 2011**

ACTION: **The Commissioners voted 3-0 to deny the application without prejudice based on the findings below.**

The following findings were made by the Planning and Zoning Commission as part of the motion to deny the application:

1. The existing installation is a legal non-conforming facility;
2. The City Council has determined that the proposed upgrade is not maintenance;
3. The proposed installation at 62 feet in height exceeds the development standard of a 48 foot height limit; and
4. The Commission is unable to make the findings of section 20.100.030 regarding the necessity and desirability and compatibility because the proposal is not consistent with the City ordinances.

Appeals: The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.



City of Albany
1000 San Pablo Ave
Albany, CA
94706

Receipt Number:

R72000

Cashier Name:

DORA

Terminal Number:

1

Receipt Date:

08/08/2011 12:16:22 PM

Transaction Code: 1.00000 - Finance

\$550.00

Product: Planning and zoning fee
Planning and zoning fee
GARY & MICHELE GOCHBERG

Units: 0.00 Amount: 550.00

Total Balance Due:

\$550.00

Payment Method: Check Reference: 206

Amount: \$550.00

Total Payment Received:

\$550.00

Change:

\$0.00