

MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 16, 2009
(APPROVED JANUARY 13, 2010)

The Regular Meeting was held at the hour of 1:30 p.m. in the Alameda County Building, 224 West Winton Avenue, Hayward, California, 94544.

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 8 people in the audience.

CALL TO ORDER: The meeting was called to order by the Chair at 1:35 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. Therese A Wright Trust

In violation of the Alameda County Ordinance 6.65.030 A (10,12) and B (6).

1. Dead pine tree in rear yard
2. Overgrown trees, growing in public right-of-way, in side yard
3. Overgrown trees in rear yard.

The Vice Chair motioned to adopt the staff recommendation. Declare the property a public nuisance, require abatement to be complete within 10 days. The Chair asked, in the event the property owner did not comply with the Order, what day would abatement commence. The 10th day falls on Christmas. Staff responded if the property was not in compliance. A contractor would not be hired until after the Christmas Holiday. Member Spalding seconded the motion. Motion carried 4/0. Member Adesanya was late, therefore not present to participate in the vote.

CONSENT 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, 2009; to be continued to January 27, 2010).
Staff Planner: Richard Tarbell.

Member Peixoto asked staff why the application continued to be delayed. Staff explained the Applicant had to leave the County to attend to a sick relative. The Design Guideline Committee has a draft of the proposal for fences. However there are no changes regarding height limits. Another issue is the fence is located in the public right of way. The item will be presented to the Board on January 27, 2010.

2. **FRED PRICE / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2009-00037, VARIANCE, PLN-2008-00020** – Conditional Use Permit Application to allow continued operation of a church, Variance Application to allow fewer than the required on-site parking spaces in a R-C ABCD (Residential Commercial, Ashland Cherryland Business Specific Plan) District, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. (Continued from November 12, 2008 and January 28, February 25 and May 27, June 10, July 8, September 23, October 28, 2009; to be continued to February 24, 2010). **Staff Planner: Richard Tarbell.**
3. **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, August 26, September 23 and October 28, 2009; to be continued to January 13, 2010). **Staff Planner: Howard Lee.**

Member Spalding motioned to accept the Consent Calendar as presented. The Vice Chair seconded the motion. Motion carried 4/0. Member Adesanya was late, therefore not present to participate in the vote.

REGULAR CALENDAR

1. **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. **Staff Planner: Christine Greene.**

Staff reviewed the application, and recommended approval. Initial Board questions were as follows:

- Is the site located in a Redevelopment Zone
- Did Redevelopment offer comments regarding the project

- Are telecommunication towers allowed in all Zoning Districts
- Is the Zoning in compliance with the Draft Eden Plan
- What is the distance of the closest home to the tower
- Why did the Cherryland Association support the proposed “light tower design”
- Where will the proposed installation be located
- What is the total height of the installation

Staff said the current zoning was Industrial. The site is possibly in a Redevelopment Zone. The Draft Eden Plan proposes General Commercial. Member Spalding pointed out the staff report made reference to heavy commercial use at the site. Staff responded final plans have yet to be submitted. Photo simulations indicate the proposal is consistent with present zoning. If the Draft Eden Plan is passed in its current form, proposed General Commercial zoning will also be consistent with the installation. The Redevelopment Agency is in support of the project, as it is consistent with zoning. Telecommunication installations are allowed in all zones except, H1 (Highway Frontage). This zoning is only found in small pockets of the East County, mostly adjacent to off ramps of the 580 and 680 Freeways. Regarding freestanding telecom poles, Alameda County Telecom Sitting Guidelines set a minimum distance requirement of 1,000 feet between poles. There is no distance requirement to residences. However if the Board can make the findings for an exception, a minimum distance can be proposed. The 300 foot minimum requirement applies to façade, ground, and roof mounted poles. The original tower was 10 feet higher. The proposed installation is 10 feet lower, and will be placed between buildings. The height of the light pole design favored by the Cherryland Association was not sufficient to accommodate the proposal. The proposed pole is considered a stealth design. The Chair was concerned because the pole diameter was 36 inches at the top. Public testimony was opened.

The Applicant Chris Coones told the Board he concurred with staff Findings. Board questions were as follows:

- Can a stealth tree pole be used in this application
- Can a light pole be used in this application
- Can a flag pole be used in this application
- What is the diameter of the present proposed design
- What is the proximity of the installation to the City of Hayward boundary
- What was the height of the original design considered
- What is the building height allowed by present zoning
- Can the present antenna design be attached to a building as opposed to ground mounted

Mr. Coones said the original antenna design was taller antenna with a full antenna array outside of the raydome. The current stealth raydome design has a base diameter 18 inches. The antenna can open further to allow change in azimuth which prevents the need for additional poles in close proximity. The material

is ceramic, and the design more compact. T Mobile did consider a tree and light pole antenna design. Planning staff said due to the lack of surrounding trees, it would not blend well. Mr. Coones said due to the placement at the rear of the site, and the height needed. A light pole is probably not the solution. A light could be attached to the raydome however this would not reduce pole visibility. Light poles are typically used at a micro-telecom site. This location is a macro-telecom site. The full service macro-site eliminates the need for nearby sites. Larger radio equipment cabinets are used which produce more range, and effectiveness. In most jurisdictions macro-site camouflage is considered taking the antennas out of view. This is accomplished by placing a ceramic raydome over the antennas. Rules vary but the provider works with the Planning jurisdiction. Trees are more typically used in an R-1 or park setting. As the proposed installation is at the rear of a building, a flag pole's visibility would be obscured. It is more appropriate at a municipal, senior facility, fire station or school site. The Vice Chair commented although area zoning is "mixed use" the neighborhood is trying to clean-up. The proposed tower looks like a smoke stack. It is very obvious. The site is also 2 blocks from City of Hayward jurisdiction. Staff said existing zoning allows a building height of 45 feet. Staff was unsure if the Draft General Plan proposed changes. The Applicant has altered the proposed design several times. Present tower design is 50 feet. The Applicant contends the design cannot be façade mounted. Staff has not had the opportunity to verify this. Public testimony was closed.

Member Spalding said there did not appear to be sufficient information at this juncture, regarding possible options. Perhaps the City of Hayward would also like to consider further design options. The Vice Chair attended the Cherryland Association discussion, at which the thin 60 foot pole was discussed. The Chair said it appears the Applicant might like a macro-site because of the location.

Mr. Coones confirmed a macro-site is being considered, to reduce further proliferation. Board Members asked if the pole could be moved, or further camouflaged. Public testimony was re-opened to obtain further information from the Applicant. Further Board questions were as follows:

- Does the site abut the railroad tracks
- Can the pole be moved to reduce visibility
- Can T Mobile's coverage objectives be achieved with a reduced pole diameter
- Can T Mobile's coverage objectives be achieved with a shorter pole
- Can T Mobile's coverage objectives be achieved with a tree pole
- What was the width of the top panel of the 1st proposed design

Mr. Coones confirmed the property abuts the railroad tracks. In this installation if the telecom pole were moved to the rear of the site. It would not be effective. A height of 200 feet would be necessary to overcome the RF shadow produced by the warehouses in the area. This is due to the line of site design. The County would not approve a pole of that height. T Mobile is not opposed to a slimmer design. The first design proposal of 50 feet will be effective however the exposed antennas at the top would be larger. The top panels on the original design were 3 wide. When this option was presented Planning staff asked to see alternatives. They selected the lower design. The panels on both designs are considered "slim". The current panel design can be enclosed in a 3 foot radius. The raydome just appears to look wider. T Mobile is not opposed to a tree design however this was not a favored by Planning, or the referral parties. Public testimony was closed.

Member Spalding asked staff to garner the opinion of the Planning Department, Cherryland Association,

and the City of Hayward regarding the project. Further information as to how the pole might be camouflaged should be provided. The Chair agreed. In her opinion, the current panel design looked like a smoke stack. Member Peixoto asked for supporting documentation regarding the impact on coverage, if a thinner pole is proposed.

Member Spalding motioned to continue the application to January 27, 2010. Member Peixoto seconded the motion. Motion carried 5/0.

2. **T-MOBILE USA / CHRIS COONES, CONDITIONAL USE PERMT PLN-2009-00090** – Application to allow installation of a new antenna array on a 11 foot, 6 inch high extension to the top of a 100 foot high PG&E high voltage transmission tower, with ground equipment placed between the four tower legs, in a PD (Planned Development 1268th Zoning Unit) District, located at 18832 West Cavendish Place, north side, approximately 125 west of Troost Court, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1510-013-00. **Staff Planner: Richard Tarbell.**

The staff recommendation was approval. The CVMAC recommended approval via the Consent Calendar. The pole will be a freestanding mono pole design. Zoning does not restrict telecom uses. Initial Board questions were as follows:

- What is the proximity of the closest home
- Is there a history of Neighborhood Preservation Ordinance violations at the site

Staff explained Telecom Sitting Guidelines adopted by the BOS do not require a minimum distance of 300 feet to residences, for freestanding poles. Staff was not aware of any violation history at the site. Public testimony was opened.

Representative for T Mobile, Mr. Chris Coones was present. He was in agreement with Conditions of Approval.

Mr. John Cligny was present representing the Briar Ridge Neighborhood Association. He apologized, letters to Association had been returned. He will provide staff with the correct information. Mr. Cligny has been in communication with T Mobile, PG&E and Mr. Coones. The placement area is located on a PGE easement. The easement was granted to PG&E by the HOA. This information is in the Homeowners Association CC&R's. Prior to approval, modification of the agreement between PG&E and the HOA will be required; or be subject to a licensing agreement with T Mobile. Negotiations are currently in progress. Technical details such as radio equipment casing are also being discussed. The antenna would be visible from a trail on West Cavendish Place. Board questions for Mr. Cligny were as follows:

- Was Mr. Cligny at the CVMAC Meeting
- Does T Mobile have the ability to install the antenna without Briar Ridge approval
- When will the licensing agreement be complete
- What additional landscaping is proposed

Mr. Cligny told the Board that the Briar Ridge HOA owns the land. PG&E owns the tower, which is located on an easement. T Mobile cannot install the antenna without HOA approval. He did not attend the CVMAC Hearing. He did not receive notice. Mr. Cligny was unaware some homeowners were unhappy about the project. Negotiations with PG&E are on-going. The HOA Board of Director's does not object to the land use. The focus is on working through issues regarding appearance, and easement technicalities. There may be individual Homeowners that have issues separate from the HOA Board. The HOA has reviewed preliminary drawings submitted by T Mobile. The licensing agreement is under negotiation by T Mobile. PG&E cannot sublease with modification to the Briar Wood CC&R's. A draft was received in March of 2009. However the HOA had to seek out legal advice because a change would be required in the CC&R's. Modification would require a super majority vote of the Briarwood HOA, equal to %75 or 294 people. This would be difficult however work on the licensing agreement is still being pursued. Preliminary landscape plans have been submitted. Thus far they have not been finalized.

Ms. Nancy Green a property owner on West Cavendish Drive told the Board, the installation would be 10 feet from her back fence. She objected to the tower. The site is presently an eyesore. Children cut through the area while walking to the Middle School. Homeowners play with their kids, and walk dogs on the easement. The tower is unsafe, and will affect people using the area. Although her home is close to the site, two homes look directly at the site. PG&E raised a 100 foot tower a few years ago. The HOA will get the revenue, however where is the benefit to the residents. The project address given is that of the easement, not the exact project location. Ms. Green did not believe the HOA represented her. PGE purchased the tower in 1995. In 3 years the tower was extended. A few years later, another extension was added. Trees can be added to camouflage, but they only grow so fast. The Board had the following questions for Ms. Green:

- How tall is the existing tower
- Is there additional equipment at tower ground level
- Has Ms. Green reviewed plans for the project
- Would Ms. Green object to additional equipment on top of the tower

Ms. Green said the tower is now 111 feet high. There is a 3 foot grade surrounding the tower, which makes it more visible. She did review the proposal. T Mobile will defiantly be adding to the tower. She did not believe additional equipment at the base of the tower was a good idea. Currently there are high voltage signs posted. Children walk through the area. Wild life also congregates below the tower. Equipment placed low to the ground, could pose a danger. Public testimony was closed.

Member Spalding did not believe sufficient information was available. She would like to hear from more residents. She would also like to review less intrusive designs. In addition, she did not feel comfortable approving an application without the HOA coming to an agreement with PG&E. Member Adesanya asked staff who they believed to be the Applicant, also who signed the application. The Board should determine this information to confirm the BZA is the appropriate governing body to decide the application. Member Peixoto agreed, determining the legal owner may be an important point. An easement may allow some uses, and restrict others. The Chair asked staff to confirm the zoning. Staff said the PD (Planned Development) allowed telecom uses. Per the Board's request staff can obtain specific information about the easement.

Mr. Coones explained PG&E would enter into a licensing agreement with the HOA. T Mobile will then

pursue a licensing agreement with the property owner. T Mobile has also been in discussion with the HOA. T Mobile would first like to obtain approval of the use permit. Thus far T Mobile has not received any negative feedback regarding the project. Public testimony was closed.

Member Spalding recommended the application be continued to February 10, 2010. Mr. Cligny said he will confer with impacted neighbors, and the HOA. There may be other tower designs that are more suited for this application. He will report back. The Chair asked staff and the applicant to clarify the Applicant, also who has the authority to move forward with the application process. Member Adesanya was concerned there would not be sufficient time to complete research. She then asked for a friendly amendment. The application should return to hearing on March 10, 2010. Staff was in agreement. Member Peixoto seconded the motion. The motion carried 5/0. The Chair also asked staff to re-notice the application for the March 10th hearing.

3. **CASTRO VALLEY UNIFIED SCHOOL DISTRICT / MICHAEL BUSH, VARIANCE, PLN-2009-00105** – Application to allow an nine foot, six inch sign where four feet is the maximum height allowed, 97.6 square feet in area where 56 square feet is the maximum permitted in an R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 19722 Center Street, southeast of Paradise Knoll, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-1063-001-02. **Staff Planner: Richard Tarbell.**

The staff recommendation was approval with a modification to Condition #4. The sign will now be illuminated from the hours of 7:00 a.m. to 7:00 p.m. The Castro Valley Municipal Advisory Committee recommended approval by a vote of 5/0. Initial Board questions were as follows:

- What is the proposed sign height from finished grade
- How many other schools in the area have signs
- Is the sign electronic
- Was a wind velocity study conducted
- Will the sign face Center Street
- Will the proposed sign replace the existing sign
- Is the location near Creekside Plaza Shopping Center

Staff confirmed the proposed will replace the current sign. The sign is electronic. Two sides of the sign will face Center Street. The location is in the vicinity of Creekside Plaza. There is a similar sign at the nearby Middle School. There are also other schools in the area with informational signs. The approximate height from grade is 9 feet, 6 inches. At this juncture a wind velocity study has not been conducted. This may be required to obtain a Building Permit. The Applicant can further explain features of the sign. Member Peixoto pointed out signs at the other schools, were not illuminated. Public testimony was opened.

Mrs. Jennifer Kline is a parent, and school volunteer. She has the task of changing the school information

sign. It takes one hour per month. Creekside School should come into the 2010 era. She drives by the school, 3 days per week. The sign is invaluable. Her 8th Grader does not inform her of events. The signage at school does. The present marquee is at the height of a vehicle window. Children currently climb on the sign. The Plexiglas is broken from children stepping on the lower tracks. Kids also congregate around the sign. It is a safety hazard. The new sign will not block the site of drivers exiting the school driveway. The school has gone green and prefers not to purchase new lettering, unless required. Board questions for Mrs. Kline were as follows:

- What are the sign dimensions
- Where is the closest school in proximity to Creekside Middle School
- Will the sign have a scrolling feature
- In which direction will signage move

Mrs. Kline told the Board, Marshall Elementary School is a mile away. However Marshall School is not located on a corner. Neither of the nearby schools have signs. The proposed sign will have two lines of text that scroll. Mrs. Kline will let the school principal elaborate further on sign functions. Mrs. Kline conducted research for another model not selected.

Mary Ann De Grazia the School Principal at Creekside Middle School testified. The sign will scroll side to side. She showed a graphic of the proposed sign that will include the school logo. She was unsure if the text would run from left to right. Board questions for Ms. De Grazia were as follows:

- What is the level of sign illumination
- Does the sign blink
- What hours will the sign be in use
- How will the sign impact traffic at the intersection, and the surrounding area
- What is the elevated height of the sign
- Where is the crosswalk in proximity to the sign
- Where is the entrance to the parking lot
- Has Ms. De Grazia read the staff report

Ms. De Grazia confirmed she read the staff report, and is in agreement with the Conditions of Approval. The sign does not blink. The Hours of Operation will be from 7:00 a.m. to 7:00 p.m. The light from the sign will provide additional safety during ingress and egress. Through a Safe Schools grant, the school was able to have a stop light installed. The Chair commented she familiar with the area. The intersection is heavily traveled, and dangerous. Ms. De Grazia said the light held 3 seconds. There are 8 characters on each line generated on two lines, 16 pixels high. The sign is perpendicular to the school. Signage will be seen from traffic on Center Street. There is no entrance or exit to the parking lot from Paradise Knoll with the exception of a locked entrance onto the sports field. Ms. De Grazia was unsure of the height. However it will be placed in the same position as the present sign.

Ms. Jan Le Roy lives around the corner from the site. She passes the school several times a day. She is opposed to the application. The Ordinance does not allow the sign. The proposed visual impact is negative. The base is too wide. The Ordinance should outweigh the need for a better sign. If the proposal were a fence, the application would not be approved. If the Board does approve the sign, it should be more aesthetically pleasing. The sign should be smaller, and lower. Currently the proposed size is twice the Ordinance allowance. The proposed sign is not in keeping with the neighborhood. In comparison the sign at Castro Valley High School is located on a 4 lane road. It is placed high above traffic. The sign at the other local school is on a hillside. Communication via signage is not a District requirement. Proponents of the sign assume this method will reach all parents. Not all parents drive by the school. The information display will be limited, and the light distracting. Other electronic signs have moving letters and a flashing back drop. It is uncertain if this will be the same. The newspaper is also a viable means of communication. The fad regarding signs seems clear, and will be reinforced if this is approved. It will not enhance the residential neighborhood. The schools need's can be met remaining within the Ordinance Code. The school has already made the mistake of installing a fence with a prison like appearance. Member Spalding noted for the record, the fence installed was unattractive. She asked Ms. Le Roy if she was aware the proposed sign is smaller than the existing sign. The existing sign is also unattractive. The Principal has assured the sign will not remain lit after 7:00 p.m. Ms. Le Roy responded the existing sign was unattractive. In her opinion, the replacement should be smaller, and more attractive. If the school is allowed to have the sign, other local businesses will want the same. The light will also be unattractive during the day. School signs can be seen from a great distance. The Vice Chair and Member Spalding said that may be case. However signs at the other locations are much larger. Public testimony was closed.

Member Spalding asked staff to confirm the proposed sign is smaller the existing one. Staff said it appears that is the case. Additional Board questions for staff were as follows:

- Is the height in correlation with the frontage
- Can the sign be moved onto the property line
- Would a wall mounted sign be within the Ordinance

Staff said the same Ordinance would apply if the sign placement were moved back. A wall mounted sign would be acceptable in this application. Member Peixoto said the existing sign and fence were both unattractive. Member Adesanya pointed out the light will not contrast as brightly, during daylight hours. The Chair said she is familiar with the area, and frequented the park located behind the site. Traffic is heavy until late in the evening. Her concern is there are no stop controls. The sign manufactures specifications state the sign emits a "super bright" light. This will be distracting. The sign is 9 feet tall, people will look. They will be attracted, as that is the purpose. The Chair believed there was a safety issue. Driver's attention will be diverted. The road has many grade changes. In addition there are a lot of pedestrians in the area. Member Spalding pointed out there was no driveway on Paradise Knoll. Alameda County Traffic Division did not have issue with the application. Staff clarified the referral was processed by Land Development, although there were no concerns. The Chair said people will still stop on Center Street to read the sign. The Vice Chair added that a driver could turn their head for a moment and hit a child.

Member Peixoto motioned to uphold the staff recommendation of approval. Land Development has reviewed the project, and has no objections. Member Adesanya seconded the motion. Member Spalding pointed out there is already a sign present. No accidents have occurred. The current sign is ugly. The Vice Chair asked for a modification to the motion. As per staff, Condition #4 shall now include the

language: There shall be no illumination of the sign before 7:00 a.m. and after 7:00 p.m.

The motion to uphold the staff recommendation of approval of PLN-2009-00105 passed 4/1. The Chair was not in favor of application approval.

4. **ADVENTURE TIME / SUSAN SUNG - CONDITIONAL USE PERMIT, PLN-2009-00114** - Application to allow continued operation of a child care center (Adventure Time at Bay School) in an R-1 (Single Family Residence) District, located at 2002 Bockman Road, east of Via Walter, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0042-094-00. **Staff Planner: Christine Greene.**

Staff informed the Board the Applicant was the same for Applications #4 and #5. The Applicant has asked for a continuance. They have not received Fire Department, clearance. Member Peixoto asked if the Board can approve the application and condition it as such that clearance be obtained. The school has been in operation for a long time. Staff said the Board can hear the item however the Applicant is not present. Conditions of Approval require the Applicant to comply with County Agencies, including the Fire Department. The Board agreed to hear Adventure Time at Bay and Del Rey Schools simultaneously. A separate motion will be placed to determine approval or denial. The Board continued with the proceedings. The staff recommendations were approval. Bay School has been in operation since 1984. Initial Board questions were as follows:

- Has the Applicant met prior Conditions of Approval at both locations
- How long does it take to obtain Fire Department approval
- Is Fire Department approval in conjunction with the CUP
- Has Building Inspection been informed of the request
- Have the inspection fees been paid
- What is the maximum number of children allowed
- Why is the recommended permit length 5 years, as opposed to 10 years

Staff confirmed all prior Conditions had been met at each site. The Applicant will need to schedule an appointment with the Fire Department for inspection. Although the Applicant must be in compliance the Building Department does not issue permits. The site is under the jurisdiction of the School District. School Facility Building Permits are processed through the State Architect of California. The State has issued a Child Care License for up to 75 children. The Applicant is requesting a permit for 60 children. Board Members noted on occasion, permits for schools had been granted for a period of 10 years.

Member Peixoto motioned to uphold the staff recommendation of approval of PLN-2009-00114 with a modification. The permit length shall now be for a period of 10 years. Member Adesanya seconded the motion. Motion carried 5/0.

5. **ADVENTURE TIME / SUSAN SUNG - CONDITIONAL USE PERMIT, PLN-2009-00115** - Application to allow continued operation of a child care

center (Adventure Time at Del Rey School) in an R-1 (Single Family Residence) District, located at 1510 Via Sonya, west side, approximately 100 feet west of Via Del Rey, unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0072-039-00. **Staff Planner: Christine Greene.**

Member Peixoto motioned to uphold the staff recommendation of approval of PLN-2009-00115 with a modification. The permit length shall now be for a period of 10 years. Member Adesanya seconded the motion. Motion carried 5/0.

6. **VERIZON WIRELESS / LAURA BOAT - CONDITIONAL USE PERMIT, PLN-2009-00125-** Application to allow expansion of an existing telecommunications facility (Verizon Wireless) in a CF (Community Facilities) Designation within the ACBD (Ashland Cherryland, Business District) Specific Plan, located at 50 East Lewelling Boulevard, northeast side, approximately 318 feet northwest of Ashland Avenue, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 413-0019-002-07. **Staff Planner: Christine Greene.**

Staff reviewed the history of the site, and recommended approval. . The present antennas were approved in an application through a re-zoning application several years ago. The PD (Planned Development) Zoning allowed the tower. When the ACBD (Ashland Cherryland Business District) Zoning came into effect, the pole became non-conforming. Due to the non-conforming status, the request to change out antennas is considered to be an expansion of the use. Therefore any changes require zoning approval. The antennas will be placed in the same location with a slightly different configuration. The Board asked staff to indicate proposed changes on submitted Exhibits. Additional Board questions were as follows:

- What is the definition of a CF (Community Facility) Zone
- Who is the major carrier at the site
- Is this a co-location
- Can the BZA require further camouflage
- Are there trees in the vicinity
- Is there a school near the site
- What comments were received from the Redevelopment Agency
- What comments were received from the San Lorenzo Homeowners Association
- What comments were received from the Ashland Homeowners Association

Staff said the CF (Community Facility) Zoning is in the Specific Plan. The site is now on School District property. The property was re-zoned CF. The San Lorenzo High School is nearby. The address is on Lewelling Boulevard but the site more visible from Ashland Avenue. The Redevelopment Agency has not submitted comments, as of yet. Member Peixoto confirmed the site was not within the jurisdiction of the San Lorenzo Homeowners Association. The Vice Chair informed the Board the Ashland Association was now defunct. They passed their non-profit information on to the, Cherryland Association. Member Spalding said perhaps the Cherryland Association can offer comments in their stead. The installation will

be a co-location which is to be signed off by the Building Department. Although Verizon is not the owner of the pole, they might suggest options to improve overall tower design. The Applicant interjected from the audience that the major carrier is AT&T. Public testimony was opened.

Ms. Laura Boat was present representing Verizon Wireless. Three antennas will be added at a height of 64 feet. The equipment will be placed on the second level from the bottom of the pole. There will be a total of 6 antennas on this level. Although the design is not very attractive, four carriers have equipment consolidated onto one pole. There is a tree at the base of the site. The site is visible from Highway 238 because of the slight elevation. Ms. Boat said perhaps AT&T can make some changes when the AT&T CUP is renewed. Verizon is not in the position to make changes to overall design. Board questions for Ms. Boat were as follows:

- When will the AT&T cup expire
- What precipitated the Verizon upgrade

Staff told the Board the AT&T tower did not have a use permit with an expiration date. The site was rezoned to allow the installation of the tower. A use permit is only required if changes to the pole are requested. Ms. Boat said upgrade was necessary to keep-up with 4G technology. It is likely AT&T will need to upgrade as well. Verizon is a tenant, and has a sublease agreement with AT&T. The Chair recommended the word Applicant be stricken from Condition #11 since Verizon is the co-locating party. The word should be replaced with "Owner". Member Spalding did not believe a ten year permit was appropriate. Verizon should not be locked into a 10 year permit. This eliminates an impetus for AT&T to upgrade. County Counsel reminded the Board a new State Law requires that telecom permits be granted for a period of 10 years, unless there is a substantial land use, health, or safety reason. Member Spalding believed a substantive reason existed for a limited permit. The pole is extremely unattractive. The pole is non-conforming because the Specific Plan prohibits telecom uses. Public testimony was closed.

Further Board questions for staff were as follows:

- How does the CF (Community Facility) zoning affect the application
- How does the Specific Plan zoning affect the application

Staff clarified the CF (Community Facility) Zoning does not list telecom uses as allowed, or permitted by use permit. Therefore The Standards for Telecom Sitting set the guidelines. Member Spalding did not believe there was sufficient information available in which to make a decision. In her opinion there was potential to support a finding. Substantial land use reasons exist that allow reduction of the 10 year permit period. This is a sensitive topic. She feared AT&T will use this as a reason not to upgrade the facility. A continuance may be in order to allow staff to determine the intent of the Telecom Sitting Guidelines.

Ms. Boat told the Board she would accept language added requiring Verizon's permit to expire in 10 year; or to modification to the expiration date, if the pole owner seeks any application or modification to the pole; whichever occurs first. County Counsel confirmed that would be acceptable. Staff further clarified the use application is specific to the modification of the pole.

Member Spalding motioned to uphold the staff recommendation of approval with the following modifications: Condition #11 shall remove the Applicant as the responsible party. The words pole Owner shall be added. The application will be for a period of 10 years; or modification to the expiration date, if the pole owner seeks any application or modification to the pole by the pole; whichever occurs

first. Member Peixoto seconded the motion. Motion carried 5/0.

APPROVAL OF MINUTES: The Vice Chair motioned to adopt the Minutes of October 28, 2009 as submitted. Member Peixoto seconded the motion. Motion carried 3/0/2. Members abstaining: Spalding also Member Adesanya who was not present at the October 28, 2009 Hearing.

Member Adesanya motioned to accept the Minutes of November 18 with submitted corrections. The Vice Chair seconded the motion. Motion carried 5/0.

There were no Minutes for December 9, 2009, as the Hearing was cancelled.

The Minutes of November 4, 2009 were continued.

STAFF COMMENTS & CORRESPONDENCE: Staff announced the BOS considered a compromise regarding the appeal of expiration date regarding PLN-2009-00049, T Mobile. However they could not reach an agreement as to language that would achieve the proposed compromise. Ultimately the Board of Supervisor's upheld the BZA decision, 5 year permit length to facilitate co-location with additional carriers at the site.

APPROVAL OF THE 2010 CALENDAR: The Chair motioned to approve the 2010 Calendar. Member Adesanya seconded the motion. Motion carried 4/0/1. Member Peixoto abstained.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: The Vice Chair asked staff to forward the 2010 Calendar to Redevelopment.

ADJOURNMENT: There being no further business, the hearing adjourned at 4:30 p.m.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS