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RESOLUTION NO. 2011-56

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALBANY
DENYING THE APPEAL FILED BY CROWN CASTLE ON BEHALF OF
VERIZON WIRELESS AND DENYING THE APPLICATION FOR A
CONDITIONAL USE PERMIT AND DESIGN REVIEW TO MODIFY A
NONCONFORMING WIRELESS FACILITY LOCATED AT 423 SAN
PABLO AVENUE AND MAKING WRITTEN FINDINGS IN SUPPORT
THEREOF**

WHEREAS, on June 22, 2009 Crown Castle on behalf of Verizon Wireless (the “applicant”) submitted an application for a conditional use permit to increase the number of antenna enclosures from four to six enclosures with ancillary improvements on an existing nonconforming wireless communication facility (the nonconforming wireless facility”) located at 423 San Pablo Avenue (the “prior application”). The existing wireless facility is nonconforming with respect to the height limits of the Planning and Zoning Code which imposes a 48 foot maximum height limit. The existing wireless facility consists of a 65 foot tall monopole with the Verizon antennas located at a height of 59 feet on the pole;

WHEREAS, during the time that the prior application was pending before the Planning and Zoning Commission, the City’s building inspector observed that new antennas were being installed on the nonconforming wireless facility without any City approval or permits and issued a stop work order;

WHEREAS, on October 14, 2010, the applicant submitted revised plans that reduced the number of antenna enclosures from four to six. However, the number of antennas within the four enclosures still increased from four to six antennas and the new equipment proposed by the prior application deployed an entirely new wireless network (called Long Term Evolution, or “LTE”) that provides high speed data communications as part of a 4G network;

WHEREAS, on October 26, 2010, the Planning and Zoning Commission reviewed the revised prior application and determined that the proposal consisted of routine maintenance not requiring a conditional use permit. At the Commission hearing, the applicant withdrew the prior application;

WHEREAS, on November 1, 2010, pursuant to Municipal Code Section 20.100.080.c.2.b, Councilmember Atkinson made a request that the City Council review the Commission’s determination that the proposal consisted of routine maintenance. All references in this Resolution to section numbers are to sections of the Albany Municipal Code unless other specified;

WHEREAS, the City Council conducted its review of the Planning and Zoning Commission determination on December 13, 2010. The Council voted

1 unanimously that the proposed project was not routine maintenance but instead an
2 upgrade to the nonconforming wireless facility. The Council directed that the matter
3 be returned to the Planning and Zoning Commission after a new application was filed
4 by the applicant and that the staff and Commission review include a full analysis of
5 feasible alternative sites that would conform to all Code requirements;
6
7

8 **WHEREAS**, on January 20, 2011, the applicant submitted a new application
9 (the "application") which substantially reflected the revised plans submitted to the
10 City in October 2010. The application did not include an alternative sites analysis as
11 directed by the Council and staff determined that the application was not complete.
12 Correspondence ensued between the applicant and the City on the completeness of
13 the application and the applicant threatened to sue the City if the application was not
14 accepted as complete and submitted to the Planning and Zoning Commission for
15 review;
16

17 **WHEREAS**, on June 21, 2011, the City accepted the application as complete
18 in order to avoid litigation and due to the fact that it was clear that the applicant
19 would continue to refuse to submit the additional information demanded by the City
20 staff. In a letter from Community Development Director Jeff Bond, dated June 21,
21 2011, the applicant was informed that in accepting the application as complete the
22 City was not waiving its right to require more information from the applicant,
23 including the right of the Commission or Council to require the preparation of
24 alternative site studies before making a decision on the application. At this time, a
25 Tolling Agreement was entered into by the applicant and the City clarifying the time
26 period in which the City was required to take action on the application in accordance
27 with the Federal Communications Commission "Shot Clock" declaratory ruling;
28

29 **WHEREAS**, on July 26, 2011, the Planning and Zoning Commission held a
30 public hearing on the application. The Commission voted to deny the application on
31 the basis that the existing facility is nonconforming, that the modification to the
32 facility is not merely maintenance of an existing facility at an existing wireless site,
33 and that the proposed modification is not consistent with City ordinances. The
34 Commission also determined that a sufficient alternative solutions analysis was not
35 provided by the applicant;
36

37 **WHEREAS**, on September 19, 2011, the City Council held a de novo public
38 hearing on the appeal filed by the applicant from the Planning and Zoning
39 Commission hearing. After hearing from the applicant and members of the public,
40 the Council directed that the hearing be continued in order that an independent review
41 of the application can be conducted by a qualified technical expert hired by the City
42 and that the written documentation upon which the Verizon engineer's opinions are
43 based be provided to the City. Section 20.20.100.F.4.b.1 and b.2 authorize the City
44 to require an independent review of a wireless facility application and to require an
45 alternative sites or solutions analysis. The applicant consented to the continuance of

1 the hearing and the Tolling Agreement between the applicant and the City was
2 extended to November 9, 2011;
3

4 **WHEREAS**, the City retained Jonathan Kramer, a well-known and qualified
5 telecommunications and radio frequency expert, to perform an independent review of
6 the application. Mr. Kramer requested additional information from the applicant in
7 order to better understand the scope of the proposed project; to determine whether an
8 exception is warranted pursuant to Section 20.20.100.F.5.a.3; and to evaluate whether
9 alternative solutions that conform to the City's zoning requirements are feasible. The
10 applicant failed to provide most of the information requested by Mr. Kramer and
11 failed to provide the supporting data and documentation for the opinions offered by
12 Verizon's engineer at the September 19, 2011 public hearing; and
13

14 **WHEREAS**, on November 7, 2011, the City Council held the continued
15 public hearing on the appeal and application. The Council received an updated staff
16 report and the report prepared by Mr. Kramer and heard additional testimony by the
17 applicant and members of the public.
18

19
20 **NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City
21 of Albany, as follows:
22

23 1. The City Council hereby denies the appeal filed by Crown Castle on behalf of
24 Verizon Wireless, and denies the application for a Conditional Use Permit and Design
25 Review for the modification of an existing nonconforming wireless facility located at
26 423 San Pablo Avenue (the "subject property"), based upon the findings set forth in
27 Sections 4, 5 and 6 of this Resolution.
28

29 2. The City Council hereby relies upon, incorporates and adopts the facts set
30 forth in this Resolution, including without limitation the recitals, and finds that those
31 facts and recitals are true and correct. The City Council has considered the staff
32 reports and responses by staff to questions, the written report by Jonathan L. Kramer,
33 dated November 2, 2011, and his oral testimony and responses to questions at the
34 public hearing, the presentation and written materials provided by the applicant and
35 all other testimony and information provided during the public hearing before the
36 City Council.
37

38 3. The City Council hereby finds that this project is exempt from CEQA
39 pursuant to CEQA Guidelines Section 15270(a), which exempts projects that are
40 denied by the public agency.
41

42 4. The City Council affirms its previous determination that the application does
43 not propose routine maintenance of the nonconforming wireless facility, but instead
44 proposes a significant modification and upgrade to the existing facility requiring the
45 approval of a conditional use permit and design review pursuant to Section
46 20.20.100.F. The application proposes an altogether new deployment of wireless

1 service from the existing facility, increases the number of antennas from four to six,
2 changes the antenna type and model, degrades the visual appearance of the project
3 site which is visible and dominating above the nearby structures and is plainly visible
4 from the City's north-south arterial roadway, and results in an intensified use of an
5 existing nonconforming structure that exceeds the Planning and Zoning Code height
6 limit by 17 feet.

7
8 5. The City Council makes the following findings pursuant to Section
9 20.20.100.F.5 related to the requested conditional use permit:

- 10
11 a. The proposed project at the wireless facility is not designed to protect the
12 visual quality of the City. The existing facility exceeds the City's height
13 limit by 17 feet. Photographs of the subject property in the administrative
14 record demonstrate that the existing facility far exceeds the height of the
15 adjacent commercial and residential buildings in a visually dominating
16 manner and is unsightly and out of character with the surrounding area.
17 The proposed modification adds at least eight new coaxial and other types
18 of cables to the facility that will add to the visual clutter of the existing
19 pole. The project plans submitted by the applicant are internally
20 inconsistent. The antenna enclosures will use bottom connectors and
21 cables that are much more visible than rear mounted connectors and
22 cables. Due to the proposed deployment of an entirely new radio service
23 proposed in the application, it is anticipated that additional equipment not
24 shown in the project plans will need to be added to the pole to provide the
25 new services proposed by the application.
26
- 27 b. All applicable development standards required by the City Code have not
28 been met by the application. The current development standards at
29 Section 20.20.100.E.2.h and 4.b impose a 48 foot height limit on a
30 wireless facility located on the subject property. The existing monopole is
31 65 feet in height with the Verizon antenna enclosures located on the pole
32 at a height of 59 feet. The violation of the City's height limit requires a
33 denial of the application unless an exception is granted by the City
34 Council pursuant to the requirements in Section 20.20.100.F.5.a.3.
35 Further, the proposed project will extend the life of a nonconforming
36 structure contrary to the purposes and requirements of Section 20.44.030.
37
- 38 c. Section 20.20.100.F.5.a.3 sets forth the finding that must be made to grant
39 an exception to a development standard. The Council must find that
40 "[s]trict compliance would not provide for adequate radio-frequency
41 signal reception and that no other alternative solutions which would meet
42 the development standards are feasible." The applicant has the burden of
43 proof to show that this finding can be made, and why it should be made.
44 Not only has the applicant failed to demonstrate that this finding is met,
45 but the report by Mr. Kramer and other evidence in the record
46 demonstrates that a sufficient alternative solutions analysis has not been

1 completed that would enable the Council to make the required
2 determination that no other alternative solutions which would meet the
3 development standards (including the height limit) are feasible. The
4 findings and conclusions described in Mr. Kramer's report, dated
5 November 2, 2011, as clarified by Mr. Kramer during the hearing, are
6 hereby adopted and incorporated into these findings of the City Council.
7 The Council further finds:
8

- 9
- 10 i. The applicant has refused and failed to provide the data and
11 other documentation supporting the opinions offered by
12 Verizon's engineer Mr. Stefano Iachella as requested by the
13 City Council at its September 19, 2011 hearing on the
14 application. It is not possible to evaluate the accuracy of
15 the opinions expressed by Mr. Iachella without knowing
16 the data and documentation upon which his opinions are
17 based.
 - 18 ii. The applicant failed to provide signal coverage maps based
19 on individualized coverage studies for each of the seven
20 alternative sites identified by the applicant. Instead, the
21 applicant simply used the coverage study it prepared for the
22 subject property and applied it to the alternative sites. This
23 approach fails to take into account the different topography,
24 elevation, and surrounding development and natural
25 features of each site that will affect signal coverage from a
26 particular site.
 - 27
28 iii. The applicant failed to consider or evaluate the signal
29 coverage that would result from maintaining the existing
30 facility in an "as is" condition on the subject property and
31 installing a new wireless facility that conforms to all
32 development standards on an alternative site.
- 33
- 34 d. The modification of the existing nonconforming wireless facility is not
35 necessary for the provision of wireless communications services to Albany
36 residents and businesses or other persons traveling in or about the City.
37 The existing facility currently is providing wireless services to the area of
38 the City shown on the coverage map for the subject property provided by
39 the applicant. The denial of the application will not affect in any manner
40 this existing service and coverage. As described above, the applicant has
41 failed to show why it cannot provide the new services it proposes to
42 provide from one or more alternative sites in the City or adjacent
43 communities in a manner that complies with all development standards,
44 including but not limited to the height limitation.
45

1 6. The City Council makes the following findings pursuant to Section
2 20.100.050.E related to the requested Design Review:
3

4 a. The proposed project does not conform to the applicable provisions of the
5 Planning and Zoning Code as the proposed modification to an existing
6 nonconforming wireless facility violates the height limitation imposed by
7 Section 20.20.100.E.2.h and 4.b. The proposed project also violates the
8 nonconforming structure requirements of Section 20.44.030 as the
9 proposed project does not constitute maintenance for the reasons stated in
10 Section 4 of this Resolution.
11

12 b. Approval of the project is not consistent with the purpose and intent of
13 Design Review and is not in the interest of the public health, safety and
14 general welfare. The existing facility exceeds the City's height limit by 17
15 feet. Photographs of the subject site presented at the hearing demonstrate
16 that the existing facility far exceeds the height of the adjacent commercial
17 and residential buildings in a visually dominating manner and is unsightly
18 and out of character with the surrounding area. The application adds
19 eight new coaxial cables to the facility that will add to the visual clutter of
20 the existing pole. The antenna enclosures will use bottom connectors that
21 require substantially more visible antenna cables as compared with rear
22 mounted connectors. Due to the significant service upgrade proposed by
23 the application, it is anticipated that additional equipment will need to be
24 added to the pole to provide the new advanced services proposed by the
25 application. Further, the proposed modification and upgrade to the
26 existing nonconforming wireless facility will improve, upgrade and extend
27 the life of a nonconforming structure contrary to the purposes and
28 requirements of Section 20.44.030. The proposed modification and
29 upgrade also is contrary to general planning and zoning principles under
30 California law that encourage the replacement of nonconforming
31 structures with new development that will conform to current Code
32 requirements.
33

34 7. This Resolution shall take effect immediately upon its adoption.
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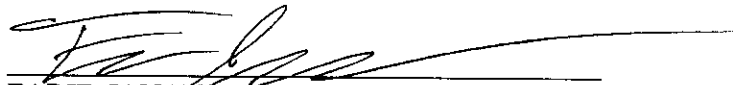
I HEREBY CERTIFY that the foregoing Decision was duly adopted by the City Council of the City of Albany at a public meeting of said City Council held on the 7th day of November, 2011, by the following vote:

AYES: Council Member Atkinson, Lieber, Thomsen, Wile & Mayor Javandel

NOES:

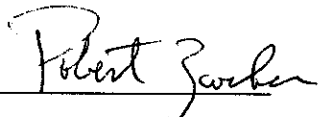
ABSENT:

ABSTAIN:

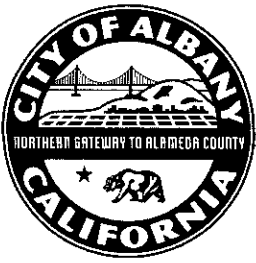

FARID JAVANDEL
MAYOR

ATTEST: 

City Clerk

APPROVED AS TO FORM: 

Robert Zweben
City Attorney



City of Albany

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

RESOLUTION NO. 2011-56

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

this 7th day of November, 2011, by the following votes:

AYES: Council Members Atkinson, Lieber, Thomsen, Wile and Mayor Javandel

NOES:

ABSENT:

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

8th Day of November, 2011.

Eileen Harrington
DEPUTY CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of a diverse community, and providing a safe, healthy and sustainable environment.



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