

MINUTES OF MEETING
West County Board of Zoning Adjustments
January 27, 2010
(Approved March 24, 2010)

REGULAR MEETING: 1:30 P.M.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding, Frank Peixoto and Ineda Adesanya.

MEMBERS EXCUSED: NONE.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, William Fleishhacker; Code Enforcement staff; and Yvonne Bea Grundy, Recording Secretary.

There were approximately 10 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:30p.m.

ANNOUNCEMENTS BY THE CHAIR: The Chair made no special announcements.

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. No one requested to be heard under open forum.

Neighborhood Preservation Ordinance Abatement Hearing

There were no items scheduled on the Neighborhood Preservation Ordinance Abatement Hearing Calendar.

CONSENT CALENDAR:

There were no items scheduled on the Consent Calendar.

REGULAR CALENDAR

1. **ANTHONY & MARTHA CASSINI, VARIANCE, V-12107** – Application to allow a wrought iron fence, four feet, nine inches in height where two and four feet are the maximum allowed, in an R-1- (Single Family Residence) District, located at 16006 Via Harriet, south side, corner southwest of Via Catherine, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0045-077-00. (Continued from May 28 and September 24, 2008, August 26 and September 23 and December 16, 2009). **Staff Planner: Richard Tarbell.**

Staff reviewed the history of the application. The application has been continued to determine if the existing fence would be in compliance with proposed modifications to County Design Guidelines. There are no proposed changes that will affect present height limitations. Most of the fence length is located within approximately 4 feet of the public right of way. The Chair asked if the Applicant had attempted to obtain an encroachment permit from Alameda County Public Works. Staff said at this juncture Public Works has not issued a permit. Public testimony was opened.

The Applicants, Anthony & Martha Cassini were present. Mrs. Cassini told the Board the County is only

addressing their fence. She did understand the meaning of "right of way". The fence can be seen through, and does not cause any traffic problems. Mrs. Cassini then distributed photographs of solid concrete fences in her neighborhood. Staff explained the public right of way is the area in front of the property before the property line. At this site the property line is set back approximately 4 feet behind the sidewalk. Presently the fence is on County property. The application has been on-going for quite some time. The Applicants have talked with the Planner. Mr. Cassini told the Board the fence, and the street sign were both located in his yard. At last review of his application Board Members stated only 6 inches of the fence was in dispute. Staff responded the property line is located 4 feet from the sidewalk. Mr. Cassini then showed additional photographs. Mr. Cassini did not believe it was fair that he move his fence. There are many fences in San Lorenzo that do not have a 4 foot setback. Board questions were as follows:

- Has a survey been conducted of the property
- Did Public Works provide diagrams verifying the fence is within the public right of way
- Is there an easement alongside the property
- Where is the area of encroachment located
- Does landscaping effect the encroachment in any manner
- Who is the owner of the right of way
- How was the encroachment brought to the attention of the County

Mr. Cassini told the Board a survey of the property had not been conducted. Staff explained the encroachment was reported through an anonymous zoning enforcement complaint. Public Works has not produced a graphic diagram of the site frontage. Staff used a photograph to show there is no easement. The right of way and street are owned by Alameda County. The proper setback to avoid the public right of way is 40 feet from the curb, to the center of the street. The fence is 50 feet. The setback is 9 feet from the curb. The side walk is 5 feet from the curb. The fence encroaches on both sides, including the corner area. Landscaping at the site does not affect the degree of encroachment. Member Peixoto said he lives in San Lorenzo. These dimensions are common in San Lorenzo.

Further Board questions were as follows:

- What is the proximity of additional homes with fence encroachment
- Are the other homes located within City Limits or Unincorporated County
- What is the zoning of other properties that contain fences encroaching into the right of way
- Have any of the properties been granted a variance for fence height
- Have any of the properties been granted encroachment permits
- Are any of the homes located on a private street

Mr. Cassini used photographs to indicate how the ground sloped downward. This should be taken into consideration when calculating the height. He then pointed out properties in close proximity. The closest property is one block away on Via Amigo. There is a property on Via Nelson, and a home on Via Catherine. Member Peixoto confirmed all of the locations were within Unincorporated County. Staff is unaware of zoning other than R-1. There are no private streets in the vicinity. At this time no other variance applications for fence height have been submitted. Board Members said staff is to investigate each site with fence height violations and encroachment into the public right of way, indicated in the photographs.

Mrs. Cassini reiterated there were many fences in the neighborhood that exceed the height limit, and placed within the public right of way. She did not understand why there was an issue. Visibility is not obstructed by the fence. Therefore there should be no issues with traffic. Regarding the height of the

fence, the ground below is actually sinking, which reduces the overall height. The fence is beautiful. She believes the complaints were generated by jealous neighbors. Public testimony was closed.

Member Peixoto agreed there were a lot of illegal fences in the neighborhood. However he cannot overcome the fact the fence is within the public right of way. The Chair and Member Spalding asked if Planned Development zoning or Private Streets had different rules regarding fence heights, and encroachment. Staff said possibly. However sites with this type of zoning are not located in the area. The Design Review Committee has not proposed changes to the Design Guidelines. The Chair said she less concerned with the fence height as opposed to placement within the public right of way. However it appears to be an unnecessary burden to these property owners to move their fence when others in violation. The Vice Chair and Member Spalding agreed, they cannot get past the location in the public right of way. Member Spalding said it appears there are two separate issues, fence height and placement in the right of way. Member Adesanya posed a point of clarification. Only the issue of height is before the BZA, as an action item. Counsel said the Board does not have the jurisdiction to grant a variance within the public right of way. The BZA can grant a variance for height. The Board would then refer the application back to Public Works to address the issue of location. Public Works must make the determination if a fence within the public right of way is acceptable.

Member Adesanya motioned to uphold the staff recommendation of denial. Member Peixoto seconded the motion. The motion to deny Variance, V-12107, Cassini passed 4/1. Member Spalding was not in favor of denial.

Member Adesanya asked staff to continue to work with the Applicants. Perhaps there is more information as to why other fences are located in the public right of way.

2. **MEEKLAND STORAGE LLC / T MOBILE - CONDITIONAL USE PERMIT, PLN-2009-00084** - Application to allow installation and operation of a telecommunications facility (Monopole) in an M-1 (Light Industrial) District, located at 22425 Meekland Avenue, west side approximately 250 feet north of A Street, unincorporated Cherryland area of Alameda County, designated Assessor's Parcel Numbers: 429-0086-018-00 and 429-0086-019-02. (Continued from December 16, 2009) **Staff Planner: Christine Greene.**

Staff reviewed the history of the application. The application had been continued to review alternate pole designs. The staff recommendation was approval. The application is for a 50 foot, 36 inch diameter mono pole. The antennas will be hidden inside. The Applicant has also submitted an alternative palm tree antenna pole design. One response regarding the palm tree design from the Cherryland Association has received. It was positive. The Applicant had also considered placing a pole on the Costco building in the City of Hayward. Each of the buildings is approximately 25 feet in height. The Applicant can pursue the application process with the City if that is the ultimate decision. Initial Board questions were as follows:

- Is the proposed site within the influence of the Eden Area Plan
- Is staff aware there were further responses from the Cherryland not in favor of the palm tree

Staff was unsure if the project Planner considered both the Draft, and current Eden Plans. The Planner has been in communication with one of the Cherryland Board Members. Thus far staff has not received additional comments regarding the palm tree design. Public testimony was opened.

Mr. Zach Carter was present representing T Mobile. The slim line pole design has an encased raydome antenna. The other palm tree design option would look good. There are some existing palm trees in the

neighborhood. The antenna palm should blend in well. Prior versions of palm tree antennas did not look as natural. They were essentially branches attached to a pole. The company that makes the latest version, designs plants and trees for Las Vegas Hotels. There is a sense of realism. The base of the raydome antenna is covered by palm leaves. Board questions for the Applicant were as follows:

- Is the proposed site considered a macro or micro site
- Are Specifications available for the palm tree antenna pole
- What other sites have been considered for the antenna installation
- Can either of the proposed pole designs accommodate co-location
- If co-location is possible, is further camouflage an option
- Will the proposed antenna box be enclosed
- Will additional palm trees be planted around the proposed palm antenna pole
- Will the site be visible from the A Street Freeway overpass

Mr. Carter said the proposed site would be a macro facility. The width at the bottom of the raydome is 6 inches wide. The equipment cabinet will be located between existing buildings on the site. The color will be painted to blend with the surroundings. An 8 foot fence will be installed around the site. Typically the fence material is chain link. However T Mobile will work with staff on preferred materials, and height requirements. Manufactures Specifications for the palm design were not available at the hearing. However they can be forwarded to staff. T Mobile did approach COSTCO regarding antenna placement. They were not interested. Mobile is willing to plant additional trees if there is sufficient room at the site. Neighboring sites may be willing to plant trees as well. However their permission must be obtained. A balance must be struck. When planting additional redwood and evergreen trees near a pole, the antenna pole may not appear as realistic. Both designs have the ability to co-locate. A permit is required from the Building Department with Planning Department approval. An additional carrier's equipment would be placed beneath T Mobile's. Camouflage is still possible. Planning would require that all equipment be painted to match, and blend in. Member Spalding pointed out the Ariel photo did not appear to be consistent with Exhibit A-1. Mr. Carter acknowledged Exhibit A-1 included a photo of the lot above the site. Once installed, the facility will be visible from the A Street Freeway overpass. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval with the installation of a 50 foot palm tree antenna pole. Member Spalding seconded the motion contingent upon the required fence to be installed be made of a solid material. Member Peixoto responded the fence is located between two buildings, and would not be seen from the street. Member Spalding seconded the original motion. The Chair raised a question about the lack of specifications regarding the palm antenna. Member Spalding said the motion can be clarified to state: As per the photo simulation submitted in the staff report. The Chair re-opened public testimony for the limited purposes of clarification from the Applicant.

Mr. Carter described the palm tree antenna in more detail. The antenna will taper at the top. Attached above are poly vinyl chloride leaves and bark that are fade resistant. Up close the material has a fiberglass like texture. From a distance there is no indication the material is not a real palm tree. If you drive by, you would not notice the pole as an antenna. The material is only obvious as plastic vinyl when you touch it. T- Mobile typically works the Manufacturer called Treescapes. The wider section of the pole is 32 inches in diameter. The antennas are camouflaged in the palm portion of the installation. The antenna pole would be the same design, without the palm leaves. Public testimony was closed.

The Chair said she was concerned with the incorrect identification of the lot on the Exhibit submitted by staff. The specified fence may be too tall for the site. She would like the application subject to Planning Director approval of the antenna palm design. Staff clarified the fence would be 7 foot tall with barbed

wire at the top. The requirement was an acceptable Condition of Approval to the Board. Member Adesanya said she located the Treescapes website on her PDA. Specifications are available. Although she would not like to delay the application process, she would like to see a map/diagram of corresponding trees and heights in the vicinity of the proposed location. This can help determine the additional planting of trees. Also there appears to be further comments that have not been reviewed regarding the palm design. Member Adesanya was inclined to recommend a continuation to review the new information. Member Spalding did not object to a short continuation. Staff should include reference to the Eden Plan in consideration of the project. Perhaps the neighbors would be amenable to adding trees as well. This could bring overall improvement to the neighborhood. Member Peixoto pointed out the area was industrial. Neighbors may not be willing to pay for, and plant trees. Real palm trees can also be dangerous when leaves fall. The faux palm design would be safe.

Member Peixoto re-stated his motion to uphold the staff recommendation of approval of the installation of a 50 foot palm tree antenna pole. Member Spalding seconded the motion with the inclusion of the following Condition: Prior to installation, approval of the final design is required by the Planning Director.

The motion to uphold the staff recommendation of approval of PLN-2009-00084, Meekland Storage / T-Mobile passed 4/0. Member Adesanya abstained.

3. **JAY GRUENDLE / VERIZON WIRELESS, CONDITIONAL USE PERMIT, PLN-2009-00112** – Application to allow continued operation of an existing Verizon telecommunications facility with no proposed changes from existing Conditional Use Permit, C-7511, in a PD (Planned Development) District allowing R-1-L-B-E (Single Family Residence, with Limited Agricultural Uses, 40,000 Minimum Building Site Area) District Zoning, located at 5241 Jensen Road, east side of the street, approximately 0.3 miles northeast of Castro Valley Boulevard, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085A-0350-005-07. **Staff Planner: Carole Kajita.**

The staff recommendation was approval. The Castro Valley Municipal Advisory Committee passed the application via the Consent Calendar. Public Testimony was opened.

Mr. Jatzak, a tenant who lives at the site was present. He has lived on the property for 20 years. The site is set back 20 feet from the street, and cannot be seen. During his residency, there have been no issues. Board questions for Mr. Jatzak were as follows:

- Can additional trees be planted at the site
- Can further landscaping be added to the site

Mr. Jatzak told the Board that site was already landscaped. Over the years he has planted 150 mixed variety trees. Of the 150 trees, approximately 50 trees were redwood. Mr. Jatzak would not recommend palm trees. The branches are actually dangerous. His son hand was seriously injured by the sharp edges. Public testimony was closed.

Member Spalding acknowledged the telecom site had been in place for 10 years. However the aerial photo graphic provided by staff did not delineate exact property boundaries. A street level photo of the site may be helpful to determine the location of the telecom facility in relation to the entire site. A street view would also show the size of the facility. Mr. Jatzak interjected from the audience. The parcel is

approximately 3 ½ acres. Member Adesanya said the owner may own additional parcels surrounding site. This is supported by the Assessor's Map. Member Spalding believed this was speculation. Mr. Jatzak's testimony was not consistent with the marked area in the aerial photo on file.

The Vice Chair motioned to adopt the staff recommendation of approval. Member Adesanya seconded the motion. Motion carried 5/0.

4. **STEVE HATHCOX, CONDITIONAL USE PERMIT, PLN-2009-00113** – To allow the continued operation of a 170-foot high radio tower, in a R-1-L-B-E (Single Family Residential, Limited Agricultural Uses, Five Acre Minimum Building site Area, 300 foot Median Lot Width, 30 foot front yard, and 20 foot side yard) District, located at 27640 Fairview Avenue, east side, approximately 300 feet south of Oakes Drive, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 085A-6200-015-00. **Staff Planner: Andy Young.**

Staff reviewed the staff report, and recommended approval. Member Spalding said she lives across the street from the site. She knew the original property owners, who installed the radio tower. They used it to for radio communication to contact their daughter who spent time at sea. She asked Counsel if was appropriate to recuse herself; or limit input to comments. Counsel said there may be recusal issues if you live within a certain distance from the property, or have a personal interest in the site. An issue could arise if Member Spalding has pre-judged her determination. The safer action may be to abstain. However Member Spalding can participate if she does not pre judge her opinion. Member Adesanya pointed out the Members are assigned to the BZA based on the area they live in. Member Spalding announced that she did not have an interest in the site. Therefore she decided to participate in the decision regarding PLN-2009-00113. Initial Board questions were as follows:

- Is the use considered non-conforming
- Are there additional carriers located at the site
- How do Telecom Guidelines impact the facility since it was installed prior to their establishment
- Is a new cup required since the "A" Zoning, and original owner have changed since the first cup
- Is the site within the FAA sphere of influence
- How far is the telecom site from the property line

Staff explained the application is for a continued use. The zoning has changed from "A" (Agricultural) to P-D, R-1-L-B-E (Planned Development) (Single Family Residence with Limited Agricultural Uses). The use is not considered non-conforming, as telecom uses are allowed in the R-1 District. There is a new property owner. However the use goes with the property. The site would not be subject to Telecom Sitting Guidelines. The installation was prior to their adoption. The site is approximately 300 feet from the property line. In this case placement in relation to property line setbacks would not applicable. The site is not within the pathway of an airport runway. Public testimony was opened.

The Applicant, Mr. Steve Hathcox was present. He did not offer information in addition to the staff presentation. The Board had no questions of the Applicant. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of approval. Member Adesanya seconded the motion with the request of a friendly amendment.

The permit shall expire in a period of 10 years as opposed to 5 years. Member Spalding said if the amendment is accepted, a further Condition should be added that the tower cannot be modified. The Vice

Chair pointed out the current Conditions state the height cannot be increased. Member Spalding recommended the Applicant's statement be modified on Exhibit "A" to be in agreement with Conditions of Approval. The Board Members accepted the modifications. Member Peixoto said a further Condition should be added: If a further carrier is added, or if there are any changes, the property owner must return to the BZA with a new application.

The motion to uphold the staff recommendation of approval of PLN-2009-00113 for a period of 10 years, and the requirement of a new the application if there are any changes passed 3/1/0. The Chair was not in favor of approval. Member Spalding abstained, and did not participate in the vote.

5. **AZAR HUSSEIN / SCHOOL OF HEALING TOUCH, CONDITIONAL USE PERMIT and SITE DEVELOPMENT REVIEW, PLN-2009-00141 -** Application to allow continued operation of a massage therapy establishment including the following services: massage training, physical therapy, rehabilitation, massage, skin care, electrology, counseling, hypnotherapy, acupuncture, acupressure, herbalist, and micro pigmentation; allow replacement, and new signage, façade improvements including: new doors, gutters, wood shutters, and window planter boxes, in a CVCBD-S5 (Castro Valley Central Business District – Sub Area 5) District, located at 2881 Castro Valley Boulevard, approximately 100 feet west of Nunes Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084A-0017-006-01. **Staff Planner: Howard Lee.**

Staff recommended approval of the application. The Castro Valley Municipal Advisory Committee recommended approval with a permit expiration in 10 years. Board questions for staff were as follows:

- Did the CVMAC discussion take the Draft Castro Valley General Plan under consideration
- Is the site a training facility of a school
- When was the "massage use" established at the site
- Has there been a change in capacity since the first use permit has been established
- Was the prior use permit approved by the BZA

Staff said the current Castro Valley Plan was used in consideration of the application. Although the Draft Castro Valley Plan is circulating, significant modification is anticipated. The site is a massage service establishment. In addition, it also functions as a school. The massage use has been in effect in the same capacity since 1985. The massage use was allowed in conjunction with a medical office use. When the physical therapy use ceased, the massage use continued. The current Applicant established a business at the site in 1989. He purchased the property in 1989. When a new use permit application was submitted in 1989 the BZA was not empanelled. A Zoning Administrator conducted zoning decisions at that time. The BZA made a decision on the continued use application in 2004. County Counsel added that in 1985 massage use was allowed in conjunction with medical office, and physical therapy use. Public testimony was opened.

The Applicant Mr. Azar Hussein has been the owner and operator since 1989. He started his business in 1985. At the time the facility was also a medical facility. In 1989 when Mr. Hussein purchased the site the services were limited to massage related to a medical capacity. At this time the property owner would like to improve the building. Other businesses in the neighborhood, including the theater have made improvements. Currently he is working with the Redevelopment Agency. Board questions for the Applicant were as follows:

- Is the BZA consideration limited to the massage use
- Does Mr. Hussein own the massage therapy business, and the building
- How much time does Mr. Hussein spend at the site
- What percentage of the business is solely related to the massage use
- Does Mr. Hussein own more than one massage therapy establishment
- Is there more than one classroom at the site
- Is there a separate exterior door to the massage business
- Are there other service based retail businesses located in the building

Mr. Hussein clarified he is a tenant who owned a massage therapy business inside of the building. He is not the owner of the building. Mr. Hussein is the anchor tenant. Space is leased through him. There are 14 rooms available for lease. At the present time all of the rooms are leased. Approximately 13 to 14 professionals operate as independent contractors in the building ranging from, massage therapy, physical therapy, rehabilitation massage, skin care, electrology, hypnotherapy, acupressure, acupuncture, and permanent make-up. People can come and purchase an individual service, or attend classes to learn a specialty. All teaching is conducted inside the single classroom at the site, three times per week. Mr. Hussein spends one third of his time on the massage aspect of the business. He spends the balance of his time teaching, and offering his professional services. The School of Healing Touch is the only business he operates. There is an exterior entrance the business operators use. There another exterior door for customers. Clients can access all of the businesses through an interior pathway in the building. Public testimony was closed.

Staff said the Board the Planning Director will take action on the Site Development portion of the application. This includes the façade improvements. The BZA will consider Exhibit "A" including the Site Plan. Member Spalding asked staff to clarify the BZA decision will encompass Exhibit "A" given the massage use is only one third of the entire activity at the site. A letter in the file written by staff, dated August 1985 said if the massage use were to become "full time", the use may be required to re-locate. Also can the BZA employ a mechanism to ensure the site remains free of graffiti and debris. Staff explained the massage use is now allowed in the current zoning with a use permit. The BZA may add Conditions of Approval that require the site remain free of trash and graffiti.

Member Spalding motioned to accept the staff recommendation of approval with the following modifications: A further Condition of Approval will be added requiring the Applicant maintain the premises in a clean condition, free of garbage, and graffiti. The Applicant shall submit a Site Plan and a Landscaping Plan in conjunction with the Site Development Review application.

Member Peixoto asked Board Members if they were in agreement with the CVMAC recommendation of a 10 year permit. After discussion all Board Members agreed with the recommendation. Condition #5 shall be modified to reflect, permit expiration 10 years from the date of approval. The Vice Chair seconded the motion.

The motion to approve, PLN-200-00141 AZAR HUSSEIN / SCHOOL OF HEALING TOUCH carried 5/0.

6. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD, CONDITIONAL USE PERMIT, PLN-2009-00145** – Application to allow installation of two 26.1 inch, and one 15.3 inch in diameter microwave antenna dishes; two 42 inch by 12.7 inch panel antennas, and one 4 inch in diameter GPS antenna, on three corners of an existing PG&E transmission tower, with an equipment enclosure located at the base of the tower, in a PD (Planned Development, 1337th Zoning Unit) District,

located opposite 17249 San Franciscan Drive, east side, approximately 325 feet south of the T intersection with Bellingham Drive, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-6311-001-00. **Staff Planner: Andrew Young.**

Staff requested the Board continue the application to the February 24, 2010 Hearing. The Castro Valley Municipal Advisory Committee would like the Applicant and the neighboring property owner to conduct further discussions. The neighboring property owner attended the CVMAC Hearing and raised questions about project noticing. They believe all neighbors were not informed. Staff confirmed project noticing was sent to the HOA, but was not distributed to all of the Members. Member Adesanya requested the application return to the CVMAC for review prior to BZA re-consideration. Initial Board questions were as follows:

- Is the site located in the vicinity of other active telecom applications
- Does staff have the ability to request further camouflage at the site
- Is the proposed installation on the side of a PG&E tower
- What is the County Telecom Policy regarding 230 KV transmission lines
- What are the State design recommendations regarding 230 KV transmission lines
- Can this application require PG&E to improve the design and appearance of the existing pole

Staff confirmed there is another telecom site in the area. The proposed installation will be on an existing PG&E tower. Staff was unaware of further methods to camouflage 230 KV lines. Member Adesanya pointed out that the Applicant is not the owner of the tower, only the leasee. The Chair requested the Applicant consider further methods of camouflage. At this time Public Testimony is not required, as the application is to be continued.

Member Adesanya motioned to continue the application to February 24, 2010. Staff announced if the application is not ready for review, the item can be placed on the Consent Calendar. Member Peixoto seconded the motion. The motion to Continue PLN-2009-00146 passed 4/1. The Vice Chair was not in favor of a continuance.

7. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD – CONDITIONAL USE PERMIT, PLN- 2009-00146** - Application to allow installation of a wireless telecommunications facility including three (3) antennas, three (3) microwave antennas, and one (1) equipment cabinet on an existing commercial building rooftop, in the CVCBD-S9 (Castro Valley Central Business District – Sub Area 9) District, located at 20980 Redwood Road, east side, approximately 50 feet north of Norbridge Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0615-005-00. **Staff Planner: Howard Lee.**

Staff announced corrections to the staff report. The facility will contain 3 antennas, as opposed to 4. The application noticing sent to the public was correct. The Applicant can clarify if the antennas will be mounted in front of, or behind screening. The recommended was approval. The Chair pointed out that the response from the Sheriff's Department was in a different format. Staff said if there is a past history of Public Safety communication interference. The Sheriff may request more stringent requirements. Member Spalding noted the Sheriff's recommendation is the facility will shut down immediately if there is interference. Current Condition #6 regarding Public Safety Interference, Section c states the facility will be shut down after 30 days if not mitigated. Conditions should be specific, updated and consistent, referencing the Sheriff's letter requesting immediate shut down in the event of interference. In addition

Member Adesanya said the Status Report required in Condition #6 a, should reference the December, 2009 Sheriff's letter. Condition #8 c, referencing the Sheriff's Agency should be updated as well. Public testimony was opened. Public testimony was opened.

Mr. Chad Christie was present representing Clearwire Legacy LLC. Clearwire Legacy was formed in 2004. The Partnership is a conglomeration of the businesses, Air Touch Cellular and several other carriers. Clearwire provides wireless broadband internet services. They do provide voice over Internet protocol, however not traditional voice service. The service is geared toward businesses, and retail outlets as opposed to mobile phone service. Marketing is done via Television. The product is also for sale at retail stores. Customers purchase a card they insert in a computer. Antennas at the site will be façade mounted onto a mechanical screen wall. The equipment painted a brick color. The antenna mounting must be in front of the screen wall because it is made of metal. Transmission signals will not travel through metal. The mounting will be flush to the surface, and painted to match the surroundings. Board questions for the Applicant were as follows:

- Is Clearwire in agreement, immediate shut down in case of Safety communication interference
- Are further screening methods available
- Where will the equipment box be located
- Is there an opportunity for co-location
- Is the site located at the former Old Republic Title Building

Mr. Christie was in agreement with all Conditions of Approval, including the Sheriff's immediate shut down, in the event of safety interference. They can co-locate and look for existing structures. Clearwire seeks suitable properties. If there are no suitable locations a tower could be built. However this is not on the Business Plan. The equipment box is 49 square feet which is substantially smaller than most telecom installations. The equipment will be on the roof-top behind the screening. The cabinet will not be visible from the street. If required an FPR box (fiberglass material) can be made to fit over the equipment. The box can be painted to match. The Chair requested the equipment be enclosed in a box. Mr. Christie accepted the further Condition of Approval. Public testimony was closed.

The Board asked Counsel if it was appropriate to replace Condition #6, or add further language to provide clarification and alleviate conflict. Counsel said given the detail, language should be added to provide clarification. The Board may reference and use the recommended Condition contained in the Sheriff's letter solely for this application. If this is to be imposed as a standard Condition for future applications, staff should confer with the Sheriff's Department, and agree to specific language. Member Spalding offered the following language: As stated in the Sheriff's letter dated December 9, 2009 the facility shall immediately cease operation if there is interference with Public Safety communications. Member Adesanya asked if staff should craft final language. The Vice Chair noted the Sheriff's letter addressed both public safety needs, and interference. Counsel said it would be acceptable to let staff reconcile the language.

Member Spalding motioned to accept the staff recommendation of approval of PLN-2009-00146, Clearwire Legacy with the following modifications: The facility shall allow 3 antennas. Staff shall reconcile the appropriate language for Condition #6, including requirements of the December 9, 2009 letter from the Sheriff's Department. The Applicant shall add stealth boxes to cover equipment cabinets. Member Adesanya seconded the motion. Motion carried 5/0.

8. **CLEARWIRE LEGACY LLC / CHRISTIE CHAD – CONDITIONAL USE PERMIT, PLN- 2009-00153** - Application to allow installation of a telecom facility, including three (3) panel antennas, three (3) microwave antennas, and

one (1) BTS equipment cabinet to be located on an existing PG&E tower, on an "A" (Agricultural) District parcel that is 11 acres, located on Matilda Lane, west side, approximately one half mile east of Fairview Avenue, unincorporated Fairview area of Alameda County, designated Assessor's Parcel Number: 085A-6100-005-03. **Staff Planner: Jeff Bonekemper.**

The staff recommendation was approval with modification to Condition #4. Language that references the Sheriff's recommendation, letter dated December 2009 shall be included in Condition #4. Board questions were as follows:

- Where is Matilda Lane located
- Is Matilda Lane a private street
- Is there frontage onto a County road
- Has the project been referred to HARD, East Bay Regional Park District or Highway Patrol
- Is there a public walking, and horse trail located on the property
- What is the visual exposure from the road

Staff explained Matilda Lane is an easterly section of Llama Lane. The site is adjacent to Five Canyons Parkway. The street does not have frontage on a County Road. The prior owner, Mr. Wallace did receive approval for a private street. The site that contains the trail is located in the area. The project notice was sent to East Bay Regional Parks and HARD as property owners of neighboring sites. The Agencies were not sent a project referral. Member Spalding acknowledged the site with the entrance to the corridors of the Bay Area Ridge Trail was across the street. However due to the proximity of this site, EBRP may want to weigh in on possible impact. Member Adesanya said the Highway Patrol may also have comments to offer, as they patrol the area. Public testimony was opened.

Mr. Chad Christie was present representing, Clearwire Legacy LLC. He confirmed notices were sent to the surrounding property owners. Including HARD which owns a neighboring parcel. Mr. Christie was in agreement with the Conditions of Approval. However he did not want to change the address on the Site Map. A licensed surveyor conducted the survey, and the document is stamped as such. Mr. Christie requested the Board make a decision on the application. The installation is a co-location at an existing site. He is not aware the location is on a public hiking trail. The property owner, Mr. Parham is present, and can provide conformation. Member Spalding asked if the Surveyor provided the information to the County. At this juncture there did not appear to be sufficient information available to move forward with a decision. In addition one of the photographs shows junk and debris present at the site.

The property owner Mr. Gary Parham told the Board he recently purchased the property from Mr. Kramer. As of yet, there is no physical address to the site. The location is listed as Matilda Lane, and an Assessor's Parcel Number. The horse trail is located alongside another property line. The road follows a jagged edge next to the trail. Board questions were as follows:

- How does Mr. Parham access his property
- Will additional landscaping be added to the site

Staff said a landscaping plan will be required in conjunction with the Site Development Review. The SDR includes remodeling plans for the existing home. Mr. Parham does have an easement on the property. Additional redwood trees at the site. Preliminary information has been submitted regarding landscaping. He is not familiar with the address on Canyon Parkway.

Mr. Christie returned to testify. The application has been submitted for the permit process. The Building

Department will assign an address to the site. The property is accessed through Fairview Avenue. He did not object to an added Condition of Approval requiring a Landscaping Plan. The Board asked staff if Mathilda Lane is in Unincorporated Hayward versus Castro Valley. Staff confirmed Unincorporated Hayward.

Mr. Joseph Walters told the Board he owned 80% of a nearby property. He has never heard of Matilda Lane. Although not indicated on the staff report map, there is a street called Llama Lane. The property owner with the PG&E tower on his site is Mr. Wallace. The Chair told Mr. Walters the property with the PG&E tower is actually owned by Mr. Parham. Perhaps Mr. Walters had this site confused with another nearby. Public testimony was closed.

Member Peixoto motioned to continue the application to February 24, 2010. Staff should refer the application to HARD, and the East Bay Regional Park District. Member Spalding seconded the motion. The motion failed to pass by a vote of 2/3. The Chair, Vice Chair and Member Adesanya were not in favor of a continuance.

Staff told the Board it is standard procedure to send referrals to the Fire, and the Sheriff's Department. Member Adesanya noted that although the Planning file did not have record of referral to EBRP and HARD the Agencies were sent Hearing Notices. She would like to see input from the neighbors living next to the site. Member Spalding said the installation may not interfere with the ability of people to access the walking trail on the neighboring property. However the installation does have a visual impact, and affect on the public ability to use the park. The proposed installation could make the PG&E tower look worse. A park should remain un-cluttered. The Vice Chair pointed out the PG&E tower is already in existence. The facility would be attached to it. PG&E is not considering placing their equipment underground. Member Spalding acknowledged that fact, however it is unknown at this time where the proposed installation will be attached. Also there is a fence enclosing the tower now. When the trail opens, the fence will be removed. At present there is insufficient information. The Chair asked the Applicant if the trail would go through his property. Mr. Parham confirmed it would not. She also asked if the Highway Patrol should be consulted since they use an emergency frequency. The Vice Chair said the Sheriff and Highway Patrol use the same emergency frequency. Perhaps the same language regarding the emergency frequency submitted in the Sheriff's Letter for PLN-2009-00146 can be used. Member Peixoto did not think that was appropriate since this was the first time the Sheriff's requested a facility be shut down immediately if there was interference on the emergency frequency. The Sheriff should be required to submit a specific request for the record, if they would like immediate shut down for this site. Since there is no record confirming the Sheriff's was sent a referral. They should be contacted. Appearance is less of a concern. The PG&E tower is already present. The Chair agreed. The Sheriff's Department should clarify if they have changed the standard response format, also if each case is being considered on an individual basis.

Member Spalding motioned to continue PLN-2009-00153 to the February 24, 2010 Hearing. The application will be referred to the Sheriff's Department, HARD and EBRP District. Member Peixoto seconded the motion. The Sheriff's Department shall clarify if there is a new format, and/or requirements regarding Planning referrals. The Applicant shall provide information as to the exact location of the proposed installation.

The motion to continue PLN-2009-00153 to the February 24, 2010 Hearing passed 3/2. The Vice Chair and Member Adesanya were not in favor of a continuance.

APPROVAL OF MINUTES: The Minutes of January 13, 2010 were continued to February 10, 2010.

STAFF COMMENTS & CORRESPONDENCE: Code Enforcement Case # COD-2009-0119 Cornejo, exceeding 50% maximum paving allowance, is set for abatement today.

The BZA denial decision, regarding Application, PLN-2009-00061, Rombough was appealed to the BOS. The Chair asked if the Applicant intended to modify the proposal. Staff said the appeal was just received. Further information was not yet available. The Chair hoped staff would uphold the BZA decision

The Appeal regarding, Application, PLN-2009-00098 Oscar & Susan Miller scheduled on the BOS Agenda will be continued for one month. The Applicant may submit a proposal to enclose the batting cages. The Chair asked if the proposed modification would require submission of a new application. Staff responded the definition would become an enclosed recreational facility. The facility would also be subject to the Zoning Ordinance requirement that no more than 30% of the rear yard be covered.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Spalding asked Code Enforcement staff to make a site visit to the property next to Agenda Item #8 on Fairview Avenue to verify the property is clear of debris.

ADJOURNMENT: There being no further business, the hearing adjourned at 5:15 p.m.

WEST COUNTY BOARD OF ZONING ADJUSTMENTS