

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
AUGUST 26, 2009
(APPROVED ON OCTOBER 14, 2009)

The meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California.

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 11 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:33 p.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

1. Jeremy & Traci Smith/Cal-Western Reconveyance, Saturn Dr., San Leandro, CA 94578

In violation of Alameda County Ordinance 6.65.030 D (1), D (3) and M (1).

1. Overgrown vegetation & weeds throughout the property.

The Vice Chair motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. Member Spalding seconded the motion. Motion carried 4/0.

2. Man & Alice Kim, Trustee's, A St., Hayward, CA 94541

In violation of Alameda County Ordinance 6.65.030 A (1), F (5), F (6), K (3) & M (

1. Graffiti; debris; trash; cracked storefront window; deteriorated wood and metal trim on the building and worn/soiled exterior paint;

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement of the graffiti, trash and debris to be complete within 10 days. The abatement of the deteriorated wood and metal trim on the building and worn/soiled exterior paint shall be complete within 30 days. Member Peixoto seconded the motion. Motion carried 4/0.

3. California Reconveyance Company, Bland Street, Hayward, CA 94541

In violation of Alameda County Ordinance 6.65.030 D (1), D (2), D (3) and M (1).

1. Overgrown vegetation and weeds on the property.

Member Peixoto motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0.

4. **Martha O. Arechiga, 168th Avenue, San Leandro, CA 94578**
In violation of Alameda County Ordinance 6.65.030 A (1), D (1), D (2), D (3) and M
 1. Overgrown vegetation and weeds; and
 2. Garbage, debris and miscellaneous items stored on the property.

Member Spalding motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Vice Chair seconded the motion. Motion carried 4/0.

5. **Ramiro & Victorina Cornejo, Grove Way, Hayward, CA 94541**
In violation of Alameda County Ordinance 6.65.030 I (1) and M (1).
 1. Recently installed front yard paving exceeds the maximum 50% allowed.

Member Spalding motioned to continue the item to the October 12, 2009 Hearing to allow the property owners, Mr. & Mrs. Cornejo to work with staff to determine what percentage of the paving must be removed to achieve the maximum allowance of 50% front yard paving. Member Peixoto seconded the motion. Motion carried 4/0.

Member Adesana arrived at 2:53 p.m.

CONSENT CALENDAR:

1. **STACI ROMBOUGH, VARIANCE, PLN-2009-00061** – Application to allow:
a) building site status for a site of 2,479 square feet, where 5,000 square feet is required; b) a 0.27 foot rear yard setback, where 20 feet is required; c) a 1.04 foot street side yard setback, where 10 feet is required; d) a 2.47 foot front yard setback where 20 feet is required; e) a 2.95 foot setback side yard setback, where five feet is required; and f) zero parking spaces, where two are required. The site is zoned R-1 (Single Family Residential), located at 2005-150th Avenue, west side, north of 149th Avenue, in the unincorporated Hillcrest Knolls area of Alameda County, designated County Assessor's Parcel Number: 080-0006-013-04. (Continued from July 22, 2009; to be continued to September 23, 2009).
Staff Planner: Howard Lee.

The Chair asked why the application continued to be delayed. Staff explained sufficient information had yet to be obtained as to the full history of the lot. If the site is determined "non buildable" the application cannot move forward.

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 28, 2008; to be continued to September 23, 2009). **Staff Planner: Richard Tarbell.**

The application had been continued to determine if the proposed updates to Design Guidelines might address the need for a variance. However impending updates will not address fence height, at this time. Member Spalding motioned to accept the Consent Calendar as submitted. The Vice Chair seconded the

motion. Motion carried 5/0.

REGULAR CALENDAR

1. **T-MOBILE / HARD, CONDITIONAL USE PERMIT, C-8734** – Application to allow the installation of a 35 foot telecommunications facility with four concealed antennas camouflaged as a light pole, a 240 square foot lease area for placement of an equipment cabinet, and landscaping in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking) District, located at 18988 Lake Chabot Road, east side, north east of Keith Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-009-12. (Continued from July 9, September 10, November 5, 2008 and January 28, February 25 and March 11, April 8 and 22, July 22, 2009). **Staff Planner: Jeff Bonekemper.**

Staff reviewed the application, and recommended denial. The present application is for a 35 foot monopole. The project has undergone multiple design revisions which include a proposal for an 80 foot monopole. Initial Board questions were as follows:

- Did staff change the recommendation regarding the project over time
- What iteration of the project was reflected on the most recent public noticing
- Did the CVMAC find merit with any of the proposals put forward
- What votes were recorded in the CVMAC recommendation process
- Where would the supporting equipment cabinets be placed

Staff further explained a prior design was submitted for an 80 foot monopole. The project was reviewed by the Castro Valley Municipal Advisory Council on four occasions, resulting in a denial recommendation each time. The CVMAC proposed revisions each time. The Applicant returned with options, none of which were acceptable mainly from a visual perspective. The CVMAC did not vote specifically on the 35 foot mono pole proposal. The CVMAC asked the Applicant to provide alternatives to the initial proposal. One of the options provided was an 80 foot mono pole. However the most recent vote regarding the proposed 80 foot monopole resulted in a 5/2 vote to deny the project. Public Notices were issued for consideration of a 35 foot mono pole. Project Planner Jeff Bonekemper explained the project was submitted in 2008. Staff did not like the original design a 35 foot antenna pole located in the parking lot, and requested revisions. The Applicant revised the design which resulted in a 35 foot light pole design. Staff was in support of the 35 foot design, as it was did a good job of minimizing visual impacts. The recommendation was approval. When the 35 foot light pole design was reviewed the second time at the CVMAC, alternative designs were requested in response to neighbors that did not like the parking lot location, or the design. In response the Applicant put forward several size and location options. One of the options was a photo simulation of an 80 foot antenna adjacent to the tennis courts, which exceeded the trees by approximately 10 feet. The neighbors wanted an option that was screened by the surrounding trees. The 80 foot alternative proposal was never officially routed through the Planning Department to replace the original application. The photo simulation was produced in response to the CVMAC request. Staff believed the light pole antenna placed next to the tennis court was the best option because the trees provided screening. However in the end, the CVMAC as a result of public opposition voted not to recommended approval of the original 35 foot; or the alternative photo simulation of the 80 foot pole. Some neighbors and CVMAC Members did not want an antenna to exceed the height of the surrounding trees. Others did not like placement at the tennis courts. They did not believe visibility was reduced to the greatest extent possible. The original staff recommendation was approval of the 35 foot pole. In staff's opinion the Applicant has made a good faith effort to disguise the antenna equipment

inside of the light pole, and the equipment cabinets. However based on the CVMAC recommendation and opposition to the project by neighbors, staff is now recommending denial. The Applicant has prepared further options for review per CVMAC's request however CVMAC did not have an opportunity to review the most recent alternative proposal. Staff said the Board of Zoning Adjustments could act upon the proposal for a 35 foot antenna or allow the Applicant to present further options at this time. County Counsel clarified the BZA could review the most recent proposal without the CVMAC's recommendation. They could also, refer the latest design to CVMAC. Board questions were as follows:

- How tall are the existing light poles on the tennis court
- Did the School Board offer comments regarding the project

Staff said one of the original proposals was to place the antennas on the 50 foot light posts at the base ball field. However the School Board owns the site and did not want a cell phone antenna on their property. Planning staff thought the next suitable option was the parking lot. Staff estimates the existing light poles located at the tennis courts are 40 to 45 feet in height. The Applicant contends the antennas must be above the trees to eliminate interference. Public testimony was opened.

Mr. Ben Davies was present representing T Mobile, in support of the application. Mr. Davies said there had been a lot of confusion and misinformation circulating. He then reviewed the history of the project. Mr. Davis took over the application process in July of 2008. The CVMAC heard the project in 2008, and continued the planning process in order for T Mobile to submit alternate designs. The first design was thought to be too "space age" in appearance. T Mobile engineers worked with staff planner, Jeff Bonekemper and developed a 35 foot standard light pole design with an "old fashioned" appearance. Additional landscaping will be added to the installation. The equipment cabinet design was modified including the addition of a steel mesh retaining wall. The pole can be mounted into the down slope of the terrain between the parking lot, and the tennis courts. Mr. Davies displayed photo boards of the design, including the surrounding landscaping and terrain. This design was presented at the January 12, 2009 CVMAC meeting. The Council continued the meeting and requested T Mobile provide, coverage maps, and an EMF Report to determine if there would be any health concerns, in addition to an alternate site analysis. One of the alternative site placement locations considered was to replace an existing light pole Quail Avenue. This alternative was abandoned because it was even closer to homes than other alternatives. Another option was a pole, just south of the baseball fields. That option was abandoned because the pole height would further increase 10 feet beyond the 35 foot proposal. T Mobile was in agreement with the Planning staff. The option at the baseball field would be the most efficient. However the property owner did not want a telecom pole at the site. Planning staff asked to see a photo simulation of a light pole design at the tennis court. In response T Mobile returned an 80 foot pole design. At the April 13, 2009 the CVMAC meeting both the 35 and 80 foot proposals next to the tennis courts were rejected. Three neighbors were present opposed the design. Mr. Divine was the most vocal due to aesthetics and other possible reasons. The two other neighbors on Quail Avenue, Mr. Owyang and Mr. Monroe opposed the site primarily because of health concerns. Once Mr. Davies showed the Mr. Owyang and Monroe an EMF Report indicating emissions would be well within Federal guidelines. They appeared to be okay with the site. Although the two neighbors may have had additional concerns he is not familiar with. Mr. Davies then talked with T Mobile, as they did not want to face further denial recommendations. It was decided to develop further designs, and then return to CVMAC. As a result an alternate design was generated. One individual light pole could be replaced at the tennis court. The pole would be a 50 foot monopole design, within the trees. The location is further north of the tennis courts. Placement would be in the front grove of trees. Based on a survey conducted by T Mobile, the tallest tree in that grove is approximately 76 feet tall, the shortest 29 feet. In order to get a sense of what the CVMAC expected. Mr. Davies then attended the July 13, 2009 CVMAC meeting. T Mobile was not on the Agenda but Mr. Davies spoke during Open Forum. Mr. Davies met Senior Planner, Sonia Urzua at

the meeting. Ms. Urzua explained Mr. Davies could not discuss alternatives, unless he had a complete application before the Council. Otherwise they could not respond with feedback. Ms. Urzua instructed Mr. Davies to speak with Senior Planner, Jana Beatty. Mr. Davies met with Jana Beatty and Jeff Bonekemper, 2 weeks later. Ms. Beatty told Mr. Davies since CVMAC had denied all options submitted he was complete in the planning process. It would be necessary for T Mobile to wait one year before reapplying. Even if a prior design was modified, any new changes would be considered a new application. Mr. Davies said the next plan was to appear before the BZA and get input on the options proposed thus far. He requested that at the present juncture, the BZA consider the 3 options CVMAC reviewed. The 35 foot light standard; the 50 foot monopole in the grove of trees at the front of the property which has points visible from portions of Quail Avenue; or the 80 foot monopole. T Mobile submitted a revised EMF Report and additional photo simulations to Planning staff on July 9, 2009. Apparently this revised set has not been fully circulated. Mr. Davies was told by Planner Phil Sawrey-Kubicek that T Mobile did have the option of returning to the CVMAC, for further review. Board questions for the Applicant were as follows:

- Which design option is superior, in Mr. Davies opinion
- What can be attributed to the increased pole thickness, in the parking lot placement design
- Do any of the designs accommodate co-location
- How is antenna performance affected by surrounding trees
- Where is the closest pole next to the proposed location
- How do the proposals compare to the telecom site located at the Bayfair Mall

Mr. Davies said the thickness of a 35 and 50 foot pole would be similar. The width is to accommodate internal antennas and cable. The design accommodates T Mobile's requirements, and not co-location. Mr. Davis had not been to the telecom site at Bayfair Mall. The Chair explained a permanent pole approximately 80 feet in height had just been installed at the Bayfair Mall. The height is very obvious, she can understand why there is concern regarding an 80 foot installation. Mr. Davies then said T Mobile would like the Board to consider the 50 monopole design which they believe to be the best option. T Mobile would be satisfied with the 35 foot design, however CVMAC denied that option. T Mobile would accept either version, as this is what the RF Engineers originally proposed. Regarding placement of a 35 pole in the parking lot vs. placement within the trees, sufficient space between the trees was not available to achieve coverage goals. Trees would have to be removed to accomplish the installation. An 80 foot pole above the tree line, next to the tennis courts would have been the most efficient option. However that was sacrificed for the proposed 50 foot mono pole at the front of the site within the trees, although some efficiency is compromised in comparison to the 80 foot monopole. Mr. Davies was not aware of the exact location of the closest T Mobile site but coverage gaps do exist. He did not have a map of the surrounding sites at the hearing. However Mr. Davies did present coverage maps of the area indicating coverage intensity. Board Members pointed out a coverage map indicating that a 35 foot pole would fill coverage gaps.

Mr. Pat Devine lives up the hill from the proposed installation on Quail Avenue. His home is directly across from the site on Quail Avenue. He indicated the location on the graphics displayed. Mr. Devine looks over the park. The notice of the project stated the BZA was considering a 35 foot pole. Mr. Devine wanted to provide testimony regarding the original proposal for the 35 foot antenna. Mr. Devine said the telecom pole disguised a light pole seems rather benign. However the antennas are housed behind barriers. Each barrier is approximately the size of a kitchen door (2' by 4' by 6'), and placed on top of the pole. There are 4 barriers in total. From Mr. Devine's home the downhill perspective would place a direct view of the barriers, from his bedroom window. In addition to himself other neighbors including, Mr. Monroe and Mr. Owyang wanted to be present. However they are elderly, could not get away from home; or had to work. Mr. Devine took the day off to be present to testify. Although most of the

concerns regarding radio frequencies have been abated, people in the neighborhood are still uncomfortable with emissions, even though there is science stating emissions are not harmful. Especially Mr. Monroe, his bedroom is located directly across from the installation. The radio frequencies would travel directly into his bedroom, and he is very concerned as a result. He spends one third of his life in his bedroom. In addition, no one in the neighborhood likes the aesthetics. The CVMAC asked why alternative locations were not investigated. T Mobile said the location was the best site for the installation. The 35 foot option was rejected, based on input from the community. The hearing was continued to allow T Mobile to present further proposals. Reduction of trees would be necessary in the options discussed thus far. The neighbors, CVMAC and T Mobile agreed at the meeting. Although not ideal, the 35 foot pole would be acceptable, if located and camouflaged within the trees. In response T Mobile returned with an 80 foot design that exceeded the trees, and was monstrous. Another concern raised was the removal of old growth trees. They cannot be replaced. The 80 foot pole would also block the helicopter flight path of the Eden Medical Trauma Center. Mr. Devine said as a taxpayer who contributes \$14,000 per year, he did not want to view kitchen doors outside of his window. The site is a park, where children play. He was unsure if radio frequencies would affect them as well. Mr. Devine reiterated he had no problem with T Mobile having an antenna. However the antenna should be disguised in the trees, and not placed outside his bedroom window. The 4 barriers he would see from his bedroom are each the size of a kitchen door. Mr. Devine even offered to compensate HARD for the money they would have gained from leasing the antenna. Thus far HARD has not contacted him. Mr. Devine thought the CVMAC voted down all options. He and the neighbors did not understand why the application had been revived. The Chair explained the CVMAC was an advisory committee. The BZA is the decision making body. Board Members had the following questions for Mr. Devine:

- In Mr. Devine's opinion which option is superior, the 35 ft. or 50 ft. antenna
- Do neighbors object to a pole extending beyond the tree tops
- Did Mr. Devine and the neighbors consider any further design options
- What location and placement did Mr. Devine believe was the best option

Mr. Devine did not understand why the Board was considering the 50 foot option, it has not been noticed. All of the options have a detrimental effect. Mr. Devine said T Mobile acknowledged a 35 foot antenna would work. Mr. Devine said the Board should distinguish between an option that is less efficient versus an option that will work. There is a specific distinction. Mr. Devine acknowledged that he is not an engineer but the data should be parsed. He did not want to be in the position of identifying a site for T Mobile. Member Spalding said Mr. Devine had a legitimate objection. He would see the pole from his home. However the light poles at the HARD Park are at a height of 45 feet. They are already in the line of sight, of his home. In addition the flight path of a helicopter is typically elevated 200 foot, above ground. The proposed 35 foot light pole is lower in height. Mr. Devine described the surrounding area in more detail. The light poles at the tennis court are enveloped in the trees. At night only dispersed light is seen, not the poles themselves. He did not want to be a bad neighbor. However the original agreement at the CVMAC meeting was the pole would be placed in the trees, and camouflaged. Although less efficient the solution provided accommodation. Eden Hospital is less than a quarter mile away. Mr. Devine did not believe an installation shaped as a tree was attractive. In person they were hideous. Staff Planner, Jeff Bonekemper interjected to clarify the CVMAC discussed several placement locations during the review process, with varying advantages and disadvantages. Proposals located in the center of the parking lot, and placement options around the periphery of the site. One of the issues with a periphery installation is trenching from the road to the antenna. This could disturb surrounding trees. After discussion of the options, the antenna in the parking lot appeared to be the best solution. The smaller antenna on the tennis court was the better secondary option presented. Staff thought the tennis court placement that was not centered in the parking lot was preferable, due to the reduced 20 to 30 foot elevation. In addition the option does not require tree removal. Board Members agreed that although

coverage may be reduced, the lower elevation would reduce some of the impact. This would be a mitigating factor. Mr. Devine was not aware of the discussion regarding the tennis courts at a prior CVMAC meeting. The neighbors were okay with a 35 foot pole within the trees. That placement is even lower than original location for the 35 foot pole, however T Mobile returned with an 80 foot proposal. If the 80 foot proposal were placed at the tennis courts, the 80 foot height may be increased to 120 feet to compensate for the lower elevation. Staff then interjected to further clarify. T Mobile was asked by staff to develop options beside the tennis courts. Potentially the existing light pole at the tennis court could be replaced with an antenna light pole. Staff did not specify size. T Mobile returned with an 80 foot proposal, developed by their engineers. The CVMAC rejected that option.

Ms. Natasha Skinner, a designer for T Mobile then provided testimony. She acknowledged the consultant Mr. Davies for taking on the project, as it has gone through many iterations. Ms. Skinner said the consideration of a 50 foot pole located on Quail Avenue should have been on the Agenda for consideration. All of the necessary materials were submitted on July 9, 2009. It is unfortunate that after all that has happened, to not be considering the intended design. The 80 foot pole design was submitted because it met optimal coverage objectives. The pole must clear the tree line to meet optimal engineering coverage. Minimal interference is required. It was a tough battle to then get a 50 foot pole to the point of consideration, in the planning process. T Mobile has been responsive to community concerns that the 35 foot light pole was in the view corridor. The alternate 50 foot design was the solution provided, in a reasonable time frame. The planning process has been ongoing for over a period of one year, involving multiple designers and engineers. Ms. Skinner acknowledged that she had only been involved in the process since April. However multiple changes have occurred since then. She respectfully requested the BZA make a decision of either approval or denial, based on material before the Board. Ms. Skinner's understanding was that the 35 or 80 foot light pole designs would be considered. The Board clarified they would be considering the 35 foot light pole. In response Ms. Skinner restated she would like the Board to make a decision today regarding the 35 foot light pole option. The project has been ongoing, and lengthy. Thousands of dollars have been spent on EMF Studies to ensure the health and safety of the projects. Multiple designs and iterations have been proposed with photo simulations, in addition to multiple consultants. The Chair asked Ms. Skinner if she was aware if the application were denied, T Mobile would have a one year waiting period before they could re-apply with a new proposal. Ms. Skinner also has the option to continue the application at this juncture. Ms. Skinner asked County Counsel if the 50 foot light pole could be considered at this time. County Counsel said he was not familiar with the history of the application. However based on what he has observed the 50 foot light pole could not be considered at this time, due to lack of public notice. Although the Board has some material regarding the 50 foot pole in their hearing packet, staff's intent was the materials were for consideration to the extent further circulation would be necessary. The material is not yet at the point of finality. Further staff review would be necessary in order to determine a recommendation. Ms. Skinner would likely prefer staff recommendation, before proceeding. Ms. Skinner said it was her understanding the material for the 50 foot pole had already been circulated, and would be considered at this hearing. Staff Planner Jeff Bonekemper explained the materials for a 50 foot design were taken in during July by one of the Senior Planners. He was out of the office that week. Mr. Bonekemper said he did explain to Mr. Davies that submitted materials would be sent to outside Agencies for review. Review includes consideration of: location, trenching, trees, biological impact, etc. before a determination as to if the public review process would continue. Once responses were obtained and determined, the proposal could move forward. The project would then be referred to CVMAC. Ms. Skinner said she had not received written confirmation of the intended process. She thanked staff for the clarification.

Member Spalding asked a question to the existing light pole mentioned Figure #3 on page 6 of the staff report. Mr. Davies was unsure. Staff estimated a height of 30 to 40 feet but a site visit had not been conducted in some time. Member Spalding asked Mr. Davies if T Mobile would consider a 35 foot light pole as a replacement for the existing light standard. Light poles in existence at the site are relatively the

same height. The location is not within the trees, and appears to accommodate everyone's needs. The elevation is lower and would reduce the impact of the antenna shields to the neighbors. It may be helpful for the Applicant to provide a photo simulation from the vantage point of the neighboring homes on Quail Avenue, to determine the potential impact. The application could be continued to consider possible modification. The Vice Chair asked if the application were continued, could T Mobile return with a 50 foot proposal as well. The Chair closed public testimony to allow questions to staff, and further Board discussion.

Members Peixoto and Adesanya asked staff to clarify if the BZA were to revise the design to accommodate a 35 or 50 foot pole at a different location like the tennis court, would the item have to be reviewed again by CVMAC. Staff said they would like further review if substantial changes were required. The proposal would then be sent back to the advisory body (CVMAC). The Applicant was only prevented from making a presentation at CVMAC under Open Forum. A project must be formally presented for review. Public testimony can then be taken. The Chair said although Mr. Davies was not willing to consider a pole located in the tennis court parking lot during earlier testimony. T Mobile may want to consider that as an option at this juncture. A public need has been established. The issue is where to place the pole on the site without adversely impacting people in the area. Member Spalding said it appears there are options fairly close to what is acceptable. Regarding Mr. Davies expressed concern about the pole in the view shed. Member Spalding referred to Figure #3 at the tennis court. The existing light pole at the location is already higher than 35 feet. This location would not be in the trees. T Mobile could provide photo simulations. The Chair added Mr. Devine testified that although most of the tennis court area is enveloped by trees, this particular pole is out in the open. Member Adesanya said if the application did return to CVMAC, a 50 foot pole that is within the tree line should also be further explored. The Vice Chair asked the Applicant if they would like to continue the application to further explore options; or did they prefer the Board come to a decision, that could result in denial. Member Spalding pointed out the BZA did not need the Applicant's approval to continue. The Chair acknowledged that was the case however the Board should let the Applicant respond. Public testimony was re-opened.

Ms. Skinner again respectfully requested that the Board render a decision on the 50 foot pole. She told the Board she understood the decision could result in denial. T Mobile would need to conduct Radio Frequency research to consider further options. In the event the Board renders a decision of denial, T Mobile will spend the re-application period developing a project. Member Spalding explained the application before the BZA was a 35 foot light pole. An option for a 50 foot pole was not noticed to the public. T Mobile would not be able to appeal an option for a 50 foot pole to the Board of Supervisor's Ms. Skinner said she would like a decision either way. Member Spalding noted Mr. Devine said he was representing the neighbors as well since they were not able to attend. The fact that he is present should satisfy the need for Public Testimony. Photo simulations also indicate that an existing light pole exceeds the height of the proposed installation. The installation is out of the tree canopy, and view of the equipment shed. The Chair referred to the photo simulation and pointed out that although the lights at the tennis courts are enveloped in the trees. The portion of the lot considered for installation is not located in the trees. Member Adesanya said if the application did return to the CVMAC, the 50 foot pole should also be considered. Public testimony was re-opened.

Public testimony was reopened. Mr. Davies said T Mobile engineers recommended an 80 foot pole at that location. He was unsure if a lower antenna would operate. All parties considering the 50 foot option did receive materials in their staff packet. Ms. Skinner requested the BZA make a decision, even if the decision results in denial of the application. She understood the impact. Ms. Skinner wanted the BZA to consider the 50 foot pole. Member Spalding explained the 50 foot option was not a consideration in front of the BZA. Ms. Skinner may want to reconsider a continuance, to re-submit a 50 foot consideration to the CVMAC. Ms. Skinner said there were other considerations that could not be discussed in the present

forum. She again asked for a decision. Board Members announced in agreement. Applicant approval of continuance is not a requirement, although they try to take the Applicant's feelings into consideration. Public testimony was closed.

The Chair asked staff their thoughts. Staff responded they had worked with the Applicant on the permit from the beginning. The goal was to present a proposal that would require minimal changes. The design was a modern stealth design. The CVMAC did not find the design sufficient. The second suggestion was a pole to be installed at the baseball field. However the owners of the ball field did not find the design acceptable. The Chair asked the dimension of the panels of the proposed 35 ft antenna, currently before the Board for consideration. Public testimony was re-opened.

The Board asked Mr. Devine to use the large graphic display to give them more of a clear ideal as to what he sees from his property. Mr. Devine referred to the drawing he saw at the CVMAC Meeting. The antenna proposal appears to be 20 inches wide, and 8 feet in height. Mr. Devine would like to accommodate T Mobile because he knows the impact will happen regardless. However he does not want the installation to be placed outside of his bedroom window. The Chair asked Mr. Devine again his opinion of the aesthetics, of the proposed parking lot installation. He responded that he could not speak to the engineering aspect. In his opinion the 35 foot antenna at the tennis court appears to be the best concealed. Mr. Devine then viewed Figure #3 again and reiterated that it was up to the BZA to go through their process.

The Chair asked Counsel if a waiting period would be in effect if the Applicant withdrew the application. She wanted the Applicant to know options available to them. Ms. Skinner told the Chair she would like a decision today. She did not have the authority to withdraw the application on behalf of T Mobile. Public testimony was closed.

Member Peixoto motioned to uphold the staff recommendation of denial. The motion died due to lack of a second.

The Vice Chair said in her opinion the placement of the pole was reasonable. Sometimes communities have a fear of change.

Member Spalding asked staff if the BZA could designate a change in placement. Member Adesanya said they would need engineering approval from T Mobile. Member Spalding then recommended the Board take action on the light pole proposal at the periphery of the site. Member Peixoto said although it appears the Applicant may be shooting themselves in the foot by insisting on a decision now. In response the Board should uphold the staff recommendation of denial.

Member Adesanya thought the application should be approved as submitted based on the photo simulations, and the dimension measurements indicated on the plans. The panels will not have as great of an impact at the proposed location. She has concerns as well, however she believed the required findings necessary for approval, can be met. The effort to provide camouflage is sufficient.

Member Adesanya motioned to uphold the staff recommendation to approve Conditional Use Permit, C-8734 submitted indicating a 35 foot telecommunications facility with four concealed antennas, camouflaged as a light pole in the parking lot as stated in the staff report. The Vice Chair seconded the motion with the following modifications. Finding #2 shall now state as originally proposed by staff: The unmanned facility will have minimal transportation impacts on the surrounding area and the existing rights of way and provide safe and effective access to the facility. The facilities location in a residential area and the design of the proposed development have been minimized to better fit into the residential area and park location. Finding #4 Telecommunications facilities may be allowed subject to Conditional

Use Permits in all areas except the H1 Districts and PD Districts which prohibit their use. In addition due the camouflage design the pole would not be out of character in the District in which it is being considered. Conditions of Approval from the Staff Report to the CVMAC on January 12, 2009 shall be adopted with the following additional Conditions: The permit will expire in 5 years. A further Condition will be added: Planning staff has no authority to re-design the pole without return for review by the Board of Zoning Adjustments.

Mr. Davies interjected to raise an issue. Although he did not have interpretation, he was made aware of a government code that permits approval for such facilities shall not be approved for an unreasonable duration, ten years unless there are safety reasons, or substantial land use reasons. The Vice Chair believed the permit length should remain at a period of 5 years. The placement is a new location this will give opportunity for adjustments if there is an adverse impact. The Chair said a second option would be to approve the permit for 10 years and review the permit at the 5 year interval. Counsel said although 65.964 Planning Zoning State Government Code is in reference to construction of new facilities. Mr. Davies reference is in relation to the County Standards for Telecom Facilities regarding, renewals. Member Adesanya agreed with the Vice Chair. In this case the design is new and untested for a telecom facility. There is potential for visual impact that has not been tested, this is a valid land use issue. Member Spalding thought the better alternative was continue the application. The Applicant can still say the design is not untested. The wiser course would be to continue the application. The Applicant can then provide a panoramic view. Member Adesanya said the Applicant did testify the design was new. She would accept the Vice Chair's recommendation of either a five year permit expiration length; or a 10 year permit with a 5 year review. Counsel said if the Board felt the land use reason was substantial that is something that could be tested. Deference is given to findings, and the decision maker. There is no precedence on this exact code, there is some discretion. The code does provide for a shorter time period if there is reason for it.

The Chair restated the motion placed by Member Adesanya to approve C-8764 was restated: Finding #2 shall now state as originally proposed by staff: The unmanned facility will have minimal transportation impacts on the surrounding area and the existing rights of way and provide safe and effective access to the facility. The facilities location in a residential area and the design of the proposed development have been minimized to better fit into the residential area and park location. Finding #4 Telecommunications facilities may be allowed subject to Conditional Use Permits in all areas except the H1 Districts and PD Districts which prohibit their use. In addition due the camouflage design the pole would not be out of character in the District in which it is being considered. Conditions of Approval shall be adopted from the Staff Report to the CVMAC dated January 12, 2009 with the following additional Conditions: The permit will expire in 5 years. A further Condition will be added: Planning staff has no authority to re-design the pole without return for review by the Board of Zoning Adjustments.

The Vice Chair seconded the motion and stated: The permit length should remain at a period of 5 years. The placement is a new location this will give opportunity for adjustments if there is an adverse impact. The design is new and untested for a telecom facility. There is potential for visual impact that has not been tested, this is a valid land use issue.

The motion to approve Conditional Use Permit, C-8734 passed 3/2. Members Spalding and Peixoto were not in favor of approval.

2. **T MOBILE USA / AMY MILLION, PLN-2009-00049** – Conditional Use Permit Application to allow the continued operation of existing telecommunication equipment consisting of two 13 foot high power antennas, and one self-contained equipment cabinet, in an "A" (Agricultural) District,

located at 17922 Lake Chabot Road, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1400-002-17.
Staff Planner: Carole Kajita.

Staff reviewed the application, and recommended approval. The Castro Valley Municipal Advisory Committee was in favor of the staff recommendation. The Applicant is not in agreement with the exception to the 10 year permit length. Staff recommends the permit expire in 2017 to coincide with the expiration date of another carrier at the site. This provides an opportunity to co-locate, and consolidate equipment. Initial Board questions were as follows:

- Will equipment cabinets be a part of the installation
- Does the current design support co-location
- Are there homes located near the installation
- How many telecom sites in the County currently co-locate with additional carriers
- Does the County have specific Design Guidelines that address co-location
- Is the Applicant in compliance with the Conditions of Approval contained in the prior use permit
- Are there any issues with graffiti at the site

Staff confirmed equipment cabinets will be a component of the installation. The telecom antenna and cabinets will be painted to blend with the surroundings. Due to the remote location on an isolated road in a wooded area, visibility to homes and graffiti are not an issue. Although staff did not have an exact number available at the Hearing, they confirmed a number of telecom sites in the County have co-located. Co-location applications are processed "over the counter", at the Permit Center. Co-location is dependant on telecom pole coverage goals and design, which affect installation. Currently there are no specific Design Guidelines for telecom facility co-location. However staff acknowledged Guidelines are something that should be considered in the future. Public testimony was opened.

Ms. Amy Million was present representing T Mobile. Ms. Million discussed Condition #16 regarding the placement of signage containing emergency contact information. The closest structure on which to mount signage is approximately 20 feet from the main entrance. Alameda County Fire would like non-emergency contact information to be added to signage. However Ms. Million believed if the updated signage were placed on the equipment cabinet located close to the entrance of the site, it would be more visible. Member Adesanya suggested signage be posted at both locations. Condition #16 was modified to reflect signage placement in both locations. Ms. Million then referred to Condition #18. She did not believe the Alameda County Telecom Policy applied because according to the staff report. The site will blend into the surrounding trees. Regarding the expiration of the permit to coincide with the other carrier at the site, Ms. Million believed this was for administrative convenience. The other carrier's permit could be extended to link with T Mobile's. Ms. Million said she can appreciate the effort to co-locate, however T Mobile should not be impacted. Public testimony was closed.

Member Adesanya stated she did believe permit expiration that coincided with the other facility at the site was a land use matter for the purpose of lessening the impact of telecom facilities, as opposed to an administrative issue.

Member Spalding motioned to uphold the staff recommendation of approval with the following modification. An additional Finding shall be added that supports permit expiration of August, 2017 based on the land use objective of co-location and consolidation, to reduce the impact on public property, and the community.

Member Peixoto asked for clarification of the motion. He was unsure the BZA was allowed to add further Findings. County Counsel confirmed it was acceptable to add further information to Conditions, or further Conditions of Approval, if the information supported Tentative Findings.

Member Adesanya and all Members were in agreement the language: *land use objective of co-location and consolidation to reduce the impact on public property and the community*, shall be added to Condition of Approval #2.

The Vice Chair seconded the motion to uphold the staff recommendation of approval of PLN-2009-00049. The motion carried 5/0.

The Chair called for a short break at 5:00 p.m. The Hearing reconvened at 5:10 p.m.

APPROVAL OF MINUTES: The Vice Chair motioned to accept the Minutes of June 24, 2009 with modifications. Member Spalding seconded the motion. Motion carried 3/0/2. Member Adesanya abstained as she was not present at the June 24, 2009 Hearing. Member Peixoto abstained as he was not a Member of the Board of Zoning Adjustments on June 24, 2009.

Member Spalding motioned to accept the Minutes of a July 22, 2009 with modifications. Member Peixoto seconded the motion. Motion carried 3/0/2. Member Adesanya abstained as she was not present at the July 22, 2009 Hearing. The Vice Chair abstained as she was not present at the July 22, 2009 Hearing.

The Vice Chair motioned to accept the Minutes of August 12, 2009 with modifications. Member Adesanya seconded the motion. Motion carried 3/0/1. Member Spalding abstained as she was not present at the August 12, 2009 Hearing.

STAFF COMMENTS & CORRESPONDENCE: Staff had no comments.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS:

Board Members reviewed the letter prepared for the appeal of Garnhart, PLN-2008-00072 to the Board of Supervisor's. Staff will add the recorded vote. Staff will also further clarify that all three Members present were in favor of denial, as a result of the Applicant's failure to make necessary findings. In addition a further point was two Board Members believed there was a greater extent of detriment to persons or property, referred to in Finding #3. The planned addition included a new second story which would impede, light, etc., to the neighboring property.

The Chair asked which Department was responsible for processing address change requests. Staff said the Building Department will review the request. Building will then confer with the Fire Department.

The Vice Chair announced tickets were still available for the Cop Shop BBQ held on Friday, September 11, 2009.

ADJOURNMENT: There being no further business, the hearing adjourned at 5:30 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS