

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
OCTOBER 27, 2010
(APPROVED NOVEMBER 10, 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.

REGULAR MEETING: 1:30 p.m.

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

MEMBERS EXCUSED: Ineda Adesanya.

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

There were approximately 9 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: There were no items on the Neighborhood Preservation Ordinance Hearing Calendar.

Alcoholic Beverage Sale Regulations Administrative Hearing: There were no items on the Alcoholic Beverage Sale Regulations Administrative Hearing Calendar.

CONSENT CALENDAR:

1. **AILIAN LU / CHINESE HEALTH CENTER, CONDITIONAL USE PERMIT, PLN-2010-00135** - Application to allow operation of a massage therapy business (Chinese Health Center) offering acupuncture, acupressure, pressure point massage and foot reflexology, in a C-1 (Retail Business) District, located at 17780 Hesperian Boulevard, east side, south of Hacienda Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0071-024-04. **Staff Planner: Andy Young.** (Continued from October 13, 2010; to be continued to November 10, 2010).

Member Peixoto motioned to accept the Consent Calendar as submitted. The Vice Chair seconded the motion. Motion carried 3/0. Member Spalding abstained, and did not participate in the vote.

REGULAR CALENDAR

1. **VILLAGE BAPTIST CHURCH, CONDITIONAL USE PERMIT, PLN-2010-00115** - Application to allow continued operation of a telecommunications

facility, in an R-1 (Single Family Residence) District, located at 1535 Bockman Road, north side, northeast of Brandon Avenue, in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0057-183-00. **Staff Planner: Christine Greene.**

Staff reviewed the application, and recommended approval. The San Lorenzo Village Homes Association had no objections to the application. Public testimony was opened.

Ms. Rosemary Burn was present representing, AT&T Mobility. There are no changes proposed to the facility. It has been functioning well. Public testimony was closed.

The Vice Chair motioned to uphold the staff recommendation. Member Spalding seconded the motion. The motion to approve, PLN-2010-00115, AT&T Mobility carried 4/0.

2. **KIDANGO INC. / JOHN FONG, CONDITIONAL USE PERMIT, PLN-2010-00121** - Application to allow the operation of a Community Facility (pre-school / child care facility) within an existing classroom, in an R-1 (Single Family Residence) District, located at 879 Grant Avenue, north side, approximately 300 feet east of Washington Avenue in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 412-0022-007-00. **Staff Planner: Damien Curry.**

Staff reviewed Application, PLN-2010-00121 and recommended approval. The Applicant is applying to open new pre-school / child care facilities within classrooms of existing schools, at four separate locations. Each application will be considered on an individual basis. Public testimony was opened.

Mr. John Fong, Facility Manager of Kidango Inc. was present. Board questions for the Applicant were as follows:

- Is there an established history of pre-school programs at the locations
- Are all applications new, or requests for renewal
- What is the proposed number of children in attendance

Staff explained a previous cup application was filed for the 879 Grant Avenue facility in 1979 for an, afterschool care program. This is the first application for pre-school children 3 to 5 years of age. Mr. Fong confirmed the classroom facility will hold 24 children. The Hours of Operation will be from 8 a.m. to 4 p.m. Public testimony was closed.

Board questions for staff were as follows:

- What did Public Works recommend in regard to traffic issues
- Has the Applicant submitted a detailed Traffic Plan
- Is there new development on Grant Avenue that may affect the facility and/or traffic
- What is Planning staff's recommendation for upkeep and maintenance of the site

Member Peixoto said there are multiple traffic problems. Many people live on the northern side of San Lorenzo Village. The church parking lot next to the school is used for pick-up, which exacerbates the problem. Staff responded that Public Works did not offer comments. The school is already in use. Mr. Fong interjected, 70% of pre-school attendees have siblings attending the school. Therefore further traffic will not be generated. Member Spalding recommended pick-up and drop-off times for children

who are non-siblings. These recommendations should be submitted by the Applicant, in writing. Further Conditions of Approval should be added, based on that information. Staff explained the material storage location on Grant Avenue is a staging area for improvements along the street. Storage will be temporary. The School District is responsible for cleaning and up-keep at the school. Member Peixoto acknowledged school sites are generally neat and clean. Member Spalding said the Applicant should be responsible for maintaining the classroom interior, and area immediately outside of the classroom. Staff accepted the additional Conditions of Approval.

Member Spalding motioned to accept the staff recommendation of approval with the following modifications:

Condition #3 shall be modified to include: The Applicant shall be responsible for maintaining the premises within their responsibility. The immediate surrounding area shall also be maintained in a clean trash and graffiti free manner.

A further Condition of Approval shall be added: The Applicant shall submit a Traffic Plan which includes drop-off and pick-up procedures to the Planning Director within 30 days for final approval.

The permit is subject to a 1 year review by Alameda County Planning staff to verify compliance and/or the possible addition of further Conditions of Approval.

Member Peixoto seconded the motion. The motion to approve, PLN-2010-00121, Kidango Inc. passed 4/0.

3. **KIDANGO INC. / JOHN FONG, CONDITIONAL USE PERMIT, PLN-2010-00122** - Application to allow the operation of a Community Facility (pre-school / child care facility) within an existing classroom, in an R-1 (Single Family Residence) District, located at 1510 Via Sonya, west side, approximately 100 feet west of Via Del Rey in the unincorporated San Lorenzo area of Alameda County, designated Assessor's Parcel Number: 411-0072-039-00. **Staff Planner: Damien Curry.**

The staff recommendation was approval. Member Spalding asked if the requested pre-school use was going to replace the after school care program. Staff clarified the pre-school use would be in a different classroom. Public testimony was opened.

Mr. John Fong appeared again on behalf of Kidango Inc. The Vice Chair commented that in contrast to the other San Lorenzo location, there were no traffic issues. Public testimony was closed.

Member Peixoto motioned to adopt the staff recommendation of approval with the following modifications:

Condition #3 shall be modified to include: The Applicant shall be responsible for maintaining the premises within their responsibility. The immediate surrounding area shall also be maintained in a clean trash and graffiti free manner.

The permit is subject to a 1 year review by Alameda County Planning staff to verify compliance and/or the possible addition of further Conditions of Approval.

The Vice Chair seconded the motion. The motion to approve, PLN-2010-00122, Kidango Inc. passed 4/0.

4. **KIDANGO INC. / JOHN FONG, CONDITIONAL USE PERMIT, PLN-2010-00123** - Application to allow the operation of a Community Facility (pre-school / child care facility) within an existing classroom, in an R-1 (Single Family Residence) District, located at 620 Drew Street, south side, approximately 150 feet west of Wagner Street in the unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080D-0577-013-02. **Staff Planner: Damien Curry.**

The staff recommendation was approval. Member Spalding asked if traffic issues were present at the site. The Vice Chair acknowledged there were. As a result the Applicant should provide a Traffic Plan. Public testimony was opened.

Mr. John Fong appeared again on behalf of Kidango Inc. Seventy five percent of the pre-school customer base already have siblings attending the school. This results in the arrival and of pick-up approximately 6 children, a small percentage of families may also reach the destination by walking.

Mr. Carl Brown lives in the neighborhood. He is neither in support or opposition but given the proceedings, he is skeptical about what is taking place at the school. Specifically he is skeptical about traffic management. There is increased traffic flow, and back-ups on Drew Street. Although a bus pull-out was added a few years ago. Traffic is congested for a longer period, in the morning. Traffic into the school continues throughout the day. In contrast to the Applicant's testimony that traffic stops at 4 p.m. It continues until 5 p.m. After that, the neighborhood returns to quiet. Mr. Brown asked if Kidango was a private organization. He read in the newspaper they received a government grant this year. Mr. Brown also asked if parents pay tuition. He noticed the classroom was re-modeled this summer. The operation is now in progress since the start of the school year. He asked staff why zoning is proposed to be changed, to accept this use in an R-1 District. Consideration of impact should have been considered, prior to the use beginning. Staff explained the use is considered a community facility. A private or public school use is allowed as a conditional use, in an R-1 Zone. There is no distinction between public and private schools in the Ordinance. The Board commented the use is a private corporation operating within an existing school classroom, at a School District building. Mr. Brown did not understand why the use would be exempt in an R-1 District. A private organization should not be considered a community facility. The Applicant has remodeled. If Mr. Brown would like to remodel his home, a permit would be required. Detailed information regarding the rules is not readily available. The information provided, is buried within the staff report. In addition, the pre-school has been operating without a permit. The permit process is taking place, after the fact.

Mr. Fong responded Kidango Inc. is a private organization. Kidango receives private and public funding in addition to grants from the State of California, Counties, and private sources. Kidango primarily caters to low income families. If a family qualifies as low income, their tuition is paid by the State. A family that does not qualify as low income will pay full tuition fees. There are 47 Kidango facilities spread between Alameda and Santa Clara Counties. Grants received are spread throughout these areas. Funding for the Kidango site on Hesperian Boulevard was from the CA Department of Education. Tables, amenities, and school supplies were purchased. The Vice Chair asked if all of the facilities were currently

in operation. It appears the cart was put before the horse. Mr. Fong confirmed the pre-school has been in operation since the start of the school year. Kidango partners with school districts and hospitals. Typically when partnered with an open functioning school, the use is exempt from the cup process. Kidango did not find out until later, the San Lorenzo School District did not want to exempt this set of projects. The pre-school projects are a new venture for them. As soon as Kidango was informed projects were not to be exempt. The permit process was started. County Counsel explained under State law a School District is subject to local zoning. However if a District chooses to exempt themselves from local zoning, there is a process through which to do so. In this case it sounds the School District chose not to exempt themselves. Public testimony was closed.

Member Peixoto motioned to accept the staff recommendation of approval with the following modifications:

Condition #3 shall be modified to include: The Applicant shall be responsible for maintaining the premises within their responsibility. The immediate surrounding area shall also be maintained in a clean trash and graffiti free manner.

A further Condition of Approval shall be added: The Applicant shall submit a Traffic Plan which includes drop-off and pick-up procedures to the Planning Director within 30 days for final approval.

The permit is subject to a 1 year review by Alameda County Planning staff to verify compliance and/or the possible addition of further Conditions of Approval.

Member Spalding seconded the motion. The motion to approve, PLN-2010-00123, Kidango Inc. passed 4/0.

5. **KIDANGO INC. / JOHN FONG, CONDITIONAL USE PERMIT, PLN-2010-00124** - Application to allow the operation of a Community Facility (pre-school / child care facility) within an existing classroom, in an RS-DV (Suburban Residence, Density Variable) District, located at 20450 Royal Avenue, northeast corner of the intersection of Royal and Sunset Avenues, in the unincorporated Hayward Acres area of Alameda County, designated Assessor's Parcel Number: 432-0008-036-00. **Staff Planner: Damien Curry.**

The staff recommendation was approval. Initial Board questions were as follows:

- Is Sunset Royal High School a continuation school
- Is there a church located on the site
- Is there currently an elementary school in operation on the site

Staff responded. Royal Sunset High School is a continuation school. There is also another private high school on the site that received a cup in 2005. Currently there is no elementary school on the site. Public testimony was opened.

Mr. John Fong appeared again on behalf of Kidango Inc. The Vice Chair asked Mr. Fong how parking, drop-off and pick-up will be affected since this is a continuation school. Mr. Fong responded the Kidango facility occupies a single classroom. Some of the children have siblings at the high school. State licensing requires a fence with a gate, around all facilities. Further Board questions for Mr. Fong were as follows:

- Is the pre-school currently in operation
- How many children are enrolled
- Have there been complaints lodged against the school
- How was this location selected

Mr. Fong confirmed the pre-school was in operation. The facility can accommodate 24 children. All of spaces are filled. To Mr. Fong's knowledge, there have been no complaints. Kidango Inc. caters to local neighborhoods that need childcare. They ask school districts, in this case San Lorenzo Unified to identify available classroom space, or square footage within the District. Although some of those sites may have siblings attending the school, sites are also viable if there is a need for a pre-school. Mr. Fong confirmed there were there are a lot of young families in the area. There is no church adjoining this facility. The church is near another Kidango location, heard earlier.

Member Spalding said the Traffic Plan should focus on minimizing interaction between parents, pre-school students, and the students attending the high school. The Chair agreed. Board Members asked if there were additional photos of the school, including fencing. Staff did not have photos in addition to those provided in the staff report. Mr. Fong interjected from the audience. He assured the Board from a safety perspective, it is also in Kidango's interest to keep high school drivers away from kids.

Member Spalding motioned to uphold the staff recommendation of approval with the following modifications:

Condition #3 shall be modified to include: The Applicant shall be responsible for maintaining the premises within their responsibility. The immediate surrounding area shall also be maintained in a clean, trash and graffiti free manner.

Condition #4 shall be modified to include: Permit shall be subject to a one year review by the Planning Department for compliance and/or the modification, addition of further Conditions of Approval.

A further Condition of Approval shall be added: The Applicant shall submit a Traffic Plan which includes drop-off and pick-up and procedures to the Planning Director within 30 days. The Traffic Plan must minimize interaction between pre-school students/parents and students attending Royal Sunset High School.

Member Peixoto seconded the motion. The motion to approve, PLN-2010-00124 passed 4/0.

6. **T MOBILE USA / CHRIS COONES, CONDITIONAL USE PERMIT, PLN-2010-00129** – Application to allow installation and operation of a telecommunications facility consisting of two cabinets and six antennas on a PG&E tower. The property contains 33,900 square feet (0.78 acres) and is in an R-1-BE-CSU-RV (Single Family Residential, Conditional Secondary Unit, Recreational Vehicle Parking Regulations, District, located at 5314 Crown Court, northwest side, approximately 284 feet, southwest of Greenridge Road, in the unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 085-1601-006-00. **Staff Planner: Sonia Urzua.**

Staff reviewed the application, and recommended approval. Minutes from the October 11, 2010 Castro Valley Municipal Advisory Committee were distributed. The CVMAC voted to approve the project, 5/0 with 2 Members absent. Public testimony was opened.

Mr. Chris Coones was present representing T Mobile. The facility includes 3 façade mounted antennas onto an existing PG&E high power, transmission tower. The staff report confirms Tentative Findings there is a demonstrated public need for the site, due to lack of coverage in the area. The facility properly relates to others in the area. The site will not be a detriment to public welfare. Mr. Coones was in agreement with staff findings. Due to the location of the existing 98 foot tower, the visual impact of the project will not create a significant change the existing environment. The CVMAC is also in support of the application. Initial Board questions were as follows:

- Has this application been heard by the BZA
- Are there other T Mobile applications at this site
- Has there been interaction between T Mobile and the concerned neighbors
- Where will the antennas be mounted
- Is a height extension required for the project
- Are other carriers on the PG&E tower

Mr. Coones confirmed this was a new application. There are no other T Mobile facilities at this site. Mr. Coones conducted a meeting to discuss the project at a neighbor's home, prior to the CVMAC Hearing. He thought the biggest issue to surface at the meeting was the existing PG&E tower. Mr. Coones was not present to address the existing tower, but the proposed T Mobile facility to be added to the site. Mr. Coones tried, but could not do a lot to address the existing PG&E tower. The facility installed, will be a micro facility. Antennas will be flush mounted on the face of the tower, and painted to match. PG&E requires flush mounted facilities to be a minimum distance from one another and PG&E equipment. Power lines are also attached to the tower. A top hat designated by PG&E will also be added to the extension. The addition to the current 98 foot tower will result in a height of 106 feet. The batteries to operate the micro facility are slightly larger than a motorcycle battery. The two radio cabinets will require a 12 to 18 foot area. This will be inside an existing Nextel equipment area, surrounded by a fence. The area will not be visible or expanded.

Ms. Joelleen Oslund lives two doors from the lattice tower site, on Crown Court. She is disappointed with the staff report. The neighbors expressed very specific concerns at the CVMAC Meeting. The concerns have not been communicated in the staff report. Mr. Coones did not accurately reflect the problems expressed by the neighbors. The existing carrier Nextell had a permit issued in 2001. The permit is due to expire in January, 2011. A third carrier Clearwire also had an application for the site. She believes they still have a lease agreement with PG&E. The T Mobile permit could result in 3 carriers on the tower. The T Mobile extension would add 8 feet, with the additional carriers. The extension will reach 12 feet. PG&E added equipment called a goat head to the top of the tower. The T Mobile extension will be on top of the goat head. The photo simulation shows a space between where T Mobile will be placed. This space is probably reserved for another carrier application, possibly Clearwire. They already have a lease with PG&E. As a result, neighbors will have to look at a higher tower. The extension will be higher than what is required for T Mobile. Mr. Coones states there must be additional room. Other towers have extensions that are limited to 6 feet. There is an example of one in Livermore. Neighbors request the extension be limited to 6 feet. Height should not be further extended, in an attempt to place further carriers on top of the tower. This attempt is an end run around the public process. The staff report says there will not be a significant change to the environment. The Applicant may not plan a potential change. However this does not prevent the tower from extending further. Neighbors need to know if there is a limit. Some towers in Central California have extensions of 24 feet with multiple carriers. The closest home to the tower is 70 feet away. Mr. Henderson, the owner of the property who leased to PG&E, is not the closest home to the site. There is another property. This tower is unique. The property is in close proximity to road access. It is also unique in that homes are in close proximity. They were built in 1961. There were no rules in place at that time. She understands T Mobile does not need a

12 foot extension. The neighbors should not have to look at a tower that is higher than necessary. The area neighbors, request the Board delay the application so the carrier application that expires in January can be consolidated. The neighborhood needs more time. T Mobile has a location on Greenridge Park and Crane Court. Just because the tower is ugly, does not mean the tower should be made uglier. Neighbors must look at the tower. Member Spalding acknowledged the tower is 70 feet from some homes. She asked where Ms. Oslund obtained her information regarding extension height. Ms. Oslund said the staff Planner gave her some vague information that was apparently obtained from PG&E. However this information was all verbal. Mr. Coones confirmed 6feet would be sufficient for T Mobile. The Nextel enclosure has room for 2 cabinets. There appears to more present. Nextel may not be in compliance. It is unknown whether further equipment cabinets could be placed there. Ms. Oslund wanted assurances that further noise generated by T Mobile equipment, be a quiet as possible. The Chair asked Ms. Oslund what she considered consolidation. Ms. Oslund told the Board she would like T-Mobile, and Nextel be considered as one application. This will give the neighbors a sense of the full project impact. Otherwise neighbors have to constantly attend CVMAC and BZA Meetings. In addition, staff reports do not give a clear picture of application impact. The Chair pointed out that Clearwire is an internet carrier, unlike the other applicants. She is surprised to see them at the PG&E site. Ms. Oslund responded Clearwire had an application at one time. She is unsure if it has been withdrawn. Mr. Henderson is the easement lease holder. He collects rent for the PG&E tower. He also has other towers out of the area with 6 foot extensions.

Mr. John Henderson, the lease of the tower was in the audience. He declined to add testimony in addition to what had been presented.

Ms. Gail Masomoto told the Board she lives on Greenridge Road. The back of her home has full glass windows. She looks at the tower every day. She then showed the Board her home, on photos provided in the staff report. Ms. Masamoto asked staff how they determined the project had little visual impact. The tower is 3 times taller in reality then it appears in photos. Also the equipment area is not shown. Counties, such as San Diego require Applicants provide photo simulations in a larger scale. Her concern is the future impact of the project. For example in Roseville there is a tower with a 24 foot extension. She can bring in photos for the Board to view. The proposed tower may also add microwave dishes. There are other towers in the County, not located in others backyards. This project would be 70 feet from some homes. Most Counties require 200 feet minimum. The CVMAC said the tower is already ugly. Ms. Masamoto said regardless, the effect is one of a naked Christmas tree versus a Christmas tree with balls and lights. Information has not been provided to inform what other types of spaces were considered, open or green space, as opposed to residences. Telecom Guidelines say residential areas are to be the fourth placement option to be considered. Neighbors found out about this project at the last minute. Therefore we request additional time to ask questions. These extensions can be 5 feet tall.

Board questions for Ms. Masamoto were as follows:

- How far is Ms. Masamoto's home from the tower
- What is the distance of her home to the equipment cabinets
- What height would neighbors prefer the extension
- How did Ms. Masamoto find out about the Application

Ms. Masamoto can see the top two thirds of the tower from her home. She cannot see the equipment cabinets, although other neighbors may. She is most concerned with the visual impact, as opposed to noise. She prefers extension height be limited to 6 feet. This would prevent another carrier from co-locating on the extension in the future. Although they cannot officially comment, due to FCC rules, neighbors are very concerned about radio frequency emissions. They believe there is a cancer cluster in

the area. A disclosure about radio wave frequencies is why she did not purchase a home in Five Canyons. There is no proof that waves are not harmful. Her home now is 475.3 feet from the tower. Ms. Masomoto was not notified by mail. She heard from her neighbors, although she received a postcard notice on Saturday. The print was so small she threw the card away. A notice was also posted on the tower, Saturday. T Mobile also sent a registered notice about the project. Staff clarified, County staff does not work on Saturdays. The notice would have been posted prior to the week-end.

Mr. Coones responded that Clearwire has withdrawn their application. He does not know what their future plans are. There may be other sites with 6 foot extensions. PG&E has stopped 6 foot spacing between facilities because they want to mitigate danger. Their minimum is 12 feet between carriers. The distance safeguards their construction crews. He understands PG&E e-mailed this information to County staff. However this is not an official document. PG&E is first an electrical utility. Their required conditions are very strict. The site is in a residential area, but the facility is unique. The antennas will be façade mounted. The use the highest, and best for the site. Greenridge Park is 75 feet away from the proposed facility. It looks down into the canyon, and serves that area. A minimum of 100 feet must be maintained between T Mobile sites. Castro Valley is not flat therefore the park location would not serve the same area as the proposed facility. This is supported by the coverage documents. Further Board questions for the Applicant were as follows:

- Can the facility be mounted on a lower section of the tower
- Is the Clearwire space still reserved
- How is the coverage map interpreted
- What alternate sites were considered for the facility
- Are there unique requirements for mounting facilities on PG&E towers
- How high is the PG&E tower

Mr. Coones said perhaps Clearwire, secured the lease and then opted out later. PG&E may or may not put equipment there. PG&E said they will not have less than 6 feet between facilities. The coverage map areas are defined as follows: White areas indicate no coverage, for example no cell phone signals inside of a home. Green indicates a strong signal, coverage inside of a home. Yellow is coverage strong enough to pick-up outdoors, inside of a vehicle. Gray indicates the area provides some coverage, although not very strong. T Mobile did consider alternate sites, although they did not provide the equivalency of coverage. A telephone pole mounted location was considered. T Mobile hesitated. The telephone pole is located in the public right of way. Alameda County Public Works is considering requirements for these installations. Currently there are no County Ordinances that govern telephone pole facility mounts, within the public right of way. There is another telephone pole within the right of way, nearby the PG&E site. The existing telephone pole mounted site on Crane Avenue was voluntarily taken down. The T Mobile pole in Greenridge Park is a monopine, that serves a different area. The entire process is a balance between accommodation and providing service. The PG&E tower is 98 feet high.

The Chair called a brief recess at 3:15 pm. for staff to locate communications between PG&E, the Applicant and Staff. The Chair reconvened the hearing at 3:23 pm.

Board Members read a copy of an e-mail communication between PG&E and T Mobile. Public testimony was closed.

The Board asked staff the following questions:

- How many providers can be placed on a 12 foot extension

- Can staff restrict the addition of further pole extensions
- Can the Board restrict further carriers on the pole extension
- Can the Board restrict further outward expansion on the pole
- Can a height extension prompt a permit review by the BZA

Counsel told the Board they may be able to set Conditions to a degree. However there are regulation limitations. The Board cannot create such restrictions to deny carriers coverage, under FCC law. The process is such that if a carrier was restricted, proof would be required. In this case there is a landowner who is leasing space to PG&E. Conditions should possibly be limited to the Applicant and the underling property owner. It could be tricky, if the Condition were tied to the land, the property owner would have to request review. In any case Conditions can be appealed to the Board of Supervisor's. Board Members further discussed the e-mail from PG&E and T Mobile. The email did not address the possibility of 12 foot extensions indefinitely. PG&E could also switch to 24 inch extensions. Member Spalding thought it best to introduce information contained in the e-mail, into the public record.

Tentative Finding #3 can be modified to add: The use will not be detrimental because there are not expected to be further extensions greater than 12 feet as this would create an adverse affect on the public welfare. The Chair thought the issue of sound emitted from equipment could be addressed by modifying Condition #19. Member Spalding agreed. The subtitle Maintenance shall add the word: Noise. Equipment should reduce noise to the greatest extent possible, utilizing the most current technology.

The Chair directed the Applicant to forward the entire original e-mail communication dated October 6, 2010, including all attachments to Planning staff.

Member Spalding motioned to adopt the staff recommendation of approval with the following modifications:

Tentative Finding #3 shall add the following language: As there are not expected to be any further extensions. Further the Board finds that any additional or further extensions would impact public welfare.

Condition #19 shall add the following: The Title Caption shall add the word Noise. An additional sentence shall also be added to the existing Condition: Equipment utilized shall be the most current feasible, to minimize impact on neighbors to the greatest extent.

A further Condition of Approval shall be added: The original e-mail communication in its entirety, dated October 6, 2010 between the Applicant and PG&E shall be submitted to Planning Staff within 10 days.

The Vice Chair seconded the motion. The motion to approve, PLN 2010-00129 passed 4/0.

ELECTION OF OFFICERS WEST COUNTY BOARD OF ZONING ADJUSTMENTS

Frank Peixoto nominated Dawn Clark for the position of West County Board of Zoning Adjustments Chairperson. Kathy Gil seconded the nomination. All Members were in agreement.

Dawn Clark was confirmed as the Chair Person of the West County Board of Zoning Adjustments.

Dawn Clark nominated Kathy Gil for the position of West County Board of Zoning Adjustments Vice Chair. Member Peixoto seconded the nomination. All Members were in agreement.

Kathy Gil was confirmed as the Vice Chair of the West County Board of Zoning Adjustments.

APPROVAL OF MINUTES: Member Peixoto motioned to accept the Minutes of October 13, 2010 with stated corrections. Member Spalding seconded the motion. The Motion carried 3/0. The Vice Chair did not participate in the vote as she was not present at the October 13, 2010 Hearing.

STAFF COMMENTS & CORRESPONDENCE: The Usher Inn on Lewelling Boulevard is working with staff on the karaoke aspect of the use.

Staff reminded Board Members that hearings in November will take place on the 10th and 17th. Board Members will attend a training workshop prior to the November 17 hearing at Noon. The Regular Meeting will begin at 1:30 pm.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Peixoto asked if Supervisor Nate Miley's Office had been informed of the impending departure of Board Member, Ineda Adesanya. Staff confirmed the Supervisor's Office had been informed of the upcoming vacancy.

Member Peixoto asked staff the outcome of the appeal of the BZA decision of denial to the BOS regarding, James Silva, Variance, PLN-2009-00010. Staff confirmed the BOS approved the application.

Member Spalding recommended the Board of Zoning Adjustments by-laws be amended to rotate the positions of Chair and Vice Chair, as typically this is the informal process that is followed from year to year.

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

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS