

# City of Albany

## Planning and Zoning Commission Minutes April 24, 2012 Meeting

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2 *Note: These minutes are subject to Planning and Zoning Commission approval. The minutes are not*  
3 *verbatim. An audiotape of the meeting is available for public review.*  
4

### 5 **Regular Meeting**

6  
7 **1. Call to order-** The meeting of the Planning and Zoning Commission was called to order by  
8 Chair Panian, in the City Council Chambers at 7:30 p.m. on Tuesday, April 24, 2012.  
9

### 10 **2. Pledge of Allegiance**

### 11 **3. Roll Call**

12 Present: Eisenmann, Maass, Moss, Panian  
13 Absent: Arkin- recused on the items.  
14 Staff present: Jeff Bond, Community Development Director  
15 City Planner Anne Hersch  
16 Craig Labadie, City Attorney  
17  
18

### 19 **4. Consent Calendar**

20  
21 **None.**  
22

### 23 **5. Public Comment on Non-Agenda Items**

24  
25 Jeff Bond notes that the agenda item regarding the University Village was removed at the  
26 request of the University, and that if any of the public wanted to speak on the matter they  
27 should do it during the public comment. Any comments made will be forwarded to the  
28 Commission at a future meeting.  
29

30 **John Kindle, Albany resident-** notes that UCs are required to follow some zoning regulations  
31 and codes. He points out that the city of Albany has some specific ordinances regarding poultry  
32 keeping. He brings this up because the area where the squatters are is a nesting area for turkeys.  
33 He notes that you should never keep chickens and turkeys in the same area because chickens  
34 are carriers of a certain organisms that will give the turkeys disease. He is worried that when  
35 the squatters leave, the resting area will get contaminated, and will hurt the native turkey flock.  
36 He asks the Commission if UC is obliged to follow Albany's animal regulations. He knows that  
37 UC property bans dogs, while Albany doesn't, but wonders if they are required for the  
38 squatters not to allow chickens.  
39

40 Commissioner Panian- notes that any pertinent comments will be written down and discussed,  
41 but the Commission won't take any action that night.  
42

43 **Effie Rawlings, activist camping on the lands-** says that she hears John Kindle's point, and will  
44 bring it back to the farmers on the land and discuss it. She wants to provide her information so

1 that they might contact her. She had wanted to participate in the public forum about what is  
2 happening at the Gill Tract, but is disappointed because it was pulled out of the agenda. She  
3 sees it as a bad faith move on the part of the university, and notes that a public forum is a time  
4 for people to comment on issues, contentious or not. She relates this with the time when the  
5 university said that they would come and talk with them, but didn't and just turned off the  
6 water.

7  
8 Commissioner Moss- says that they are taking testimony about the application this night, and  
9 that it will be broadcasted. He says that this is the time to discuss it.

10  
11 Commissioner Panian- says that they will let Effie have her three minutes and says that in the  
12 three minutes, they should address anything that they want have entered into the testimony for  
13 the larger decision making process.

14  
15 **Effie Rawlings-** asks whether there will be a time when the topic will be an agenda item.

16  
17 Commissioner Panian- says that he expects that they will bring the application back at some  
18 point, and that she could state her points now, or come back at that time.

19  
20 **Effie Rawlings-** informs them that on Earth Day, around 200 farmers and activists marched to  
21 the Gill Tract, and started start a farm there, after watching two decades of struggle for the land  
22 to remain an urban farm and a resource for the larger community. She notes that it isn't a tent  
23 city, a party, or a squat, and that they don't intend to stay there. She says that they don't want to  
24 live there, they are only there as a statement, to try to set it up as a farm. She invites everyone at  
25 the meeting to go and see what is happening, and to participate in it. She says that there is  
26 going to be a family day on Saturday night, where there will be a potluck.

27  
28 **Sally, Albany resident-** disagrees with the development. She believes that once passed, the UC  
29 Berkeley developers will work to benefit their interests and not the Albany community. She  
30 notes that the land that is being called a farm has had a 100 year history of fertile land is in  
31 jeopardy. She believes that the area of land could be a great benefit to the community. She  
32 thinks that that, as an Albany resident and lover of healthy foods, it would be unwise to take  
33 away the farmland that could be beneficial to many people, as well as the environment, only to  
34 develop it into something that they don't need. She notes that the 14 acre Gill Tract rests in a  
35 thermal belt considered to be the finest agriculture zone in California, having been fertile over  
36 the last 100 years. She says that it could provide a range of Albany students, from the very  
37 young to the high school, a standard curriculum in math, science, diet, global warming, art, and  
38 could be a great educational resource. She notes that Albany Board of Education passed a  
39 resolution urging UC to allow a farm on the site. She asserts that the farm could produce local  
40 organic food, provide revenue for the farm, attract the local community as well as nearby  
41 communities, inspire healthy diet, and promote a green community, while maintaining a  
42 habitat for wildlife. She says that the Gill Tract could fight global warming, because the organic  
43 farming methods will increase soil carbon, helping with the high levels of carbon dioxide from  
44 cars. She says that the seven acres of farmed land captured 7000 pounds of carbon dioxide from  
45 the neighborhood annually. She notes that as the world's population becomes increasingly

1 urbanized, the need of local food production grows. She says that Berkeley seemed proud of  
2 their organic farming, like at the Martin Luther King Jr. School, and she thinks that Albany can  
3 be too. She says that the people planting and organizing at the farm believe that it is possible to  
4 save the land.

5  
6 **Michael Beer, former teacher in Albany-** had worked on the idea of a farm. He presented an  
7 architectural drawing of the schematic. He noticed that Albany had recently adopted a climate  
8 action plan. He reads another item, about creating a sustainable and climate friendly food  
9 system, and believes that the plan he brought would fulfill the item. He also believes that the  
10 farm would become a signature of Albany, and would keep the small city ambience. He says  
11 that the farm would be a commercially sustainable organic farm with bike pads, benches, and a  
12 place where children from all the schools in the area could go to learn from the environmental  
13 educator on the farm about growing patterns, and even have their own gardens. He points out  
14 the area for the allotments, so that people who live in apartments without land could use, which  
15 is a system used in Europe. He says that there should be an amphitheatre, for summer music  
16 and drama events, an area where people could pick their own salads, a café, a bike path, etc. He  
17 notes that it would be a gateway to Albany, and he believes that Albany would want something  
18 distinctive and unique, and that it would be an eco-park. He believes that the farm would be  
19 nationally known, putting Albany in a good position. He also mentions that there would be a  
20 petting zoo, saying that people wouldn't need to go to Tilden to see animals.

21  
22 **Eric Larsen, Albany resident-** has been involved with the Albany Rollers and Strollers about  
23 the development of the complete streets, as well as the bicycle and cycle tracks, in making sure  
24 that there is bicycle access to the Whole Foods development. He had all but written off the  
25 progressive dreams that the environmentalists, activists, and ecologists have fought for and  
26 brought forward to the council for the past 10-20 years with progressive ideas and visions  
27 around having sustainable permaculture and community farm area on the Gill Tract. He  
28 thought that the corporate motive driving the Whole Foods and UC development, which is  
29 rapidly privatizing education and the rest of the lands and properties, was all but forgotten. He  
30 went over to find out when the activists came, and has been working with them for a number of  
31 days. He says that everyone who has visited, no matter the age, has been warmly and cordially  
32 welcomed and invited in to help build and develop a community. He says that the farm could  
33 build a resilient community for Albany and set for an aggressive character for Albany, which he  
34 believes would be a wonderful thing. He said that there were UC Berkeley regents down at the  
35 farm, who actually listened to the people talking about it, and he urges the Commission to  
36 allow the UC application have complete control over the land to try to help Albany residents, as  
37 well as neighboring residents, recover that land, where they could grow food for themselves.  
38 He wants everyone to go down and see it for themselves, and to create a more open-minded  
39 future.

40  
41 **Delia Carroll, Albany resident-** acknowledges the Commission for their work, and thanks them  
42 for volunteering their time. She has been aware of UC's plans to develop the Gill Tract for 12  
43 years, and believes that UC's proposal to build senior housing and retail on the section of Gill  
44 Tract between the village and Codornices Creek is misguided. While she knows that UC is the  
45 property holder, she also believes that because UC is a land grant university, she is a part owner

1 in all of UC's property holdings, and that her opinions deserve consideration by both UC and  
2 the City of Albany. She says that there is an opportunity on the Gill Tract for UC to demonstrate  
3 true leadership in the blossoming fields of urban farming and food security. She says that part  
4 of UC's mandate as land a land grant university is to disseminate their research to the general  
5 public. She notes that she is a UC trained Alameda County master gardener, and is involved in  
6 doing so on a volunteer basis. She believes that the Gill Tract presents a perfect opportunity for  
7 a demonstration and outreach site consisting of an urban farm and education center dedicated  
8 to developing and sharing new ways to grow more food safely, and in the heart of urban  
9 development, thereby reducing the transportation requirements which make the current food  
10 system fragile. She says that the City of Albany has had a long history of interaction with UC,  
11 and would even characterize the relationship as "friendly", and notes that a friend is someone  
12 who helps you out when you are in need, for example, getting up at night to post your bail. She  
13 also notes that a true friend would do so, but then insist that you examine the reasons you  
14 ended up in jail in the first place. She is asking Albany to be a true friend to UC, to deny the  
15 requested zoning changes, and to give them time to rethink its approach. She says that UC has  
16 grown into a world-class institution by adapting to changing circumstances, and believes that  
17 UC could change course on the Gill Tract development and secure its position as a world leader  
18 in the fields of urban farming and food justice.

19  
20 **Paulo Venezuela, Albany resident-** says that upon moving to Albany, his first impression was  
21 that it was a beautiful farm in the middle of all the concrete cities. He says that it is the only  
22 land where they have a farm, in the Bay Area, and that it is beautiful to go with children to see  
23 things grow. He follows the way the grow things, and do it in his garden, replicating even the  
24 changing of soil. He says that they need the farm. He believes that they don't need any more  
25 buildings, or expensive stores, and notes that Albany is a green city, the only one in all of  
26 California. He says that they need the farm for their children, and their future.

27  
28 **Jackie Hermes-Fletcher, farm advocate-** has been speaking for years to preserve the farm. She  
29 was overjoyed at what the kids were able to do, and that she was able to help them. She says  
30 that it showed the vision of what an urban farm looks like, and rather than always talking about  
31 it, they now have it for everyone. She says that many Albany residents are seeing it, and that the  
32 farm is what they want. She asks the Commission to reconsider, and while she knows that they  
33 had already passed the zoning offer to the city council, she thinks that they still some power  
34 left, to deny the agreement. She is asking them, when asked about building the buildings on the  
35 Gill Tract, to not give them the development agreement, and to ask them about the urban farm.

36  
37 **Catherine Castro, Albany resident-** wonders if the Gill family had bequeathed the land to the  
38 university to keep as open and agricultural land, and if there are any restrictions in that, that  
39 would influence the City of Albany to honor any such agreement.

40  
41 **Mara Duncan, Albany resident-** wants to believe that it isn't too late, after seeing all of inspired  
42 young people caring about future generations, and taking chances. She says that they are  
43 putting their lives and futures on the line, and wants everyone to do their part. She says that,  
44 after going to the council and Commission multiple times, it was inferred to her that no  
45 agreement could be made about the ten acres of Gill Tract (now including where Whole Foods

1 is going to be). She says that it was said to her that legally you can't make these agreements,  
2 that we will give you this if you give us that. She says that in her impression, what the city has  
3 settled for, of ten years of leaving baseball fields where they are, they will sacrifice and have  
4 pollution, traffic, and food that isn't cost effective. She believes that it is the Planning and  
5 Zoning Commission's job to make a living action out of what they are claiming, that they are a  
6 green, sustainable city. She thinks that it is interesting that they could parley the ball fields, but  
7 could not parley a farm. She believes that Planning and Zoning should be part of food safety,  
8 and is supposed to protect them. She is sure that there are places in Albany where Whole Foods  
9 could go on cement, and not on open land.

10  
11 **Sydney Matson, Albany resident-** wanted to reiterate her hope that the Commissioners  
12 seriously consider their legacy of having volunteered and served, and to consider what legacy  
13 they will leave. She brings up the climate action plan, and says that the proposed development  
14 will worsen the climate situation as opposed to helping reach the climate action plan goals. She  
15 notes that she had spoken before, that it would not be a food that she could afford, and that it  
16 would not be a senior living situation that she could afford, and that she is sure that she isn't the  
17 only one in Albany. She asks the Commission to do right by the citizens, and to work together  
18 to make their town the best for now and the future.

19  
20 **Gary Manley, Albany resident-** says that he bikes to work in Berkeley, passing by the farm,  
21 and that it is a great place to ride bicycles. He passes traffic all the time, and notes that the more  
22 that goes in, the more traffic there will be, and that his view will change. He says that he knows  
23 that many people feel the same way.

24  
25 Commissioner Moss- notes that the initial agreement is in the EIR report of the Gill Tract, and  
26 when it was donated to UC Berkeley, so anyone could read it and see what the terms were.

## 27 28 **6. Discussions & Possible Action on Matters Related to the Following Items**

- 29  
30 **a. PA08-038: 1035 San Pablo Ave. AT&T Roof Mounted Antennas Conditional Use Permit**  
31 **& Design Review-** The applicant is seeking Design Review and Conditional Use Permit  
32 approval to allow nine (9) new panel antennas on an existing office building at 1035 San  
33 Pablo Ave. The equipment will be housed in new fiberglass enclosures behind the  
34 existing parapet wall. The south facing enclosure is approximately 55 sq. ft. and will  
35 house six (6) antennas. The north facing enclosure is 20 sq. ft. and will house three (3)  
36 antennas. Both enclosures are proposed to shield the antennas from public view. Related  
37 equipment is proposed to remain located on the center of the roof, though some  
38 equipment has been reduced in size. The application was most recently presented to the  
39 Planning & Zoning Commission for action on February 28, 2012 and was continued to a  
40 date uncertain. Action is expected to be taken on this application at this hearing.

### 41 42 **Recommendation:**

- 43 1. *Review the project as it is proposed and include a condition or approval to relocate the*  
44 *equipment into the mechanical equipment room and make findings pursuant to Section*  
45 *20.20.100 (D) (4) of the Albany Municipal Code.*  
46

- 1           2. *Review the project as it is proposed and make findings to support the project consistent with*  
2           *Section 20.24.080 (C) of the Albany Municipal Code where equipment that is than 6 ft. in*  
3           *height is allowed up to 20% roof coverage.*
- 4
- 5           3. *If the Commission moves to deny the application, the hearing must be continued to a date*  
6           *certain so that staff may craft findings of denial for review and action by the Planning &*  
7           *Zoning Commission.*
- 8

9 Ms. Hersch presented the staff report.

10

11 **Commissioner Eisenmann-** asks if the staff makes any kind of recommendation of any  
12 direction.

13

14 Ms. Hersch says that it is in the Commission's purview, and based on the previous meeting,  
15 the options that the Commission directed would be to move the equipment to the rooftop  
16 penthouse or to reduce the equipment height to less than six feet.

17

18 PUBLIC HEARING OPENED.

19

20 **Gordon Bell, AT&T representative-** says that they have reviewed the staff report and the  
21 analysis and that they concur with the conclusions and recommendations. He says that they  
22 would be amenable to either option one or option two, and says that both are feasible. He has  
23 spoken to the property owner, who is willing to allow them to use the penthouse and convert  
24 it back into a mechanical room. He made himself available to questions, and strongly urges  
25 the Commission to take action at the meeting. He says that they are willing to accept any  
26 conditions of approval that will get them to recommendation one or two.

27

28 Commissioner Panian- asks the applicant if they have a plan outlining the differences in  
29 terms of what is on the roof.

30

31 **Gordon Bell-** says that they have investigated, and says that doing it would be very possible.  
32 He notes that they have been out with the engineer to look at the rooftop, interior, and  
33 structure, along with the landlord, who has agreed to the footprint. He says that they have  
34 made sure that there is enough space in the penthouse to maintain a 10-foot setback off the  
35 property line.

36

37 Commissioner Panian- asks the applicant what wouldn't be inside of the property for  
38 scenario one.

39

40 **Gordon Bell-** says that what wouldn't be inside the penthouse are essentially the screen wall,  
41 the antennas, remote radio units behind the antennas and behind the parapet, and wall  
42 mounted air conditioning units to cool the penthouse. He says that all of the units would be  
43 below six feet, and that all of the remote radio units would be visible, being mounted behind  
44 the parapet. He says that essentially, all there is touching the roof are pipe mounts for the  
45 antennas, and the base of the screen wall. He says that the screen walls are 10 feet high, and  
46 that the rooftop is 37 feet 5 inches, so the screen wall takes it to 47 feet 5 inches.

1 **Peter Burnham, Albany resident-** lives on the street, and says that the antennas are already  
2 blocking the skyline, and asks them to not increase it. He wants them to put it somewhere  
3 where there aren't residents who have to look at it.  
4

5 **John Kindle, Albany resident-** said that since the last meeting, there has been another  
6 emergency situation, a fire at a house. He says that the family's landline was out, and the  
7 mother had to leave her kids to go out into the street to get cell phone reception. He says that  
8 as someone who also had to leave someone in need in order to get cell phone reception, he  
9 hopes that no one will ever have to lose someone due to having no cell phone reception to get  
10 emergency help. He says that it is a public safety issue, and says that the city is collecting tax  
11 money from people using cell phones, and isn't providing any service.  
12

13 **Winkie Campbell-Notar, executive director of Albany Chamber of Commerce-** wants to  
14 reiterate their support on the program. She says that it is a public safety issue, a public  
15 amenities issue. She notes that there are existing cell towers on the building, and that the  
16 project wouldn't raise anything of any additional blight to the city, and provides a much  
17 needed service to the ATT subscribers.  
18

19 **Sara Sunstein, Albany resident-** is new to the area, and while she doesn't know all of the  
20 history of the proposal, she understands that some zoning laws will be changed to  
21 accommodate it. She knows that even though communities aren't allowed to consider health  
22 considerations in where they site cell phone towers, she says that they have to. She says that  
23 for John Kindle to say that it is a safety concern because a lady couldn't get cell phone  
24 reception in her house, she says that there are landmines. She says that everyone used to  
25 have a landline, and says that when you and cell towers to where there already are cell  
26 towers, it isn't arithmetic, but geometric. She has the belief that all of the radiation is  
27 poisoning everyone, and that it is a living experiment. She notes that the tot park is around  
28 the corner, and believes that the children are susceptible. She would like the cell towers to be  
29 sited far away, if at all.  
30

31 **Delrina, Albany resident-** lives right under the cell tower building, and shows her son. She  
32 says that they can't see the sky, and while she is proud of the city and its integrity, along with  
33 many of the changes. She believes that to "sell out" to a corporation in this way isn't one of  
34 the things that she lives in Albany for, and doesn't want her child to grow up under it.  
35

36 **Kelley Bullard, Albany resident-** works in the county hospital as a trauma surgeon, and says  
37 that they see around 2,500 traumas a year at the medical center. She has worked there for 10  
38 years, and has never heard of a case due to a cell phone not working, especially from Albany.  
39 She doesn't want to see any more cell towers.  
40

41 **Sydney Matson, Albany resident-** says that while people are talking about visibility, and  
42 hiding it, and believes that they can't hide any effects of radiation. She doesn't know what  
43 kind of county standards there are, but notes that there has been something installed on  
44 Santa Fe Ave. She believes that it has been "draining" her body, along with her

1 granddaughter's body. She doesn't understand how, as a community, they can't talk about  
2 health issues. She asks for research about the effects of radiation on the health of the people.

3  
4 **Jackie Hermes-Fletcher, Albany resident-** wonders why they can't do what Europe does,  
5 with fiber optics underground. She asks them to look into it and hopes that Albany could  
6 become more progressive.

7  
8 **Julie Beck, speaking on behalf Albany Residents for the Responsible Oversight of**  
9 **Wireless, ARROW-** shows several pictures of the neighborhood on the other side of the  
10 building. While she knows that they can't consider health and safety issues, they can consider  
11 the zoning codes for the city, and the wireless zoning codes. She says that there are many  
12 things about the application that would require bending and restructuring of the zoning  
13 code. She says that the new plans submitted are no different from the old plans, except for  
14 lowered heights. She says that they haven't received any new plans showing how AT&T  
15 would adequately address the 10% rooftop coverage limit, which are all spelled out in the  
16 city code. She believes that they are not discriminating against the company if they deny the  
17 antennas. She says that AT&T has had four years to find a suitable spot for the antennas, but  
18 have not seriously investigated the sites. She says that the proposed site, which is on an  
19 already congested rooftop building with residential buildings behind it, is the last priority  
20 zone for locating the antennas. She quotes the code that sets the limit of 10% rooftop coverage  
21 and a limit of 10 feet. She notes that the penthouse site is close to the property line, and that  
22 AT&T mentioned that they could put it ten feet back. She opposes the waiver and loopholes  
23 around the city ordinance. She believes that it is unclear in AT&T's application what the  
24 penthouse option entails. She notes that the Commission has made AT&T change their plans  
25 in the past to comply with the 50-ft setback. She notes that a new federal law encourages  
26 AT&T and other carriers to locate on federal buildings, by allowing them to put antennas on  
27 any federal building. She says that people have written in saying there is no coverage  
28 problem, and that landlines are safer.

29  
30 **Mara Duncan-** says that they, as a community, worked on the presentation, and asks  
31 whether they count. She is embarrassed at having AT&T, and thinks that she should look at  
32 that. She wants the Commission to uphold the zoning code, and wants AT&T to look at  
33 better options.

34  
35 **Heike Abeck, Albany resident-** owns one of the houses shown in Julie Beck's presentation.  
36 She says that she chose to live in Albany because it is family friendly. She doesn't like the  
37 feeling of being forced out of her neighborhood. She urges the Commission to stick to the  
38 ordinance, and to protect the residents. She thinks that neither option presented follows the  
39 ordinance. She also notes that the site is the last of three zones. She doesn't agree that it is  
40 discrimination if the Commission doesn't allow the antennas while Sprint does, because the  
41 antennas were put up before the code was adopted. She doesn't believe AT&T when they say  
42 that it is impossible to locate wireless installations in Albany, and notes that they have tried  
43 to come up with options, such as at the racetrack or other locations in Albany. She urges  
44 people who don't get service with AT&T to look for other carriers, or to get a landline. She



1 has the belief that if AT&T put cell towers up, her children are at risk, and will be forced to  
2 move.

3  
4 **John Kindle, Albany resident-** points out some misstatements. He notes that the option of  
5 getting a landline isn't true, because in the incident with the woman who had to go out into  
6 the street, the woman had a landline, but the telephone line was burned down. He also points  
7 out the misstatement that police don't know where one is when using a cell phone. He works  
8 in law enforcement and knows that they could track them down through a cell phone. He  
9 says that while there are ordinances, there are also exemptions to them. He says when his  
10 and his neighbor's houses were built, in 1927, they were so close that a new law required a  
11 setback to the side, and would have pushed her addition into her driveway, so they gave her  
12 a variance.

13  
14 **Doug Donaldson, Albany resident-** urges the Commission to support option two, after  
15 reading the staff report. He knows that at the previous meeting, there was detailed  
16 discussion about the roof coverage, and believes that the applicant has been reasonably  
17 responsible. He thinks that they now have a rational basis to move forward with either  
18 option, preferably option two. He finds it interesting that the staff punted on option three,  
19 which is denial, and believes that if the Commission chooses to go that route, they would  
20 have to give the staff good guidance of reasons for doing so, so that the staff could write a  
21 staff report that is legally defensible. He notes that the problem with the application is the  
22 complexity of the project and the conflict with the ordinance for cell phones. He says that  
23 they have a technology that has been rapidly adapted, and that they are behind in it, in  
24 bringing decent cell phone coverage into the community. He thinks that it is a shame there  
25 has to be unnecessary complexity and difficulty in implementing the cell phone ordinance.

26  
27 **Michael Barnes, Albany resident-** would like to register a complaint at the length of the  
28 discussion by the representative of ARROW. He says that he could spend an hour correcting  
29 mistakes in the presentation. He says that they wouldn't give him the option, and that it is  
30 easier to spew information than to correct it. He notes that he lives on the far eastern border  
31 of the city, and has fought for a long time for a cell tower in his neighborhood, on several  
32 locations. He notes that the cell companies can't move the cell towers east of San Pablo, into  
33 residential areas, due to the city ordinance, and AT&T doesn't do it to respect the ordinance.  
34 Cell companies have to pile the cell towers on the border, which is what they do. He noted  
35 that the location co-located with the Sprint site, isn't in contradiction to the ordinance, but is  
36 recommended by the ordinance. He says that putting the cell towers on San Pablo, co-located  
37 with the Sprint site is respectful of the city ordinance.

38  
39 **David Sanger, Albany resident-** believes that it has been too long and drawn out. He notes  
40 that the application has been in the works for four years, and hopes that they could come to a  
41 resolution. He notes that they have already had one law suit, and it wouldn't be good to have  
42 another. He says that many have suffered in the process, and that it is a serious issue of  
43 public health and safety, and that there has been anecdotal evidence of several people having  
44 problems of fires, robberies, etc, and believes that they will continue to increase. He notes the  
45 testimonies of several disabled people, who rely on cell phone service to get around. He says

1 that public opinion is overwhelmingly in favor of the application. In reviewing the testimony  
2 given to the Commission, there were 41 people who spoke in favor, and 20 who were against  
3 the project. He noted that AT&T has submitted a petition from 45 merchants and 100  
4 customers in Albany. He asks the Commission not to be swayed by a few emotional  
5 testimonies of people who live close. He says that the people who are opposed to the  
6 application are people who don't want what they perceive as a health hazard close to their  
7 children. He notes that the ARROW representative, who said that ARROW has no concern  
8 about the health, begins by pointing out that the houses have children and babies. He warns  
9 the Commission that they would put the city at risk of federal law suits if they make a  
10 decision where, in the record, they thought that the health effects were in any way part of the  
11 decision. He believes that AT&T has done a good job in responding to the numerous requests  
12 for change and studies, which were comprehensive. He points out that the second concern  
13 that ARROW has with the zoning minutia, which he believes is a cover for their health  
14 concerns, is inconsistent. He notes that every item ARROW has proposed in alternative is  
15 non-conforming. He points out that putting it on Albany Hill isn't a preferred location, and  
16 that no one can force them to put it on a municipal site. He says that the USDA site is a 60-ft  
17 tall building with a lot of roof coverage, and isn't conforming. He also points out that the  
18 Section 6409 preempts local authorities from forbidding any control over applications by  
19 wireless carriers to replace equipment. He also says that the argument that Section C, the  
20 exception for mechanical equipment, isn't applicable isn't viable, because he has found many  
21 city codes that refer to antennas as mechanical appurtenances.

22  
23 **Clay Larson, Albany resident-** believes that the Commission's roll isn't to be concerned with  
24 public safety associated with the benefits of having cell phone reception, the benefits of the  
25 community, law suits, how long the project will take, or even public opinion. He says that  
26 their job is only to look at the application and to see whether or not it conforms to  
27 regulations. He believes that the Commission should exclude option two because it doesn't  
28 take all of the equipment off of the roof, and would involve the addition of more rooftop  
29 equipment. He notes that the wireless ordinance references a section, a general pertinence,  
30 which defines the rooftop antennas and accessory equipment as items that are subject to the  
31 general exception. He believes that option one need to be developed further. He believes that  
32 the long term solution would be to edit the ordinance.

33  
34 **Todd Abbott, Albany resident, President of Albany Chamber of Commerce-** says that if it  
35 wasn't their job to weigh all of the concerns, they wouldn't need a Commission. He says that  
36 the Commission's job is to weigh the needs and values of the community and interpret the  
37 law to benefit the city. He notes that at the previous meeting, where it came down to one  
38 issue, and if AT&T could address it, it would be accepted. He notes that there are already cell  
39 towers, and some people are just speaking from irrational fears. He encourages them to push  
40 the project forward.

41  
42 **Sara Sunstein, Albany resident-** notes that everyone speaking for the application doesn't  
43 live in the neighborhood. She believes that the people with passion are dismissed because  
44 they have passion. She wants the zoning code to be respected. She says that they have time to  
45 find another location.

1  
2 **Karen Watsuoga, Albany resident-** believes that 21 cell towers are just too much. She  
3 believes that they don't know what the technology will do to them or the children. She wants  
4 them to move it away.

5  
6 **Peggy McQuade-** is wondering why the staff report says nine cell towers, but people are  
7 saying there will be 21 cell towers, and asks for clarification.

8  
9 **Gordon Bell, Applicant-** wants to clarify that even though they keep saying cell towers, they  
10 really are just antennas mounted on a roof that are concealed. He says that they will not be  
11 visible from the neighborhood. He clarifies that there will be nine antennas, as reported in the  
12 staff report.

13  
14 PUBLIC HEARING CLOSED.

15  
16 Commissioner Eisenmann- would like more information about section 20.24.080 B or C. She  
17 would like to know why C was determined to be appropriate.

18  
19 Ms. Hersch says that at the last meeting, the Commission and staff went through the code,  
20 and that it was one of the options that the Commission indicated to the applicant that could  
21 be looked at as an option, if it could be done appropriately.

22  
23 Commissioner Panian- notes that they don't have an updated plan and notes that they are  
24 currently relying on a plan that isn't to scale or up to date with the options. He asks for  
25 clarification, whether they were just looking at the pieces.

26  
27 Ms. Hersch says that the only addition to the new plans is that the previous set of plans had  
28 six sheets, and the revised plan had two additional sheets with the equipment cabinet details  
29 and a slight change on the roof site plan to show where the equipment would be located.

30  
31 Commissioner Panian- wants clarification that alternate one will not contain intensification of  
32 additional equipment on the roof.

33  
34 Ms. Hersch says that he is correct.

35  
36 Commissioner Panian- asks where the antennas would be in option one, if they aren't in the  
37 penthouse.

38  
39 Ms. Hersch says that for option one, three of the antennas on the north-facing side of the  
40 building are mounted to the building, so they don't count towards the roof coverage percent.  
41 On the south elevation, the antennas would have to be reconfigured.

42  
43 Commissioner Panian- clarifies that option one includes all of the support equipment inside  
44 of the mechanical penthouse with the antennas mounted to the outside of the building, on  
45 the wall. He asks whether they have addressed any specifics relating to wall-mounted

1 antennas, because their wireless code does talk about those instances, with treatments about  
2 what they look like, etc.

3  
4 Ms. Hersch says that they didn't delve into that level of detail, and that the plans given to  
5 them only dealt with option two.

6  
7 Commissioner Eisenmann- still believes that the city should look at giving an open-ended  
8 permit for technology that they don't know will be in place in the future. She believes that  
9 they should look at amending the code, to have a time constraint. She isn't comfortable with  
10 the first option. She doesn't think that it would be the right direction to set them in the 50-ft  
11 setback, and that it isn't what the code is asking for. For the second option, she thinks that  
12 she could support the option if they are confident that the mechanical appurtenance covers it.  
13 She does believe that it does, because under exceptions it talks about towers, chimneys, water  
14 tanks, things that aren't equipment, so she thinks that the antennas are equipment under the  
15 exception. She thinks that if it could be assured that it could be kept less than six feet, she  
16 would be willing to support it.

17  
18 Commissioner Maass- is feeling more comfortable with option one, because the issue for him  
19 was the roof coverage. He says that the second option definitely doesn't go with the code. He  
20 doesn't think that the six foot limit would apply to antennas. He says that the problem with  
21 option one is that they are moving back on the 50-ft space problem. He feels that they could  
22 do it if they make findings that it wouldn't be a visual impairment or have sound  
23 consequences. He says that the second issue with option one is that they don't really know  
24 what it will look like. He says that if they could work that out, option would be his choice.

25  
26 Commissioner Moss- is in support of option two. He believes that what they are talking  
27 about is inside of the mechanical space, and has already been counted as square footage on  
28 the roof coverage. He says that they are at 14.5%, and anything over that that is counted as  
29 square footage has to be less than six feet. He says that testimony and information has said  
30 that the antennas would be less than six feet, and that a lot of them are in front of the parapet  
31 on the wall. For option one, he interpreted the 50-ft setback to be on the roof. Having helped  
32 write the ordinance with the others on the Commission, it was his interpretation that that  
33 was what they were doing, that they didn't want the equipment on the roof to be close to the  
34 property lines. They had discussed about the case if the equipment were in a basement,  
35 where the equipment noises would be shielded. He believes that the staff had the same idea  
36 that the equipment was no longer on the roof, but in an enclosure. He said that they were  
37 more concerned about the antennas being close to the property line than the generating  
38 equipment. He believes that they now have two options that work, and that they should send  
39 it forward.

40  
41 Commissioner Panian- summarizes the central issue of the previous meeting, which were the  
42 rooftop coverage issues and the wireless ordinance itself. He thinks that one positive  
43 evolution was the creation of a penthouse, which is what it should be. He notes that there  
44 used to be an existing non-conformity, and the risk was taking it and increasing the non-  
45 conformity by building additional structures. He points out that there are specific

1 requirements in the wireless ordinance dealing with antennas. He thinks that they should  
2 keep what is already non-conforming, not increase it, and to allow what is allowed, the wall-  
3 mounted antennas. He notes that the only way they judge wall-mounted antennas are noise  
4 and aesthetics. He believes that if the 50-ft setback is mitigated by the shielding of the  
5 mechanical equipment, it would be acceptable. He would like to see the antennas sited away  
6 from the 50-ft, for visual screening. He thinks that there should be more work on the design,  
7 but believes that the big issues have been dealt with. He thinks that option two contains a lot  
8 of difficulties. He says that if all of the equipment is enclosed in the equipment room, and  
9 there is no other equipment other than new wall-mounted antennas, it fits into the code. He  
10 would like to see a design review in the future. He feels like he doesn't have enough  
11 information to deal with the visual screening aspect.

12

13 **Gordon Bell, Applicant-** wants to clear up misunderstandings about the wall. He asks if the  
14 Commission wants them to bring down the antennas from behind the rooftop extension  
15 screen wall and onto the face of the building. He says that they can't extend out on the  
16 southerly property line, because it is a zero lot line, and that there will be a screen wall to be  
17 built.

18

19 Commissioner Panian- points out that it means there is a penthouse, with additional things  
20 on the roof. He asks how it is any different from what they had a few months ago.

21

22 **Gordon Bell-** says that the equipment on the rooftop is reduced in size, overall height, and a  
23 reduced footprint, which is for option two. For option one, all of the equipment is inside the  
24 penthouse.

25

26 Commissioner Panian- asks what they have put into the mechanical room that wasn't in the  
27 original plan.

28

29 **Gordon Bell-** says that they have only gotten newer technology that reduces the cabinet size  
30 and footprint, for option two. For option one, all of the equipment that was formerly on the  
31 rooftop are inside. He says that the screen wall is there for both options.

32

33 Commissioner Eisenmann- says that that they were told that the lifespan of an antenna is  
34 around five years. She asks what will happen after five years, when the newer technology  
35 comes in and is replaced.

36

37 **Gordon Bell-** says that it is generally upgraded, because the frequencies that are allocated to  
38 the carrier change, so the antennas are swapped out for the new frequencies. He says that the  
39 antennas are generally the same size.

40

41 Commissioner Maass- asks if it is possible to break into the parapet and to set the antennas  
42 within, so they are right on the face.

43

44 **Gordon Bell-** says that the problem is that the other sector, which is in the enclosure that  
45 faces east, has to retain the 50-ft setback. He says that they can't put the antennas on the rear

1 wall where the Sprint antennas are. He notes that there are two sectors in the enclosure, one  
2 pointing east, and one pointing south, so the solution was the proposed plan.

3  
4 Commissioner Maass- believed that the staff report meant that everything would be in the  
5 equipment room, but now knows that the antennas aren't part of that.

6  
7 Commissioner Panian- says that the drawings were clear, but it wasn't clear what the  
8 alternatives departed from what was shown in the plan. He says that aside from wireless, if  
9 you are a commercial property owner, and you go to the staff and say that you want to put a  
10 10-ft high enclosure, you would be turned away. He asks if the 50-ft setback is preventing  
11 them from putting everything in the penthouse, and if there is any scenario in which  
12 everything goes in the room. He says that the 50-ft limit isn't a hard number, and that they  
13 have jurisdiction over what the 50-ft limit could be reduced to. He wonders if they could use  
14 the allowance, if they could get everything off of the roof.

15  
16 **Gordon Bell-** says that there is potential to mount the antennas on the outside of the  
17 penthouse structure. He says that it is AT&T's desire to adhere to the 50-ft setback, and not  
18 increase the impact. He says that moving the equipment would get rid of the noise and  
19 rooftop coverage, but there are visual impacts then.

20  
21 Commissioner Eisenmann- would be interested in seeing the layout of the equipment all  
22 under the six-foot limit.

23  
24 Commissioner Panian- notes that even under the six-foot option, the screen wall is still there,  
25 so it doesn't matter whether or not everything else is less than six feet. The screen wall would  
26 be intensifying the non-conformity.

27  
28 Commissioner Moss- asks the staff for clarification about the set-up.

29  
30 Ms. Hersch asks if Commissioner Moss is asking about the footprint of the equipment in the  
31 stealth enclosure.

32  
33 Commissioner Moss- asks if what they just heard changes the staff report, about the screen  
34 wall that is over six feet. He asks if the screen wall could be brought down to six feet, if the  
35 antennas are six feet.

36  
37 **Gordon Bell-** says that the screen wall is the same wall that they always had. He notes that  
38 the top of the screen wall is ten feet from the rooftop.

39  
40 Commissioner Panian- says that the Commission can craft finding for denial if needed. He  
41 adds that the project is nonconforming and City Council is likely to make a decision. He  
42 notes there is a high likelihood of appeal.

43  
44 Commissioner Moss-wants to discuss option 1 as option 2 is no longer valid because of the  
45 structure is not under 6 ft.

1  
2 Commissioner Eisenmann- states she had thought everything was less than 6 ft and that the  
3 observation that some aspects were not was a good finding.  
4

5 Commissioner Panian- indicates option 1 was also not a valid option as it does not meet the  
6 findings pertaining to 20.2100.d. He says the application has minimal modifications for the  
7 fourth time and suggests denying it.  
8

9 Commissioner Moss-clarifies if Commissioner Panian is referring to section 20.24.80.  
10

11 Commissioner Panian says the application is still adding 65 square feet of a ten foot box and  
12 that the Commission should stay diligent to the code. He suggests City Council should weigh  
13 in on larger issues.  
14

15 Commissioner Eisenmann- also supports the findings for denial.  
16

17 **Motion to continue item 6a to May 8<sup>th</sup>, 2012 with recommendation to create findings for**  
18 **denial: Commissioner Moss**

- 19  
20 • **Motion based on fact that the Planning and Zoning Commission could make the**  
21 **application conforming. In the denial, he requests staff to come back with**  
22 **reasons for denial.**  
23

24 Commissioner Panian- asks what findings for denial should be made so that the application  
25 does not return back to the Planning and Zoning Commission.  
26

27 Commissioner Moss- asks if it was possible for the Planning and Zoning Commission to make  
28 the findings now rather than staff.  
29

30 Mr. Labadie- clarifies that the Telecommunications Act requires that any denial be supported by  
31 written findings based on substantial evidence. He notes that if the Planning Commission  
32 chooses to deny the application and does not draft the findings now, staff would need to draft  
33 them and bring them back for consideration based on what the Commission deems the grounds  
34 of denial are.  
35

36 Commissioner Moss-states that since it is clear the Commission cannot craft findings to support  
37 the application; he would like to see the application brought back to the next meeting on the  
38 consent calendar.  
39

40 Ms. Hersch- indicates the next meeting would be May 8<sup>th</sup>.  
41

42 Mr. Bond- says that the public hearing has been closed so the Planning Commission could  
43 continue their discussion among themselves with the option of opening the public hearing if  
44 desired.  
45

1 Commissioner Panian- says this may further prolong the process and asks the staff to make  
2 specific findings. He asks if the staff would like more assistance on what the Commissioners  
3 find as the grounds for denial.  
4

5 Mr. Labadie- indicates that the reason for denial was that the extension of a nonconforming use  
6 is not allowed without a variance.  
7

8 Commissioner Panian- says that if the recommendation was for denial, the Commission would  
9 defer to staff and then bring it back to the Commission.  
10

11 Commissioner Moss- says that the reason for denial was they cannot make findings in the code  
12 to support the application.  
13

14 The Commission notes that staff will write the findings.  
15

16 Mr. Bond- clarifies if the Commission was referring to the ten foot high enclosure on the south  
17 elevation as the grounds for denial.  
18

19 Commissioner Moss- adds that the antennas are also over six feet. He notes if the neighbors  
20 authorized encroachment of their air space, then that would be another matter.  
21

22 Commissioner Panian- says wall mounted antennas would be a trellis so if the application  
23 meets projection rule within property lines the City Code allows for wall mounted antennas. He  
24 notes this is different from roof top mounted antennas and the application could return to the  
25 Commission in this form but so far there have been minimal modifications to this application  
26 and it has been presented to the Commission three or four times. He indicates that the  
27 Commission has tried to find ways to approve the application but could not find any. He says  
28 the new equipment exceeds the allotted amount and it is it is existing nonconforming and  
29 cannot be exceeded.  
30

31 Mr. Labadie- clarifies that for option 1 the Commission could approve the application if the  
32 mechanical equipment with the exception of the antennas was within the existing structure and  
33 any antennas or screening equipment would not increase roof coverage. He states that if it is  
34 possible to design the project that way then the applicant could move forward in the process.  
35

36 Commissioner Panian agrees this has always been the case.  
37

38 Mr. Labadie suggests attaching this as a condition of approval if the Commission wants. He  
39 says it could be approved as long is no equipment was mounted on the roof structure. He  
40 indicates the applicant would need to mount the antennas in a way that they do not increase  
41 roof coverage.  
42

43 Commissioner Panian - asks if there is a redesign of the project that meets the ordinance.  
44

45 **Gordon Bell** - proposes just taking action on the project as is presented.



1  
2 Mr. Bond clarifies that the move to denial because the Commission was unable to make findings  
3 due to increasing nonconformity of rooftop equipment of above 6 ft in height.  
4

5 Commissioner Moss- says not to refer to numbers but to simply indicate that the application is  
6 above the height allowed.  
7

8 **Seconded by: Commissioner Eisenmann**  
9

10 Commissioner Panian- clarifies that the motion was to deny the application and have staff  
11 develop written findings in support.  
12

13 Mr. Bond - clarifies that the motion was to continue to the next meeting.

14 Commissioner Panian- reiterates the motion as to continue with recommendation to create  
15 findings of denial based on the extension of non-conforming use.  
16

17 Ayes: Eisenmann, Maass, Panian, Moss

18 Nays:

19 Motion passed, 4-0.  
20

21 Commissioner Moss - notes the denial does not take place until the next meeting and at this  
22 time the Commission has only requested staff to make determinations for denial If the applicant  
23 returned with a code complying project, it may pass.  
24

25 Mr. Bond - clarifies for the public that the continuation will be on May 8<sup>th</sup>'s meeting and since  
26 this is a continuation of the public hearing, a second public notice would not be sent out.  
27  
28

29 **b. PA 07-100 University Village Zoning Amendments, Planned Unit Development,**  
30 **Density Bonus Application and Draft Development Agreement-** The 6.3-acre project  
31 site in University Village is located to the northwest and southwest of the Monroe  
32 Street/San Pablo Avenue intersection. The applicant seeks approval to construct a new  
33 55,000 sq ft grocery store at the north side of Monroe and a mixed-use retail space and  
34 approximately 175 unit senior living project on the south side of Monroe. This public  
35 hearing is for the Commission to consider making a recommendation to the City Council  
36 regarding a proposed zoning map amendment, planned unit development, development  
37 agreement, and an application for Density Bonus to reduce parking requirements, and  
38 change in parkland dedication requirements.  
39

40 **Recommendation:**

41 *Recommend to the City Council approval of a Development Agreement, an application for*  
42 *Density Bonus to reduce parking requirements required for senior housing, and amendments*  
43 *to the Municipal Code to reduce parkland dedication required for senior housing.*

44 **Continued to a date uncertain.**  
45

46 **7. New Business**

1  
2 None.

3  
4 **8. Announcements/Communications/Discussion:**  
5

- 6 a. City of Albany Planning and Zoning Update "E-Notification"  
7 b. Update on City Council agenda items related to Planning and Zoning activities.  
8 c. Review of status of major projects and scheduling of upcoming agenda items.  
9

10 Ms. Hersch- indicates Safeway has resubmitted an application this week and staff have  
11 reviewed it and would like to bring it back the Commission as a study session item on May 8<sup>th</sup>.

12  
13 Commissioner Panian- asks if this information is available on the City's website.

14  
15 Ms. Hersch- says there are new plans that still have to upload the City's website and a public  
16 hearing notice will be sent out for the study session. She notes that she heard the project was  
17 well received at a meeting the previous Wednesday and nearby residents were pleased with the  
18 design changes.

19  
20 Ms. Hersch- comments that the negative declaration has been sent out for the boutique type -  
21 salon and that they are one week into the 30-day comment period.

22  
23 Ms. Hersch- indicates that the date changes for Planning and Zoning Commission meetings  
24 have been approved and effective in September, the meetings will be on the second and fourth  
25 Wednesdays of each month. She notes the Council took action last Monday. The Municipal  
26 Code would be amended the Planning and Zoning Commission meetings will be moved from  
27 Tuesdays to Wednesdays.

28  
29 The Planning and Zoning Commissioners - discusses a possible time change.

30  
31 Ms. Hersch indicates the times for meeting were not in the Municipal Code and the Planning  
32 and Zoning Commission could decide that.

33  
34 **9. Future Planning and Zoning Commission Meeting Agenda Items:**  
35

- 36 a. **Next Regular Planning and Zoning Commission hearing scheduled for Tuesday, May 8,**  
37 **2012.**

38  
39 Mr. Bond- mentions the University Village Project and states that the meeting may be moved to  
40 a different venue such as the community cent to accommodate more people. He says he will  
41 inform the Commission of any date changes.

42  
43 **10. Adjournment**

44 The meeting was adjourned at 9:50 p.m.

45  
46 Next regular meeting: Tuesday, May 8, 2012, 7:30 p.m. at Albany City Hall

1

2

3 Submitted by: Anne Hersch, City Planner

4

5

6

7 **Jeff Bond**

8 **Community Development Director**