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>> Commissioner Bit-Badal: Good evening. My name is Edisa Bit-Badal, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, October 24, 2012. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. let the record show that all commissioners are present with exception of Commissioner Kamkar and Commissioner Cahan. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on items for which deferral is being requested. If you want to change any of the deferral dates recommended or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or defer remaining items to the next regularly scheduled

Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff do we have any items on --

>> Staff has no deferrals tonight.

>> Commissioner Bit-Badal: And just for the record, Commissioner Cahan is now present tonight. Do we have any consent calendar items tonight?

>> No consent calendar items tonight.

>> Commissioner Bit-Badal: Thank you. Commissioner Abelite.

>> Commissioner Abelite: Madam Chair, I have to recuse myself, I own property within 500 feet of the matter.

>> Commissioner Bit-Badal: Thank you. We will allow you to leave before we begin. Yet 3A. Staff.

>> Thank you, Madam Chair. This is a conditional use permit amendment for the renewal of a religious assembly just with up to 3360 fixed seats in an existing industrial building on an 8.9 gross acre parcel also including off site alternating parking arrangements. On the South side of Piercy road, approximately 550 feet from Hellyer avenue. Staff is recommending approval. Staff would like to note there's one technical correction to one of the facts that's identified on page 2 of the resolution. The staff report is correct. However, as depicted in the resolution, on page 2, item number 10, second line, it says 218 parking spaces are available for the offsite parking location. And that's a typo, it should have said 278. And so this project is exempt from CEQA, with that staff recommends approval of this permit. Thank you.

>> Commissioner Bit-Badal: Thank you, I will call the applicant, the only speaker card I have on this item. Bill BARTels, please state your name.

>> It's good to be here tonight. I appreciate your time. I really don't have any comments beyond what the staff says, bottom line this is a renewal for a church which I believe is on its seventh conditional use permit in the City of San José in its three different locations. For this site we have been located for last seven years. We have greatly relationships with our neighbors and I think also the community at large. So I would just take my time to answer whatever questions that you might have for me.

>> Commissioner Bit-Badal: Thank you sir. I do not see any questions at this point. Thank you so much for your time. And since we do not have any more speaker cards, I will close the public hearings. Or actually, counsel -- Commissioner Kline.

>> Commissioner Kline: Close the public hearing. I was just going to make a motion to approve threeA following staff's recommendations and findings.

>> Commissioner Bit-Badal: Do we have a second? Commissioner Yob. All approving vote by light. Commissioner O'Halloran.

>> Commissioner O'Halloran: Sorry I had a number of questions.

>> Commissioner Bit-Badal: Oh from staff? Absolutely, please.

>> Commissioner O'Halloran: Sorry. Thank you, Madam Chair. Staff, I had questions about the issue of preserving the general plan designation for industrial land. And I notice that we had an eight year term for the previous C.U.P. This time you're not recommending a term limit is that correct? For the record could you explain that for the lack of term?

>> Laurel Prevetti: Yes, this was a serious land use issue back when the proposed assembly use was proposed in this portion of the Edenvale area. The city council did agree to the C.U.P. happening in this area, they are the ones that proposed the time limit because it had gone through an appeal process. Now many years later we know

it has established itself well, it is a good, it is a fine use, it is working well, there is no plans for an expansion. If this was an expansion we would probably be having that policy question. But essentially they're living within the existing footprint of the original C.U.P. Existing parking arrangement that was approved prior. And so there's really at this point no benefit in coming back every five years because the policy matter has essentially been resolved and is no longer alive. But again as I say if it was an expansion, to include other parcels, or increase the intensity of the use, then that would be a new policy question. But that question is not before us tonight so the simple renewal we're comfortable with.

>> Commissioner O'Halloran: So is -- does this essentially permanently take out this property for industrial use as long as the C.U.P. is in effect?

>> Laurel Prevetti: Well, the C.U.P. does run with the land. So it is possible that if this particular assembly is no longer -- if they decide to move or whatever for business purposes, another assembly could assume that permit and continue to operate under the same conditions that are stated here. One thing you should notice. I don't know if you had a chance to look at the plans. But essentially it really is still an industrial building.

>> Commissioner O'Halloran: Right.

>> Laurel Prevetti: So if in the future the current owner decides to sell, and this building could easily be repurposed back into industrial purposes. So that's another consideration that we've had in terms of having a comfort level with the use remaining.

>> Commissioner O'Halloran: And I guess the scenario that I have in mind is, if the industrial absorption rates were such that there was a high demand for you know, industrial use in Edenvale, now, would we be taking a different position?

>> Laurel Prevetti: Well as you know, Edenvale has a lot of development opportunities. There are still significant vacant land as well as available building spaces. So there are other opportunities again as a property owner the

pastor is a very good business person so I'm sure that if there was a business case for them to do something different with the land it preserves their opportunity to make it available for an industrial user. So it's kind of a -- we're at a point where I think we're comfortable with the assembly use. And again, this is really a matter of how can we move this forward? At this point there is really not the benefit of continuing to reask the policy question because it was really settled before.

>> Commissioner O'Halloran: And was the compatibility, we did get correspondence from some appears questioning this. And we say in the staff report that compatibility's ensured in part by requirements in limitations that may be placed on future proximate industrial businesses proposing to use and store hazardous materials. So are we limiting the ability to use adjacent industrial properties because of this use?

>> Thank you, Madam Chair. Actually, I don't think we are. We have done a number of conditional use permits directly next door to actually convert much of the other industrial buildings where the alternating parking arrangement is set up, actually within the same block. Those have been converted to medical office actually.

>> Commissioner O'Halloran: Okay. Thank you.

>> Commissioner Bit-Badal: Thank you for all your questions and at this point I do not see any more questions from commissioners. We will vote by light. And all those present voted yes on this item. Next item is 3 B.

>> Thank you. This is a conditional use permit amendment to allow after-midnight use to 1:00 a.m. for an existing movie theater, the amc theaters on the 31.75 acre parcel at the el paseo de Saratoga shopping center in the CG commercial general zoning district. This amendment is to allow after-midnight use on -- to 1:00 a.m. on Fridays and Saturday nights for the existing theater. The applicant and two neighbors that provided public testimony regarding the project at the September 26th Planning Commission meeting requested an additional deferral to this date. Planning -- to this plan to allow for more time for the applicant to discuss options for the remaining neighborhood concerns. Staff is not aware of any changes to the project, or additional conditions based on discussions between the applicant and the neighborhood. At this point staff is recommending the Planning

Commission find the project in conformance with CEQA and approve the proposed conditional use permit amendment on the subject site for the following reasons: The project conforms to the Envision San José 2040 general plan land use transportation diagram of regional commercial. Number 2 the project as conditioned conforms to the city council policy number 6-27 evaluation of 24-hour uses and the project is exempt from environmental review under CEQA. This concludes the staff report. Thank you.

>> Commissioner Bit-Badal: Thank you, staff. Is the applicant here? Would you please step forward and please introduce yourself and you have up to five minutes.

>> Thank you. Good evening, chair Bit-Badal and members of the commission. My name is Robia Chang. I'm an attorney with Menat, Phelps and Phillips, and we represent AMC. I would like to take a moment to thank staff for all their work on this application. In particular John baty has worked with us in getting this to hearing. It was originally filed in 2009, so it's been a long time coming. Also with me this evening is Kevin Lynn, from AMC. He is the general manager of the theater and he's available to answer any operational questions that you might have. As indicated in the staff report this request is for a one-hour extension two nights a week on Friday and Saturday nights. As originally proposed, this was a request to operate to 3:00 a.m., seven nights a week as amC had historically operated. And since that time amC has made a lot of effort to scale back the request and also implement measures to address concerns that the neighbors had regarding disturbances and noise and security. So really, the project that has been proposed has evolved from the request of 3:00 a.m. seven nights a week to 1:00 a.m. seven nights a week, and most recently in working with staff, AMC worked and agreed to a proposed condition of approval that would further limit the request to 1:00 a.m. just two nights a week. This really minimal extension which is just two hours a week would give amC some flexibility in scheduling its movie times. Right now it is very challenging to try to schedule movie times at prime hours for their patrons. So with this extension it would result in a better selection of movie times for the patrons more revenue for amC and in turn more revenue for the city and tax revenues. And we think in turn it has a very minimal effect on the nearby residences. And so we submitted a letter this morning, that summarizes some of the additional measures that have been put in place since 2009, when the proposal was first brought forward. And we actually think that just having the one-hour extension could improve some of the existing conditions and that it will alleviate some of the

congestion that everyone is let out of the movie theater, it will allow some staggering. I guess to address some of the measures that have been put in place, there are bollards now in the rear of the building. It prevents access from 10:00 p.m. till 7:00 a.m. in the morning, and that's along the entire length of the rear portion of the parking lot at the shopping center. And another measure, there are sound deadening materials that have been installed in the catch basins behind the building. There are about ten of them. And so the rear of the parking lot is what's closest to the residents. And there have been materials that have been put in to sort of reduce any sound effects. And one of the conditions of approval is to go ahead and maintain those measures. Most of the concerns as you heard at the public hearing, still stem from the concerns about having disturbances, and so since the continuance or deferral was granted amc did go back, had discussions with the land owner. While amc isn't proposing any additional modifications to the proposal, they were pleased to learn that the shopping center is in the process of developing some security improvements. And they've indicated firmly that they plan to implement those at the first of the new budget year. So January 2013. And we don't have details necessarily about what those improvements will be but we know that they are in the works and that they are anticipated to be put in place in January of next year. So we think that's great news for amc and great news for the neighbors as well. I guess I would just add that you know one of the positive outcomes of this process is that there is more of an open dialogue between amc and the neighbors, and amc has been more than happy to allay the concerns as it relates to the shopping center as a whole back to the shopping center owner. But amc isn't in a position to really make some of the suggestions that have been made, that amc doesn't really have any authority to put in place at the shopping center, including some of the common areas of the parking lot. So again, we would just request that you consider this proposal, I think amc has made a great, tremendous effort in trying to reach a compromise with the neighbors. We understand that not all the neighbors will be supportive of the application. But we hope that most of them are patrons of the movie theaters and amc will certainly work to either maintain the conditions, or actually improve them if this use permit amendment is approved. Again I'm here to answer any questions as well as Mr. Lynn. Thank you.

>> Commissioner Bit-Badal: Thank you. Actually, we do have questions for you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I was just curious, how long have those bollards been in place?

>> Do you know how long they have been in place?

>> Every time I got here --

>> Commissioner Bit-Badal: Would you have him come forward?

>> Commissioner O'Halloran: I was just trying to relate it to some of the issues that we had at the last hearing. Is this sometime after the bollards were put in --

>> It is my understanding ever since 2009.

>> Commissioner O'Halloran: But not in the last few months?

>> Not in the last few months, no.

>> Commissioner Bit-Badal: Thank you, it seems like we do not have any more questions at this point. You will have an opportunity at the end to have up to five minutes to either do a rebuttal or continue your presentation. Thank you. And we have several speakers on this item. Actually, two. The first speaker is Peruz maxudian and the second is Philip Yeung. Would you please come forward and restate your name for the record.

>> Good evening, my name is peruz maxudnia. I was here the last time and I'm here again to raise several issues. Just to clarify some of the measures that were implemented such as the catch basins the bollards some of the lighting issues were all done because of ongoing disturbance issues at the shopping center. They were not related to our concern about the late operating of amc theaters. We had ongoing dialogue with the mall owners, and ultimately leveraged city code to get those issues fixed. So I just want to make sure that's clear. Second thing

is, unfortunately, with the exception of the letter that I think you have seen, we have not seen any detailed or updated operation plan that would address our security and noise concerns. As brought up the last time. Again, it's not that you know we were putting our foot down and saying no to this late operations, we are saying we -- you know, we already deal with security issues and noise. We don't want any more of it. But if they want to operate late, implement solid measures to address these concerns. And unfortunately, we have not seen it. We keep on hearing about you know the bollards, the catch basins, the lighting which again were issues that were resolved unrelated to this application. So they keep on being brought up. And I'm not sure how that's relevant to the issue at hand. So I'm asking the commission to please provide some guidance on this and help us at this impasse. Additionally, one other comment is that none of the docks have been updated. So the permit as it's proposed doesn't address security in any way. It does mention that there's a security guard back there at all times. And again, the last communication we've had from the mall is that they've got one or two security guards that cover the entire 31 acres. So I'm not sure how that's going to address our concerns.

>> Commissioner Bit-Badal: Thank you. And we do have a question for you from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. So just to clarify. We had a continuance from a few weeks ago for the purpose of you and amc to meet. You had that meeting?

>> No.

>> Commissioner O'Halloran: Oh you didn't have a meeting?

>> No.

>> Commissioner O'Halloran: So nothing has changed?

>> No. Frankly we tried to reach out via e-mail. We had some back and forth but, and again we were updated that effectively, nothing is going to get changed, as was proposed originally. So there was no face-to-face meeting.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. We do not have any more questions for you. Thank you for your time. And next person is Philip Peao. Please state your name.

>> My name is Philip Peao. I was here a few weeks ago, as well. My biggest concern is that the staff report is not accurate. The bollards do not completely block the back of the mall itself. There is an alcove. And you can look on this, on sheet 3, page 1, you can see where the bollards are and where there is an alcove. There is actually 41 spots on the back of the mall which has access to the front through a breezeway. It is this area that is a concern of mine and is also in nonconformance to council policy 6-27. Which says you should have about 300 feet setback from the property line to the area of activity and it's probably less than 50 feet. So the concern that I have is that this parking lot is right on the border of the property line. Even though there's this berm it does not act as a sound barrier. Since the building is so tall and there's an alcove it actually acts like an amphitheater. That whatever comes in that back parking lot is amplified and projected towards the house and the neighborhoods. So it is for this reason why -- and we did have some back and forth, as Peruz had mentioned. There was no movement from amc or from the property owners to move the bollards to block the alcove in the back. So I can't support passing of this additional hour because it's basically just another hour of more disturbances. And I think most of you could appreciate if I had 41 park spots, parked in front of your house, running up until midnight, and now 1:00 where people going to their cars, loud noises, car alarms, you know, loitering, happening in front of your house, you wouldn't appreciate that. It's just adding another hour of disturbances to the neighborhood. So I really can't support this and I actually think the staff report misses the fact that this alcove is not blocked off.

>> Commissioner Bit-Badal: Thank you so much. We do not have any more questions for you. Thank you.

>> All right, thanks.

>> Commissioner Bit-Badal: At this point we do not have any more cards on this item and I will close the public hearing portion of it. Oh, actually I'm going to ask the applicant to come back, I'm sorry. Applicant would you please come forward. You have again up to five minutes and as I stated earlier you can either do rebuttals or continue your presentation. Please state your name again.

>> Hi, my name is Robia Chang. I'll just address the comments that were just made. The operations plan that is in the staff report is dated June of this year. That is the most recent operations plan. So this is sort of the new revised application that was submitted in June. And we're not really working off of something that's considered on is a real old document. And that is lists all of the security measures, not just the catch basins and the bollards but amc actually did a sound acoustical analysis to see if there were any triggers with the city's noise ordinance and that result was that it conformed with that. And so just to point out that there is a current operations plan that's included in the record. Also, with respect to what conspired after the continuance was granted, amc primarily focused on bringing these issues back to the shopping center owners. So -- and we provided updates to the neighbors with regard to both security and the possibility of block off this little alcove. And if you look at that site plan, the alcove really isn't within the control of amc. There is two buildings building 910 and 950 that is between a.m.c that building is outside the control of where amc building is in sort of the immediate proximity. But we had brought that up with the landlord. They indicated that when they set up the bollards along the length of most of those building they considered blocking off those spaces, it is 41 spaces and because it was such a large area it wasn't feasible to set up bollards in that area. It was security and we learned from the landlord that there are plans to update the security specifically.

>> Commissioner Bit-Badal: Thank you. And we have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Just to clarify. So they said they're going to update security, but they didn't give you any details of the actual --

>> Right.

>> Commissioner Cahan: Updates that they are going to do?

>> We know that there are improvements being made specifically with regard to the security guards that will be monitoring the shopping center. With this application, amc will have a security guard inside and then there will be a security guard that monitors the outside. And I think the only other business at that shopping center that's open until 1:00 a.m. is the lucky's so there is one security guard that is posted at that hour to monitor the shopping center. We know, for certain, that there are additional improvements that will be put in place. But no, we don't really have the details as to what that final plan will look like.

>> Commissioner Cahan: And there's no plan to try to block off the alcove, correct?

>> Right, right. They've considered that when they put up the original set of bollards and determined they were not going to be able to do that.

>> Commissioner Cahan: So when you wanted to delay this hearing, what exactly was it that you were working on accomplishing and did you accomplish that?

>> We -- I mean we did accomplish that. So Kevin, Mr. Leahy, he contacted the landlord to see whether the alcove considered and it was determined to be infeasible. So our goal was to check with the shopping center owner, see if there were any other measures that could sort of -- we could fold into this application that would improve shopping center conditions. And unfortunately, the most that came out of that was the update on the security improvements.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you. We do not have any more questions for you. We do have one more speaker card on this item that just came in. I'm going to ask this person to come forward. His name is R. marfill and would you please state your name for the record.

>> Certainly. Thank you again for allowing me to speak. My name is Ronald marfill. I'm a resident of San José, I live in that neighborhood. I'll start by saying that I'm not for the proposal as it stands. To try to paraphrase why, give you a quote: What people say, what people do, and what people say they're going to do are entirely different things. That's Margaret Meade not me. The concern is specifically this. That particular movie complex of amc's is unlike no other in our area. No other abuts a residential community like that one, no other has access to a residential area like that one, it's unique. People gather behind that building. After hours. We have seen an increase in activity in our neighborhood that we believe emanates from gatherings in that area. We have had vandalism, burglaries, cars destroyed, people -- things stolen from homes. And as we know, the police don't have the staff to respond to those kinds of incidents. We're not so much against the hours. We are not with it yet, because there's no specific plan to say that we checked with the landlord, and they can do this and they can do that. We believe that amc can share the revenue they're going to get from these increased hours by taking some of that revenue and putting it towards security themselves to ensure that our neighborhood isn't affected by their increased business because it will be. We can -- we can verify that if you want with crime reports. The police department, in checking with them, aren't for this, either. They don't have the staff to handle problems. So with that, thank you very, very much for your time. Thank you for letting me come up late.

>> Commissioner Bit-Badal: Thank you, sir. And at this point I can -- I would like to ask the applicant if you would like to do a rebuttal for this last item. You can use up to two minutes. You didn't use all of your time for that. Thank you then. I do not see any further questions from commissioners. I will close the public hearing. Staff.

>> Thank you, Madam Chair. Just a couple of points of clarification. It was identified that the gates and bollards were put up by the shopping center had nothing to do with the amc theater, actually that's not exactly true. The issue of installing bollards was first suggested at the community meeting for this project on October 27th, in 2009. Now? Granted that's been three years. this project went inactive for a good number of times but that's when it was first brought up. That's when staff first identified to the applicant that this would be a good way first step of beginning to address some of the issues. The actual intent of providing the bollards was not to prevent pedestrian traffic from going through, obviously they're just bollards, teenagers or others could walk through

there. It wasn't intended to do that but really to address what was at the time issued to be the more problematic issue and that's vehicles cruising through that area and then maybe offloading pedestrians or something at that time. But the real intent was to address through-traffic. I did want to point out to the screen, one of the speakers identified that the bollards don't block off an alcove. Where it is circled and it says see detail, that's the alcove that I believe the gentleman was referring to. Staff would be supportive of moving those bollards to the area where that dashed line is just to the right. Which is a relatively short span. It's a little bit bigger span. That would keep vehicles out of that alcove and that might have some merit, if this commission feels that that's appropriate condition to add, to move that. And staff would be supportive of that. And so with that, staff doesn't have any additional comments. We feel comfortable with the conditions that are in place. We do have security condition that was put in plagues, the third speaker identified that perhaps some of the proceeds of amc's for the late night should go to security. We do have a condition in here that the movie operator shall provide security guards inside the building but they also need to have a security guard patrolling the year loading and parking area after 10:00 on a daily basis. So this concludes staff comments.

>> Commissioner Bit-Badal: Thank you, staff. We have Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I just had a question. How does staff deal with these issues where you have a tenant and a land owner involved, you don't make a distinction well, okay that's the land owner's problem and we can't deal with that I'm curious for the record how you make that distinction.

>> We really don't make the distinction. We issue the permit to the landlord conditional use permit do run with the land as we explained in the last conditional use permit so we really see the shopping center as being the responsible party for having to implement this. Whether or not, through an arrangement they have with amc, to physically do those improvements is really up to them. But when we see enforcement issues coming into play we would be dealing with the shopping center owners.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Moving the bollards over, are there still houses that back up against the remainder of that parking lot? I don't recall where the houses begin right over there.

>> There are. If you actually look at the aerial photograph on the cover page of the staff report, there's houses that back up to this that go all the way out to Keito road.

>> Commissioner Cahan: And the requirement of having an outside guard doesn't specify that it has to stay in that area, can be as was discussed, where there's one guard for the whole entire area, that just goes around and lucky's clear at the other end of that complex so there could be large gaps of time where that guard is not required to be monitoring the amc area, is that correct?

>> That could be but that does not preclude the shopping center from having additional ones on their own. I think all staff is recommending as far as this permit as far as the amc complex is concerned, with their additional one hour on two days of the weekend that that seems like a reasonable requirement. So that doesn't mean that the shopping center couldn't supplement that on other days of the week when the movie theater isn't open up late.

>> Commissioner Cahan: And the walkway that goes from the amc to the walkway lot I assume that walkway also goes to the corner parking lot, is that correct?

>> That's correct. So it would be the buildings along Campbell avenue the back way of that, there is a pedestrian walkway that goes back there. I think if the bollards were moved to that area obviously there would need to be some type of signage. You wouldn't want people to get stuck after hours and so I think the intention is that the bollards would be put in place after, I can't remember the exact time, after 10:00. But there probably would need to be some signs in that parking lot so -- to warn people don't park there after 10:00, this parking area will be closed and secured.

>> Commissioner Cahan: That's the jumbo right next to that parking lot, right?

>> That's correct.

>> Commissioner Cahan: How late is that open?

>> I don't know that they have a use permit or they're required to you about they'd be allowed to be open past midnight. I imagine since it caters to young children it probably would be not be open very late at night.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Kline.

>> Commissioner Kline: Question of staff. There was a statement of fact by one of the residents that this is a unique piece of property and a unique theater, that this is the only theater in the city that backs up against residents for park like that. Facts can be used as findings, is that fact true or false?

>> We don't do an analysis of the theater complexes to know. It's a fact that yes, this particular theater does back up to residential and therefore that's why we imposed the conditions that we do. I'm not sure that that's an unusual circumstance. I'm trying to think, with some of the other theaters I know of I don't know that they probably have that. It's probably not a typical situation. This is probably a little bit different.

>> Commissioner Kline: Thank you.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: Again, to staff. Talking about unusual or usual circumstances. I look at the berm in the back of that shopping center as it, to me it's a fairly substantial buffer between that retail component and the

neighborhoods. And given that retail has been around for a long time, I think that's a very unusual circumstance to the good for the neighborhood. Do you know of any other berms like that throughout the city?

>> Thank you. No, I would agree, that is an extremely unusual circumstance. I know of no other situation where we have a berm like that between a commercial use and a residential use.

>> Commissioner Abelite: Okay.

>> Certainly not to that extent.

>> Commissioner Abelite: I would generally concur not knowing all shopping centers I would say that is generally true. I heard of catch basin sound mitigation oops I've never heard of that in my life.

>> These catch basins are probably about two feet square to allow the water to run into them. But they're cast iron and they are set in a frame and the issue was that when a car drives over them they rattle, they bump and they make noise. So screwing them down much like city does at times with manhole covers are pretty much the same issue. If you ever run over a manhole cover in the street it can sometimes make the same noise. Strategically placed where cars happen to drive it causes this problem so that's where the sound deadening material is added so when the cars drive over them they don't make that noise.

>> Commissioner Abelite: I want to refocus on the guard issue. Maybe you can elaborate maybe you can't. The conditions talk about a guard inside the theater and they also talk about the guard patrolling the parking lot in the perimeter. I'm viewing that as a different set of guards as opposed to the landlord of course I don't know but given what is happening in our city with respect to crime and police enforcement and lack thereof and given the size of the shopping center, landlords typically fold new programs into their budgets for the following year right around now. So I wouldn't be surprised if the landlord's folding that into their programs irrespective of this amc theater. But would you know off hand whether these guards in this permit are related, coming out of amc or the landlord? Or it could be shared too I suppose.

>> It could be. It's a blanket condition. How that is sliced and diced and the responsibility is divvied up, is really up to the shopping center owner. From the City's perspective we want to make sure we have that guard that is supposed to secure that area and secure the theater itself. And just looking at the condition again it's condition number 8 on page 405 of the resolution, 1 security guard patrolling the rear parking lot after 10:00 daily. That's probably important to note because in fact the theater's only asking for late night on the weekend.

>> Commissioner Abelite: Right.

>> So then the movie theater operator is required to provide security guards inside the building just on Friday and Saturday nights. We do make that distinction here but ultimately it's going to come down to the shopping center management being responsible for making sure that they're doing their part but they're also going to need to be responsible for security they are supposed to provide.

>> Commissioner Abelite: Okay, one more question going back to the bollards now, talking about the berms are a fairly unusual circumstance as it relates to you know the relationship between neighborhoods and shopping centers. Bollard programs also I think are not particularly prevalently used throughout the city. To me it seems like this is already an extraordinary level of care they're doing now.

>> In cases of shopping centers that back up to residential, it is not an unusual circumstance to limit loading hours. Sometimes when we have issues with enforcement of that I can think of a handful of shopping centers where we have actually required them to do more significant gates. Things that are in the neighborhood of like six feet tall that are but on up the areas to keep vehicles out and keep people out as a as well a incremental changes in the hours, I'm not sure that staff felt comfortable that there was the nexus to require the actual installation of these hard more significant gates in that circumstance. Might have been a little bit different if they were building a theater or building a shopping center for the first time. But we do have shopping centers in general with loading areas not with theaters, that in some cases where there's a late night market and sometimes they do loading at

night. That's been the only way to make sure that the loading doesn't occur after midnight is to put actual gates there.

>> Commissioner Abelite: Makes sense, thank you, no more questions.

>> Commissioner Bit-Badal: Thank you. I do have a question to ask you about the signage, you just mentioned that briefly. Is that something that Planning Commissioners can also include in their motion to require no loitering signage?

>> That could certainly be included and it probably would make sense like I said to include directional type signage it wouldn't be subject code just to alert people that if the alcove is blocked off by bollards at night to put some signage there so folks that are parking there later in the evenings, perhaps, don't get stuck, because bollards get put in and they get sort of locked in.

>> Commissioner Bit-Badal: Thank you. And at this point, I will entertain a motion. Commissioner Abelite.

>> Commissioner Abelite: Yes, I am prepared to make a motion to approve the project as submitted by staff. With the condition of adding some additional signage, that displays no loitering and maybe some warning signs if they don't already exist for the bollard program. So no cars get caught in the back.

>> Commissioner Bit-Badal: Do we have a second? We have a second. And would you like to speak more to your motion?

>> Commissioner Abelite: Yes, I would. I'm sorry. Yes. Speaking to the motion, I think the applicant's request for just two additional hours in an entire week is a very, very minimal amount. And considering that it's for a movie theater and a movie-going audience, that's distinctly different than some other requests for late-night hour operations which might include alcohol. I think in my opinion, this particular relationship between the neighborhood and the retail component is very nicely buffered by the berm, sound does travel, I recognize

that. But we also have to recognize that retail and neighborhoods do coexist. And I think, on the overall look of this project, compared to others, this is not as harsh as other neighborhoods have to endure with other retail centers. You know, they are providing a guard. I think they are doing everything they can to do this. So I do wholeheartedly support this and I hope the neighborhood does as well.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. For clarification on your motion, was that including staff's addition with moving the bollards over?

>> Commissioner Abelite: No, I think they're only talking about two extra hours of business operations on a Saturday and a Friday night. I think the cost to move bollards over is fairly extraordinary. It's not that easy to do. I think it would be pretty costly if that's the direction folks want to go I think we should open up and maybe expand the hours and maybe give them four or five nights a week where they can do operations until 1:00 in the morning. I mean if we really want to do that let's grant them a broader 1:00 p.m. shut down. So my motion stands without moving the bollard.

>> Commissioner Cahan: Okay then with that then I won't be able to support the motion. I think that there is an issue with the congested noise funneling down and that parking lot is also so full, trying to find any parking in front of the amc area is very, very challenging so I can see why people are drawn to park in the back because it is really challenging there. And I think that with the security guard requirement of only one guard, it's a really large shopping center. And I don't think that that would be a good coverage, to just have one guard trying to look at the perimeter around the amc as well as the lucky which is way at the other end. It would take -- there could be a lot of activity between the time that the guard is at amc and at lucky.

>> Commissioner Bit-Badal: Thank you. And I do not see any more questions on this motion. I believe we will vote by light. -Thank you. And the motion passes with Commissioner Cahan voting no on this item. Thank you so much for your time. And just closing on that item, I just wanted to state that -- and I've said that in the previous

items in the past as well, that communication is extremely important. I also want to let the residents know that in the C.U.P., there is a requirement for security guard. So you can hold the landlord and/or the business accountable. If you're not getting your needs met. With that, we're moving to item 3C. Staff?

>> Thank you, Madam Chair. This is an appeal of the planning director's decision to proven a special use permit for the installation of a new wireless communications antenna slim line monopole and associated equipment on the A-agricultural zoning district, located on the east side of San Felipe road. Planning staff ask accordance with the California Environmental Quality Act. And approve the proposed special use permit as modified by the applicant to erect a 42-foot-tall wireless communications antenna slim liven monopole and associated equipment on the subject site, for further reasons described in the staff report. Number 1 that proposed project is squint with and furthers the general plan Telecommunications goal and policies. Number 2, the proposed wireless communications antenna slim line monopole conforms to the regulations of the zoning ordinance, number 3, the proposed wireless communications an ten that slim line monopole conforms wireless communications policies, and lastly that the policy conforms to the requirement of CEQA. This concludes staff's presentation.

>> Commissioner Bit-Badal: Thank you staff. At this point, I will ask the appellant to please come forward. And you have up to five minutes. Please introduce yourself.

>> Good evening. My name is David Cook. I am a resident of San José and a representative of a group of over 800 people that are opposed to the cell tower at this location. We have our Yahoo group known as no tower near Evergreen elementary school. I do have a presentation. It should be up on the screen, on your consoles now. Thank you very much. So the reason why we're here, is really all about one thing. And one thing only. It's just like the real estate adage, its location, location, location. This cell tower is proposed to be within 200 feet of the Evergreen elementary school grounds. It's also within 100 feet of the surrounding residences in the neighborhood. This is a neighborhood that's completely designed and built around underground utilities, it's a very attractive part of the city. And part of that attraction and desire of people to move into that part of Evergreen district is, those underground utilities and the school. We feel that putting this cell tower at this location puts both of those desirable aspects at risk. But it really is location. We're a city of high-tech folks. Our group consists of a

number of engineers, programmers, regular folks. We are heavy users of cell phones, of our smart phones, pads, wireless equipment. So we're dependent on that kind of equipment that we support Verizon in developing those services. We think there's better locations. We don't think that they have really adequately explored the alternatives. And actually, we think that the current zoning ordinances, and the City's wireless policy, are trailing behind the technology. Now, I know it's not your role to change zoning ordinances or city policy. But we think it is your role to interpret them. And to use the full extent of the discretion that you have as a Planning Commission, to implement them. So we want, tonight, we want to open up your think about cell towers. This isn't just another one-off application. We think there's really an opportunity to think forward about where cell towers should go. Is there an opportunity to encourage carriers to coordinate and co-locate their towers, is there an opportunity to start monitoring the compliance of cell towers with the FCC safety requirements. Not just an individual tower, when it's at the time it's built, but an individual tower over its lifetime. Which can actually add several carriers. You only get one opportunity when the tower is first built to speak against it. Every carrier that adds it, another transmitter, an additional power, RF power into the area is virtually an automatic approval. They don't come before the Planning Commission again. So this is really our one time to speak to the issue. So basically, my role, first five minutes, is to kind of tell you what we're going to tell you. And we're going to have different speakers talk about each of the major points in detail. And then we're going to include with a technical expert who will talk about this process, and some of the reasoning behind why we don't think the application actually has met all of its requirements in establishing the need for a new tower, in establishing that they have looked at the least intrusive location to put a tower. And in fact, we think with the impact to the property value, and kind of the visual blight of another tower in this area, with no utility poles and no above ground services, that it's going to impact our property values. And we have some evidence of buyers walking away from houses based on having a cell tower going in. So we really feel, I mean we're here to say that the permit should be denied. And kind of just summarize again our main points. It's not needed. Our test that we've done with the equipment available at the consumer level, we've walked the entire area, we've taken measurements, we have GPS points. We have excellent coverage. The tower isn't needed. The root metrics measurement which is a private firm that does this for a business, also establishes it is not needed this coverage. Even Verizon's web pages show that there's excellent coverage across this whole area. Talked about the visual blight. Staff has recommended some landscaping --

>> Commissioner Bit-Badal: Excuse me, sorry, your time is up, I don't mean to interrupt you, but you do have five more minutes at the end where you can continue your presentation or do your rebuttals.

>> Thank you. I think I've made my main points and will go to the next speaker.

>> Commissioner Bit-Badal: At this point we have a question of you. Excuse me will you return, Mr. Cook. A couple of questions. Commissioner Abelite.

>> Commissioner Abelite: Frankly I'm a little perplexed as to why you -- I know that this has been deferred for many, many months through mutual agreement between the applicant and the appellants, you. I'm wondering why you felt compelled at this point to bring it up to a hearing.

>> That's a good question.

>> Commissioner Abelite: And that's in the context my reading of the packet is that -- I'm sorry to interrupt but Verizon, by what I read in the packet and the letter I received today, has been working to actually find substitute locations in the area. In an effort to appease your group, for instance. So I'm just wondering why you wanted to accelerate to hearing today.

>> Okay. That is a good question. First of all, I should make clear this is a little unusual situation. We have two appellants, residents from the area. But we represent a much larger group over 800 people. The -- we have been working with Verizon to look for a mutual solution. Because as I said, we support cell towers. We use the services. What we found in the last month is that we haven't made any progress. We've asked for additional data from Verizon on the coverage areas for the alternate locations that they've considered. What progress that they've made in actually finding other sites. We haven't got any substantive responses. So you know at this point it's been over six months. We're a neighborhood group. People work. There's kids that are going back to school again. It's time to bring this to a head, in our view, that we're not -- we stopped making progress. So we feel there's sufficient

grounds to deny the permit. We're ready to present those grounds to you tonight. And hope that you agree with us.

>> Commissioner Abelite: And continuing along that line I have background where I am actually a landlord with three different cell sites on my site. And most of the lease negotiations I've ever gone the cell site negotiations are among the most difficult to get through primarily because you're dealing with corporate inertia at a very, very high level. These are some of the largest companies in the country. In my experience, these things take a very long time. I hear you say 30 days, you have silence, on my hand I would totally expect it will take months to do it. I know you are going to speak in rebuttal at the end I want ops right now I'm not speaking for the other commissioners but with what I have seen in front of me I am leaning towards approving this particular cell site at this particular location, and uphold the director's hearing, and so I'm going to ask you if you would maybe consider deferring this item for many, many months. Until maybe Verizon has another chance to you know, find an alternative solution. You don't have to answer that now, if you want to you can, i'm happy to talk to you alert.

>> I appreciate you making clear your concerns. I would like an opportunity to think about it, and I'll address it in our conclusion.

>> Commissioner Abelite: I plan to ask the other appellant if they are here the same question.

>> Of course.

>> Commissioner Bit-Badal: Commissioner O'Halloran. Excuse me, Mr. Cook, would you please return again.

>> I shouldn't leave too quickly.

>> Commissioner Bit-Badal: We do have other commissioners here, Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Mr. Cook did I understand you to say that it's not just the denial of the permit but are you looking for us to make a broader change in siting of cell phone or cell towers?

>> No, not really. What I wanted to do was introduce some thoughts about why the current process is inadequate, and the current city wireless policy was passed in 2003. So it's already nine years old. That was before our first smartphones even came out. So it's a little bit behind the times.

>> Commissioner O'Halloran: Okay.

>> The process is kind of haphazard. We could do five year planning horizons. We could do preferred -- city staff could prepare preferred locations for cell towers. We could emphasize carriers working together to co-locate? And in they had a longer planning horizon than these kind of case-by-case divide and conquer kinds of things. So it's not my goal to propose new zoning ordinances or new policies tonight. It's just to make the point that what we have, the process is I think is flawed. It's incomplete. I think the Planning Commission, and the city planning department have more tools at their disposal to promote the safety and the better placement of cell towers.

>> Commissioner O'Halloran: Okay so these are just suggestions that you will be making in this public hearing, is that --

>> Correct, yes.

>> Commissioner O'Halloran: Okay, thank you. And then to staff just so that we understand the scope of this, we are limited to the issues related to this permit, is that correct?

>> Laurel Prevetti: That's correct. You are hearing the appeal of this very specific application. There is no matter of policy before you, you are to consider the existing policy framework that the city council has legislated on this issue.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. We do not have any more questions for you.

>> Okay.

>> Commissioner Bit-Badal: And at this point I will ask the applicant to come forward. Please state your name, for the record.

>> Good evening some Madam Chair. Paul alBritain for the i apologize for the late mail. I've been a commissioner and a councilmember myself and I hate late mail. But until a couple of days ago we didn't think that this hearing was going forward. We thought that there would be a continuance. Verizon wireless has been diligently working towards identifying an alternatively and to answer Commissioner Abelite's question yes, we would continue this. We were actually until last Thursday I think talking about continuing this until January or February. The letter goes through the legal reasons. I have to do that I'm a lawyer under federal law why you would approve this facility this evening under the Telecommunications act and other federal law. We've also included a photosimulation of the -- a color photosimulation of the site and what it's going to look like. We they it's aesthetically insignificant as has the staff. We included a statement of the radio frequency engineer Russ Benson who is here this evening and can speak to you if you wish showing the area that we wish to cover. It's a half mile stretch of San Felipe avenue, a square mile of area approximately 18,000 to 24,000 cars pass through this area. We're having ten dropped calls an hour in this area and we have a gap that we need to fill. There's a drive test that confirms that data. As well as some dropped call informational. And I've included an updated alternatives analysis which goes through the alternatives that we went through that the staff accepted as an alternatives analysis in compliance with your code and shows some -- has some propagation maps showing why some of those alternatives don't work and as well at the end there's a google map that shows the alternatives that we've looked at. James singleton of NSA wireless is also here this evening. He is the one since 2009 who has done all the field work trying to find the right engineers they're the engineers that did the EMF analysis to confirm the emissions from this facility which are well below, well well below FCC standards and really have absolutely no --

should be absolutely no concern. And actually as you know beyond your purview once we've demonstrated that the emissions are well below the FCC guidelines. Since April Verizon wireless has worked tried to work even though we had an approval and it was appealed and we felt the verizon has tried to work with the community and Councilmember Herrera's office we met with the appellants we talked with agreed to go out and look at our -- into alternatives. We have an alternative we're working with but as was foreshadowed we're trying to come up with a design that works on that building that the landlord is happy with, it's taking quite a bit of time and redesign. I have to say the staff has been very helpful and generous with their trying to resolve those problems and that's where we are. But as of tonight we don't have a landlord's signature, we don't have a final design. We don't have an application in for an alternative. We do not have a feasible alternative. Given the fact that we have a significant gap which we think we have fully demonstrated and are now have the only -- the least intrusive and feasible means of filling it with the approved facility we feel this then would compel you to approve the facility tonight or under the anacortes case which your counsel would be advising you of it would be upper to the city to technically provide coverage. I mentioned we're willing to keep working on the alternative. If appellants insist on your making a decision tonight then we would encourage you to approve the facility. That doesn't mean we'll build it. In fact, we would prefer not to antagonize the community. We would rather go to a location that will provide service, and minimize our impacts on our community. I know the appellants have many supporters and I think a lot of concern about EMF. And we are familiar with that. Verizon wireless has 97 million customers, sort of amazing but one out of three people is carrying a Verizon phone. There are more phones than there are people in the United States right now. So it's a very valuable service. I'm sure you all are familiar with it on a day-to-day basis of how reliable it is. So we'll take any questions we'll be here for rebuttal and apologize in the night of the World Series. I understand the giants are leading 6-0 that you have to listen to this appeal tonight and again apologize for the late mail, we were not aware that we would be here this evening.

>> Commissioner Bit-Badal: Thank you, we do have a question for you Commissioner Abelite.

>> Commissioner Abelite: Do you have your signal engineer?

>> Yes.

>> Commissioner Abelite: Could you bring him down.

>> Russ.

>> Commissioner Abelite: I'll start with the next question with you.

>> I think Russ has about 20 years of experience, we call him radio russ.

>> Commissioner Abelite: My question does to write a lease to actually go and make a application for a permit, that's a very long time. If I was to -- if I was to consider making a motion tonight to defer this item to the future, in my mind, January is not long enough. You know, I think a thoughtful deferment might be out to may or so. If you think the sequence of steps together it takes that long to get to that opinion point. Do you have any idea of what you think the perfect time frame would be?

>> I will -- we have been working through the councilmembers office and meeting with the appellant and coming up with mutually agreeable date. You can ask Russ a question around I'll talk to the consultant and see what is a meaningful time. I think spring is fine. The company wants to provide the service. I tend to agree with you, we have to go through getting the lease signed and permitting and construction and so forth.

>> Commissioner Abelite: I agree.

>> I'll let you ask Russ some questions.

>> Good evening, I'm Russ Benson I'm a senior radio engineer for Verizon wireless. I've been a radio engineer for 49 years and with Verizon wireless for 17. I'm here to put things on a level service.

>> Commissioner Abelite: I'm a AT&T not Verizon guy. My question is going to center around co-location. Do you know off hand where the AT&T cell site is that supports this area? Because I think there's been language in some of the reports and some of the neighborhoods talking about co-locating with AT&T.

>> Yes. I believe -- they have two cell sites. One is further down San Felipe road, near a grammar school that's further to the South. And they have another one to the north, at a shopping center which was promoted as an alternate location. They also have a location, over near where Aborn Road hooks in to capital expressway.

>> Commissioner Abelite: I guess my point is I know that when I go up to a street, there's a street, you go up delta and you head towards due East. I totally lose my AT&T cell site signal, just probably 15 blocks to the East of this location.

>> So there is nothing out there right now. There is another promote of lease from Verizon which is going to be put forth in the next six months to be located a quarter mile east of this location.

>> Commissioner Abelite: The AT&T cell site coverage out there is very weak as well. I have no further questions of you thank you.

>> Thank you.

>> The consultant thinks March would be good timing. But it's -- I can't accurately predict but spring would be we have been sort of marching slowly forward with December, then January, then February. If the appellants were willing I think that March or April would be appropriate. It may well be that if the alternatively works we withdraw this application we never come back.

>> Commissioner Abelite: No more questions.

>> Commissioner Bit-Badal: I actually have a question to ask you, thank you very much, Commissioner Abelite. Is the other site you.

>> Don't tell anybody but yeah.

>> Commissioner Bit-Badal: It was mentioned in the staff report but you did not clarify that here.

>> It is a medical dental building, we generally don't like to disclose ongoing real estate negotiations but it was in the staff report so there you are.

>> Commissioner Bit-Badal: Thank you.

>> I did have one last quick comment that in the staff report with respect to the resolution it mentions a five year term and the state law now requires a minimum ten year term. Government section 65964b. That would be our one comment to the resolution I say that early so the staff could look it up.

>> Commissioner Bit-Badal: Thank you. And we will begin the public comment portion of the hearing. I have a lot of speaker cards here with me so glad we have so many people here to give testimonial. I will ask you kindly to not clap or boo speakers. Let's be respectful of each other.

>> Madam Chair, could I ask a point of order? We understood that --

>> Commissioner Bit-Badal: Would you please come forward, Mr. Cook.

>> Yes. Sorry, just a clarification of point of order. We have understood that because there were two appellants, that we each appellant would be given five minutes to present their position. Is that in error?

>> Commissioner Bit-Badal: Staff has clarified that you only get five minutes total.

>> I see, okay.

>> Commissioner Bit-Badal: So you have a choice of giving your last five minutes to the other appellant, or co-speak at the same time. Divide the time that you have.

>> Okay.

>> Commissioner Bit-Badal: You still have five minutes.

>> We'll adjust accordingly, thank you.

>> Commissioner Bit-Badal: Thank you. so ill will call on the next three speakers. I'm going to ask you to come forward to expedite the process. First speaker is Raj, next speaker is Amia ranjan and the next person is chinmaya ram UL. Will you please come forward and restate your name for the record. (inaudible) Mike Enderby and Mr. Audible appellant gets five minutes to speak and that's how we have prepared our speak. So we request that we get five minutes.

>> Commissioner Bit-Badal: I'm sorry we cannot hear you because you don't have the mic. But when you come to the mic for your sometime you request speak. So --

>> Okay, it's about the time that we get to see --

>> Commissioner Bit-Badal: I'm going to let the first speaker go, Mr. Raj would you please state your name.

>> Hi, my full name is Narajamaju. I'm very new to any council thing. This is my first time, please bear with me if I'm not doing it the right way. I bought a housing near the site proposed, and at the time of buying I have no idea that something is going on like this. And until recently, I don't have that many friends in the area, I'm still making

neighborhood friends. I come to something coming like this. We take two week son and three year old son, I'm not very comfortable having a tower signals in that area. I just feel it's not very healthy for kids and I plan to send my kid to Evergreen elementary which is very nearby and we live in that area so I'm not very comfortable so I just wanted to tell my point. Thank you.

>> Commissioner Bit-Badal: Thank you so much. Next speaker is amia ranjan.

>> Good evening, Madam Chair and respected commissioners and members of staff. First of all I would like to point out that we were under impression that the appellant will each get five minutes. So we were not clear on whether -- only one appellant will get the five minutes.

>> Commissioner Bit-Badal: Just to have it even more clear, that the council just clarified it, that the appellant will get another five minutes. So the original information you were given was correct. are you the appellant, second appellant? So you have five minutes.

>> Thank you very much, really appreciate it. We are here to talk about the cell phone tower on this site. This is a neighborhood of single family houses and it doesn't have a lot of taller structures nearby. The plan does propose for trees from the screening on the east, west and south but those trees will probably take 30 years to grow to become any, you know, obstruct any visual blight. Also from the north side, it is pretty much impossible to create any screening of trees. And none of the plans that we have seen from the applicant mentions anything. So this is the view from the Phelan way. There is no screening possible because the property has a building and a parking structure as well as a driveway. So we're in the plan that we have seen we don't see anything that mentions building the structure to be altered or the driveway to be changed. There's another view from the another map site and as you can see, the entire neighboring line from the Phelan way side is made up of concrete driveway which is made for the building. Still wondering where the trees would go to hide the view which is the tallest structure in the entire neighborhood. From each angle we see this is going to be the tallest structure. There is no such tall structure at all in the entire neighborhood. Also, looking at the ordinance 2020.230, it says that the minimum setback required for a property -- structure should be 300 feet minimum from the neighboring property. And it was

exception was made to give a shorter distance saying that it did not affect the utility or the value of adjacent property. And also to exceed the height of existing structure located on the subject property or lot, meaning this should be the tallest structure, should not be taller than any other structure on the building. But we don't see any other taller structure in this building other than this 15-foot building that is there. Even a top level bird's eye view I'm not able to see the tallest structure in the entire neighborhood which is as tall as this. So this pole when it comes up and it's not just a small pole, it's going to be a three feet diameter antenna pole, will be the most prominent structure in the entire neighborhood, no matter which direction we see it from, southwest east north, how that will not impact the property values in the neighborhood how it will not impact the ambience of the neighborhood. So we are requesting the commission to look from that angle, that reception provided under the ordinance 2020.300 to reduce the setback was implemented with that. The trees will definitely take 30 years to grow. So even though the applicant does mention that there will be some trees on the South, but those trees will take a lot of years to grow. And also at this site AT&T did have some pine trees years and years back, and they cut them, apparently because their switching facility interferes with this, all the pine trees interferes with the switching facility. AT&T who is the landlord of the fatality will ensure that any trees that ultimately comes up will maintain it and will not cut them. So to sum it up, then I would say that this once again, from a visual blight perspective, this site is the most intrusive as we heard from the applicant, and other people, there are more sites available, where the applicant should look at those. And not pursue on this construction.

>> Commissioner Bit-Badal: Thank you. And we do have a question for you from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Could we go back to your rendering of the view from Phelan way? It looks substantially different from what was provided in our packet. Could you explain how you did that?

>> There's just a camera picture we took from our front yard.

>> Commissioner O'Halloran: But is that red ball, is that a physical --

>> Yes, so the red ball that you see is a balloon that we put on a 40-foot string. So it's actually not really 40 feet, it is less than. The diagonal that you see is the 40-foot string that is attached to the balloon.

>> Commissioner O'Halloran: But the balloon was, was it on the actual site where this is to be located?

>> No, the balloon was not on the site.

>> Commissioner O'Halloran: That actually makes it look closer than it is, right, on this picture? I just wanted to be clear.

>> No. But because we did put it as a diagonal so the actual height of the balloon when we lifted it when we took this picture it actually was less than 40 feet. It's not 40 feet.

>> Commissioner O'Halloran: Okay, thank you.

>> Thanks.

>> Commissioner Bit-Badal: Thank you, Commissioner Abelite.

>> Commissioner Abelite: I'm just going to repeat the questions I asked Mr. Cook. You are another appellant. I'm wondering why you felt it necessary to bring this item to a hearing given that Verizon was still trying to work with the neighborhood still trying to find other sites?

>> The only meeting we had with Verizon was in April with the Councilwoman Rose Herrera's office. Since then Verizon has only mentioned they're working on alternative sites but really that doesn't do anything to the neighborhood that since April is almost six months, and what exact progress is being made, what exact alternate sites are being looked at, what other sites that neighborhood proposed, and why those are not working for the co-location, why any other carrier site, why that is not working, we have not received a forthcoming response from

Verizon. We would definitely request Verizon to work on an alternate site, that is definitely good nor the neighborhood let's move this hearing to another month. But we don't see that another month, how does it change anything? As you said earlier, Mr. Commissioner, that it may take six months for them to really look close for something. So a month, I'm not sure how it changes anything.

>> Commissioner Abelite: Okay. And then assuming you are going to come up with the rebuttal portion much this hearing, I'm asking would you consider a deferral? Would you like to answer that now or later?

>> I'll answer it at that time.

>> Commissioner Abelite: Great.

>> Commissioner Bit-Badal: Thank you, no further questions. Next speaker. And before you start speaking I'm going to call out the following three speakers. Please come forward and line up to save time. Margaret O'Del, Jefang do and Bing Quing Wong. Please state your name for the record.

>> Thank you. Sorry for interrupting you earlier because we were told everybody was going to get five minutes and we were a little confused. Amir had to cut it short.

>> Commissioner Bit-Badal: Understand it, appreciate that.

>> Good evening to all of you to the Planning Department to all the people who are here. This is an issue very close to our hearts because it concerns our children. We are opposed to the location mainly because of the proximity to the schools. If you look at it there are three sensitive receptors close to the location, the Evergreen the Bomer academy are three locations that are very, very close to this proposed location. We have all of our community is support against this location, including the district 8 round table which has given us a letter to the planning director, asking them not to put this on this location, there is an independent third party verification where Verizon really needs tower and an independent third party verification that third party consultant. We have support

from the school district, a board that has asked for the same thing, we have support from 820 people who really do not want the tower at this site. And you know people are asking me how come this tower hasn't moved, what's happening? Why are Verizon not moved it yet it's such a big company it's a billion dollar company with advance engineers why is it not able to move it from this location it is the most technologically advanced, we think Verizon has we are puzzled why this is not happening so far. We also like amir said, there is no access to what is going on in the alternative site. We have been talking to them every time we get an e-mail saying there is no updates at this time. We really don't know what is going on from their side, what are they looking at, how are they trying to solve this problem. That is one problem, it is hard to communicate with them, after April there has been no follow-ups or update. We have no chance to meet with them.

>> Commissioner Bit-Badal: Thank you, your time is up. Please state your name for the record.

>> Chin Mei.

>> Commissioner Bit-Badal: Would you please come forward and state your name.

>> My name is margaruite O'Del. I'm be taking a little bit different tack. Visual blight -- what is the -- this is not my time, I'm trying to find -- they didn't use a lot of slides. Okay, there's my slide. Now I'll start. Okay. The visual blight and health concerns from this cell tower will cause surrounding homes to be less desired. An attorney has confirmed that cell towers are now a required disclosure item for the seller of a home. Disclosure use have a negative effect on the value or desirability of property. We have statements from Realtors about two different home sales near this project. One buyer changed their mind after making an offer after reading the disclosure about the planned cell tower right behind the house. Another buyer cancelled escrow after they had already gotten their loan approved and the rate locked with the bank. These cases are concrete evidence that this cell tower will decrease the buyer pool for houses in this neighborhood. A smaller buyer pool means increased time on the market before a sale which means a smaller net value gained from sale of the property. A negative effect that will only increase once the tower is visible. Federal law allows the city to follow its zoning ordinances when they're deciding on a cell tower permit. We have colluded that there permit violates the setback requirements of

San José's zoning code. Section 2020.230 states that a setback exception may be granted only if the director finds that would not impair the value of adjacent property. The section does not limit the causes of impairment or define a minimum amount of impairment. We have shown concrete evidence with these two cases of impairment of the value of adjacent properties which requires that the setback variance be denied.

>> Commissioner Bit-Badal: Thank you so much your time is up.

>> Section 2020.200 specifies minimum setback. There is not enough room on the project site for the setback which also requires denial. Thank you.

>> Commissioner Bit-Badal: Appreciate your time. Next speaker, we only have two minutes so please adhere to that time limit. Thank you.

>> Good evening.

>> Commissioner Bit-Badal: Please state your name.

>> My name is Geofontu. What I want to cover is about whether Verizon has good coverage. Verizon has test they are saying they have good coverage. One question I want to ask is: When did they do the road test? Their application was submitted about maybe a year ago, okay? So if you look at the up to date data, this slide is from root metrics which is a company that provides unbiased coverage map. In the area, in the circle it shows no coverage gap. And if you go to Verizon's Website they are showing this area has complete digital coverage. And to further prove that we have actually done our own test. Just the last week. And our own field measurement is using an iPhone. Two iPhones using the field test mode. And we sampled more than 240 readings throughout the neighborhood. The signal readings are very good. Equivalent to three and four bars from indoor environment. And we found no gap spot as you can see from here. The greens are excellent signals. The yellows are better signals. So we go back to the data. And we also try the road test to make calls. We had two calls in two iPhones connected to each other while driving the car, it's inside the car, doing about a half hour drive test. There is no

dropped calls. We made multiple calls. So call connect, call establishment is no problem. Call is never dropped and we did texting, has no problem. We even tried Internet service also works. So this is done real data very recent last week. And this is our measurement. So also, if you read the 1996 Telecommunications act, it says applicant needs to prove significant coverage gap for building a new tower. And our research says there is no gap at all. So that that's why I ask, you please deny this permit. Thank you.

>> Commissioner Bit-Badal: Thank you. And the next speaker, would you please come forward? I'm going to also call out the following three speakers. If we can also step forward that would be great. Cisco Lee, Rishi tran, Saki Nambakam. Would you please line up. Please state your name for the record.

>> My name is bin gin Wong. There has been no third party independent research. The independently research should have been done to establish the technical need for more coverage. The independent study should have been done to find a feasible solution that's least intrusive to the neighborhood. The independent study should have been done to study the possibility of reconfiguring and redesigning existing towers. Since Verizon didn't agree to independent study of alternative sites, we request the Planning Commission to deny this permit. Zoning code should keep up with advancing of technology. What other Bay Area cities have been doing. It's common practice to hire independent consultant to analyze the need and study possible alternative sites to find the least intrusive solution. Many cities have zoning code requiring applicant to pay for independent verification of significant signal gap and the least intrusive solution. These cities are Oakland, they require applicant to pay for independent review of site location, co-location, and facilities configuration. San Francisco, they require applicant to reimburse cost incurred by using technical service to evaluate application. Santa Cruz require applicant to pay for third party technical review and specifically bans cell towers within 100 feet of school. Other cities, they all have similar provisions in their zoning code. I think this has to do with what David was talking, we need to re-think the process of giving permits to cell phone towers in San José. We are the heart of Silicon Valley. We should be taking the lead instead of falling, instead of falling behind. We need to update our process.thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker.

>> Yes, good evening, members of the Planning Commission. My name is Cisco Lee and I'm a resident of San José. And I'm here today to basically point out the biggest concern that the residents and parents have regarding the dire negative health consequences that the electromagnetic field will bring to the residents and also the children of our community. So it is -- we understand that FCC regulation growing concern over the health issues that are upon us. FCC standards are very indeed outdated and they need to be updated. To accommodate the current technology. Okay. Indeed United States has one of the highest limits for public exposure to RF radiation. Even much greater than China or emerging countries such as China, also develop countries like Austria and Switzerland. Currently, there are countless researches that show and document the effects of RF exposure and children are particularly vulnerable to the RF exposure. So as a matter of fact, in 2011 even WHO the world health organization classifies radiation from cell tower as class 2B carcinogens. These are statistics that are extremely alarming, so certainly none of the residents or children should be subject to this. We are all here today to appeal to your compassion and not only for our residents but also for our voiceless children who are not represented here today and once established a cell tower will be only 240 feet away from Evergreen elementary school and our children will be in consume from 8:30 in the morning until 2:40, Monday through Friday continuously experiencing EMF emitting from the cell tower. If there is one possibility that one child could be a brain or leukemia victim us our responsibility today not to permit Verizon to set up the cell tower. If one person becomes a victim of cancer it is hard to mention the devastation that this may bring to any family.

>> Commissioner Bit-Badal: Thank you so much, your time is up.

>> Jeopardize in terms of cell phone conveniences.

>> Commissioner Bit-Badal: Next speaker, we have so many speakers I want to make sure everyone's voice is heard equally. State your name.

>> My name is I want to bring forward that I have signed petitions for over 200 residents in this area, there are total 820 petitions which have been filed and 500 of them online and 100 of them have been done by Evergreen school teachers. This is a very serious issue we give FCC is a golden Bible but I can tell you rules and

regulations. I do acknowledge that the city council is adhering to the FCC rules but those rules are not the golden Bible. We have seen that from our past in the East Coast for example where they used to have lead based paints, union carbide there are countries that have recently deploying cell phones and they understand the consequences of it and we are in a stage where we are doing it right now because we are seeing an explosion in a cellular industry but that doesn't mean that we start planting these cell phone towers in a very close residential area especially which is not good for young kids which are going around. And that's the only request I have for you guys. I'll be submit being this petition to the council. Thank you.

>> Commissioner Bit-Badal: Thank you. And next speaker would you please come forward. I'm going to call out the next three speakers as well. Shan shan Wu, wee shy feng and Maria Escovel. Would you please state your name for the record.

>> My name is Estama Bacam and I'm here to exercise my opposition to the tower. I'm a residential customer I'm happy with the service it's just that like I wouldn't want to be immersed in the tower and its field day in and day out. I'm right next to the -- I'm the closest resident right next to the tower and I wouldn't like my kid as well exposed to that. When today like there are studies which say don't hold your cell phone close to you, don't speak too much like studies on the phone being close to it and being exposed to it could cause other things, there isn't any going back to it. Like once you're exposed to it. At least like my proposal is like if the towers could be placed further away from the residential areas or at least away from schools that would be of most help and in the long term help all citizens that is at least my request, thank you. ask.

>> Commissioner Bit-Badal: Thank you. Please state your name for the record.

>> My name is Chen Chen Woo. I'm a San José resident and I would like to point out that there are other desirable and sites but Verizon has not explored. It has something shopping complex it has Monta Gomez, Monterey hills there are other sites but Verizon does not explore. I would like to point out that Verizon has not made truly effort to explore alternative sites and they even deny the request from our group to do alternative site analysis by the third party. And also, I have to point out, Verizon has violations for some of the San José city

policy. Number one is there is no on site notice of the project by the Verizon. And number 2, there is lack of sufficient disclosure for a project with huge potential impact on the community. Only residents within 500 feet was notified. Most of the parents of Evergreen elementary school were unaware of the project, or the hearing. And there is no community meeting between Verizon and the residents for such a huge community interest project. As evidenced by the 820 signatures against the location. And as Verizon just stated, even if the commissioners approve the use of the land they may not build the cell phone tower. Then we will suggest the commissioner just deny the permit to encourage them to find the alternative site. Our group believes that San José should try hard to be not only the capital of technology innovation but also a mod model city for protecting its residents and especially its children.

>> Commissioner Bit-Badal: Thank you, your time is up. Next speaker, please.

>> Good evening, my name is Wuay so Chen. First let me share a story with you. When my daughter was born, I cried. I don't know why, I cried. When first I held the little thing in my arm, I knew immediately from that moment on, there is something in this world that is more precious than my own life. If you have your own children you probably understand what I'm talking about. Now I have questions for Verizon people. Do you love your children? Given all the evidence presented by the previous speakers, especially the president's cancer panel report, are you willing to put your own children in a classroom that is only 200 feet away from a cell phone tower rotating more than 2,000 watts of signals? Probably not. Why do you think it's okay to put other people's children in such classrooms? When the issue is about so many children's health it is important to follow the precautionary principle. Some courageous local leaders are taking actions, for example Santa Cruz requires a setback of 1,000 feet from any public elementary school. The state of New York has a bill in process which requires 1500 feet setback. This is the trend, because we have a fundamental responsibility to protect our children. I understand the Planning Commission may have some rules to follow. If this is the case, I argue that the rules are not meant to be followed blindly. If the rules were meant to be followed blindly why do we need you honorable commissioners to sit here and listen to us. What we would need would be a computer. Tonight the 600 children the parents and the neighborhood are counting on you? Honorable commissioners as human beings not computers. To make a decision that is to the best interests of the community. Thank you.

>> Commissioner Bit-Badal: Thank you. [applause]

>> Commissioner Bit-Badal: Next speaker is, Maria Escoval. I'm going to call out the next three speakers. I respectfully ask you not to clap. It's the best interest of all of us. Your name.

>> My name is Maria Escoval. I live in Evergreen here in San José. It has been my family's primary residence, two doors down from the elementary school for 46 years. I respectfully request the Planning Commission to deny the near Evergreen elementary school. I would also like to request the San José city to change the zoning code to require cell towers to be located greater than 1,000 feet from all schools. In recent research shows negative health effects from continuous low dose radiation especially on young children. On May 31st, 2011, the world health organization finally classified the type of radiation that cell phone towers emit as class B carcinogen as the same category as lead and DDT. I cannot imagine putting 700 elementary schoolchildren in that position. I ask that you consider this and deny the request. To me, big business does not have the health and welfare of the community at heart. Their bottom line is profit. And I would like to ask Mr. Abelite, you live in Evergreen? Do you live in Evergreen?

>> Commissioner Bit-Badal: Excuse me, we do not ask questions of commissioners. It's the other way around. And your time is actually up at this point.

>> Okay, well, if he does I'd like to know if he is going to send his children to Evergreen elementary.

>> Commissioner Bit-Badal: Thank you very much for your time. Next speaker, please. [applause]

>> Commissioner Bit-Badal: Next speaker, would you please come forward, Mr. Belosi and please state your name.

>> My name is Balagi Catramen. Thank you commissioners for your time and patience. I know a lot of us want to speak and express our opinions. I'm a concerned citizen. I live in Evergreen, I'm also a trustee of Evergreen school district but I'm here in front of you as a citizen. Evergreen, the Evergreen school was built in 1860. That school lent the district its name. And the community its name. And we have 600 students in that school on a daily basis. So I know you operate under certain rules. But we want to look past, and look at the welfare of the community. Hear the citizens' voice and encourage Verizon to find an alternate site and put the site there. So that they can continue to provide the services. So with that in mind I encourage respectfully request and encourage the commissioners to deny this request. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker is Kle Sra.

>> Good evening, my name is Chee Sra I'm a resident of Evergreen for over ten years I'm also a mother with two yuck kids who attends Evergreen elementary school and I would like to request the Planning Commissioner, to deny the permit for Verizon to build a cell tower near Evergreen elementary school. There are growing numbers of stories videos and Websites about the mounting research and science regarding the harmful effects of wireless technology on our body, especially on our young kids. This is why many organizations want to repeal or modify the U.S. Telecommunications act of 1996, because the current exposure standards do not take into account recent scientific findings and that's why, also why I would say no to Verizon's cell tower. Please deny the permit. Thank you.

>> Commissioner Bit-Badal: Thank you. Ben Chan and before you start speaking I'm going to call out the next three speakers. Noreen conhodi, Uta Mow and Mahodi. Please state your name.

>> My name is Ben Chan, I'm a Trent of Evergreen. Good evening commissioners. Are you continue the need for the third party alternative location, from the City of San José policy. The City of San José council policy, policies session number 6.220. Also known as wireless policy, section 8, Planning, Building, and Code Enforcement and the decision make body may impose other condition on a project by project base that's required to ensue land use capacity. This criteria in this policy represent de minimus standards for wireless communication antennas. Since

Verizon at any time agree for an independent alternative location analysis, will request Planning Commissioner to deny this permit. We urge Verizon to agree to a third party revocation nor the alternative location analysis. Pay for cost. And submit a new permit application for a less intrusive site. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, please. Good evening. My name is Nareen Kanuli I'm a long time resident lived there for 15 years, I'm a parent of a child who goes to Evergreen elementary. One of the main concerns that we have here is the cell tower, the proposed site is actually a visual blight to the entire neighborhood we have been living there for a long time. And we actually, the residents of the neighborhood came there first. It's not that -- and most of the property values there are actually since now it was also revealed that it needs to be a disclosure item. And this will definitely affect our property values. We are strongly opposing anything that would drastically devalue the properties in the neighborhood. Buyers come to the area because of the proximity to the good schools in the neighborhood. With the cell site so close to the schools that would no longer be an attractive option. So with these things in mind I'm strongly encouraging you to deny the application for the cell site. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, please.

>> Good evening, my name is E Homa, I'm living in Evergreen San José, I have two kids who study in Evergreen elementary, the other 700 kids I know there are also two preschool and one school around that area were closed to the south I have concern on the health impact of the house especially to young kids the addition to all those evidence, people have shown, I also find some other studies from Israel, they did a comparative study over ten years and they found there are three times more chance to get cancer in area close to a cell phone tower than in other area. So that make me worry about. I asked myself why are standards so high? Then I found that standard was made more than 30 years ago and never updated. So I believe it's true that Verizon study shows varied is well below that standard. But that impact to young kids. So as a parent, do I care about the health of my kids, similar as all the other parents. I do hope that our community can help us to protect the health of the kids by denying this application, thank you. The next is Jay O'Del. But before you start speaking I'm going to call out the

next three speakers. Jofan Chang, Michael Lay and Joe Fail, would you please line up. Mr. O'Dell, please state your name for the record.

>> My name is Jay O'Dell. Can you hear me? Thank you. My name is Jay O'Dell. I live at 3149 mid Hurst court and the will face me every day as I leave the court. I think they're ugly It's a personal opinion. I don't think they belong close to homes. Public opinion is against them. I think we've noticed that. Putting the tower near Evergreen elementary school is going to make parents less likely to want to live in the neighborhood. And young parents may shun our neighborhood, because of negative Feng Shui. .

>> Because of the visual impact, and the negative milk opinion. Please deny the permit, thank you.

>> Commissioner Bit-Badal: Index speaker.

>> Hi everyone, my name is Luann Chong, I have three kids in Evergreen. We lived in Evergreen three years ago. The cell phone tower were built there the first it will affect the house value. And two, also the school, the school kids will have their health impact. So the good school is not only thing I pursue. The health is the most important thing I care about. And I also want to say, all of our parents get together, to come here, have this public hearing meeting, this will -- or this all because of the big effort we made. And I want to thank for David and the leader who put all this together. And if we don't come -- you have earlier you have a question asked, why we like to come here for the final one. Not postpone the meeting. You know, the longer waited, the people, the more will become law, you know it's so hard for busy parents come here to attend this meeting. So I also think this is a strategy that Verizon have. Like they want to postpone, so let less people care about those things. And they say they try to find alternative site. But we don't keep -- we don't have any updates from them. If they believe give them more time we can find alternate site, why just not cancel this application? They can go ahead for their alternate site. And the preventively they postponed the time to summer vacation time. Which all the parents go for vacation and nobody will come here. So that's their purpose. Purpose for postpone is just to let the time to erase everything. I think if they believe they can find a good alternative site then just go ahead. I hope every member here heard our voice and vote no for this application. Thank you.

>> Commissioner Bit-Badal: Thank you so much for your time. [applause]

>> Commissioner Bit-Badal: Next speaker please.

>> I'm Joe Pham. I'm pretty new to the neighborhood. I just moved in about four months ago, all right? So I'm here today to kind of speak up against any kind of cell towers or cell stuff near schools and that includes the alternative sites like the plaza dental and the regency Evergreen because they're only like about 500 feet away from the Laurel Wood elementary school as well. So my main concerns are health reasons and property value, right? So I just want to read a quote because people have mentioned it many times already. But I just want to read this out of the Berkeley law Website, all right? There is no conclusive evidence that electromagnetic fields are cancer-causing. Particularly at the low levels emitted by cellular phone transmitters. There is also no conclusive evidence that they are not. In fact many studies have found a correlation between exposure to electromagnetic fields and cancer. Therefore, with 21 -- sorry 22 countries still studying the health effects of exposures to electromagnetic fields people remain afraid. And so I mean I'm one of those people that's afraid and I think many other people are as well and because of that fear it does affect the purchasing of properties near those schools. So I mean, I just wanted to leave that with you guys. Okay? Thank.

>> Commissioner Bit-Badal: Thank you. Next speaker, please.

>> Good evening, Madam Chair, and commissioners. And the community members. My name is Michael Leh and I'm here to represent the small community surrounding the alternative site plaza dental building. And the parents of Laurelwood elementary school. This is a last minute decision for us to come to this hearing. The main reason for us to come to this hearing is the following: Number one, we support the appeal. We believe that no cell tower should be built so close to residents. And so close to elementary school. So we share the common ground with the no-tower group. Number two, we are very concerned with the alternative site. And one of us is discovered this fact, that the city and Verizon is trying to push the cell site from near Evergreen elementary school to across the road, across San Felipe road to plaza dental building and that is also very close to Laurelwood elementary

school. As a matter of fact it's only 500 feet away from the Laurelwood elementary school. And it's less than 60 feet away from the nearest residence. The nearest residence from the plaza dental building is only separated from the building by a driveway. Which is exactly 60 feet. So we are very concerned. We feel that we might be discriminated against, because if one of us had not discovered this fact, that the city and Verizon may have secretly pushed the cell phone antennas from one site to close to us, so I have a message today --

>> Commissioner Bit-Badal: Thank you sir, your time is up.

>> Sure. I have a message today to the city and Verizon that --

>> Commissioner Bit-Badal: Sir your time is up. I have to adhere to that. You can have one of your friends continue the conversation. [Talking in background]

>> Commissioner Bit-Badal: I'm going to call out Joe Pham. Excuse me sir being disrespectful is not helping your cause. Next speaker, please. I'm going to call out Andrew Chang. Chen Swong Chun and Clara Woo. Again I'm going to repeat this. We have a lot of speakers. Who want to speak. Let's be respectful to everyone else and if I am telling you that your time is up believe me I've been in your position before where I had to make testimony right in the same exact building so I know what you're going through. But in order to gain respect, please respect us and respect the time that you're given. Thank you. Please state your name.

>> Yes thank you, my name is Andrew Truong. I'm a resident in Evergreen. I'm here to speak about the idea of having a cell phone tower near the school. Two reasons, I want to protect our kids from possible damage I don't want to live in the fearness of unknown. Let me share one news with you. Yesterday we learned that from newspaper, in Italy, there is earthquake just happened. It killed several people. You might know this. Why it happen? Because the government trusted the scientists, they know no more earthquake going to happen in like in the next day. And they allow people go back home. Then, unfortunately it happened. So many people killed and injured. So the thing can be prevented or avoid. But it really happen. So I'm not going to say who is right or who is wrong. But if people can be humble to nature, these things can be avoid. Now, we need our powerful government

to help us, to help us on this. So we know this heaven and all of us have to die some day, right? But we don't want to get there like cancer or living with fearness of unknown all day long, okay? So thanks we don't need a tower nearby our school. Please help us to make the right and correct choice and the decision before it's too late. Thank you very much. [applause]

>> Commissioner Bit-Badal: Thank you. Next speaker, please.

>> Hello, my name is Shashon and I'm here to request our commissioner to deny the permit, the reasons are I'm concerning my child's health. I have one daughter, seven and a half, she is in the second grade. I have one son he is two and a half years old, which he is going to go to the same school in two or three years. So we know we are building a cell phone tower which put hundred of children to experience the continuous radiation for eight hours every day. Now just think about, we have plenty of evidence to show that with the cell phone radiation with all kinds of radiation he had otherwise impact on the children's health. As a parent I do not want to take any problem with our children. I ask the commissioners if you have children are you willing to take the risk put your children at risk. That's all. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker please. Clara fee, Sue Sean Sean. Thomas Burke would you please come forward.

>> Would you please repeat the last name?

>> Andrew Truong. She swan Cung. Clara Phu. P-h-u. Thomas Burke would you please come forward until we clear that up. I'm going to call the next three speakers as well. Leon beechman, June Yeung and way Lee. Would you please state your name.

>> Thomas Burke. I'm against this basically for three reasons. The negative visual, negative health things, and the along with negative real estate values. That seems you know 24 hour exposure, I live less -- probably 140 feet away from where I sleep, can't get away from it. So thanks.

>> Commissioner Bit-Badal: Thank you sir. Leon beechman.

>> Good evening, Madam Chair, commissioner he. My name is Leon beechman. I'm the director of the wireless communications initiative at joint venture Silicon Valley. And what we have been working on is bringing communities and private and both public sector together, to have a rational reasonable conversation about deploying wireless technology. As you all know this region has -- is really built around a lot of the technology that we're talking about here tonight whether there's Apple or Cisco so forth. The reason that we are able to enjoy the lifestyle that we have mainly is because of those companies have been very, very successful in selling this very technology that we're talking about tonight. I only make a couple of points. First let me talk about the property value issue. What we have done, we've been working with the brokers association, Santa Clara County brokers association and we've identified dozens of sites here in Santa Clara County and we have taken a look at those sites, that are within an eighth of a mile or a quarter of a mile and a half a mile around all of those sites. Redwood City Palo Alto, San José, and Saratoga. And what we have found that there's no difference in the ask and bid price of those properties, in all of those cities. And so the contention that somehow this is going to be affecting property values, we found in the research that we've done, working with the brokers, that there really is no difference in the value based on how close you live to these sites. The other mention -- thing I mention has to do with a lot of the issues people are raising about safety. Wireless technology is the technology of the future. It's being deployed today. In fact in Mitty high school they had the capacity to connect 300 users in each of the classrooms at their school. Our schools here in the county over half of the school districts are using wireless technology already to connect their students to the Internet. And we have not seen anything nationally or internationally to suggest that there are any health effects in deployment technology.

>> Commissioner Bit-Badal: Thank you sir your time is up.

>> I want to say I very much appreciate the work that your staff is doing to accommodate the concerns of the people in the community. Thank you.

>> Commissioner Bit-Badal: Excuse me sir we actually have a question for you we have two commissioners who would like to ask you questions. First is Commissioner O'Halloran.

>> Commissioner O'Halloran: Yes, thank you, Madam Chair. Questions about schools that use wireless technology I know you're not a technical expert but are you equating that to the kind of exposure that would come from this tower?

>> Right. What I would suggest is that if you look at the numbers and I believe in this particular instance they've even taken some number readings on the campus itself from the proposed tower. And I believe what you will see is that you do not have any meaningful increase as far as what the students would be seeing based on the fact that a lot of their rooms are connected using wireless technology.

>> Commissioner O'Halloran: Okay, thank you.

>> I also let you know that on November 2nd at max Marvel we're having our second annual Silicon Valley wireless symposium and I invite all of you to attend.

>> Commissioner Bit-Badal: Commissioner Cahan has a question for you.

>> Commissioner Cahan: Thank you, Madam Chair. At Mitty how close is the the closest wireless tower?

>> At Mitty I'm not sure where it would be. But they have wired their whole campus in order to support wireless technology. When you arrive you have an iPad, you download your books your testings your assignments.

>> Commissioner Cahan: Is that significantly different from say if I lived in a really large house if I had that wired for wireless, is it a massive increase to do a school?

>> It would be I would think not being the expert, yes, you're going to see more at the site of a Mitty because it is set up to accommodate 300 people in each classroom. Now, the thing about a wireless tower, there's an inverse relationship, so every foot, every yard away from the tower, there is a significant decrease in the amount of emissions. If you tied yourself to that tower and you strap yourself there and you stayed there for a long time, yes there would be some particular effect. But the further you get away the lower the effect. And it would not in the case of let's say Mitty high school and the type of towers that we've seen you would not see a meaningful or a measurable increase based on the distance from the tower.

>> Commissioner Cahan: Thank you.

>> Thank you.

>> Commissioner Bit-Badal: Thank you, next speaker please. Actually if you have already --

>> Very --

>> Commissioner Bit-Badal: Excuse me if you have already spoken you have already used your time.

>> I'm an expert on the issue. I'm voting member --

>> Commissioner Bit-Badal: What I recommend you I cannot give you two minutes but what I'm going to ask you is to talk to your appellant, you're on the same team correct you can describe what you're talking about and they can relay that you still appellants have each five minutes at the end so you can include that information at the end. Next speaker. Mr. John Yang. Would you please come forward and state your name for the record.

>> Good evening everybody my name is June Yang. I've been living in the area for two years and I'm the father of two little kids and we walk to the school every morning. So from a health point of view I don't want my young kids to be exposed to under the evil cell tower. And if you talk to every resident in the Evergreen area you will know

AT&T coverage is bad but nobody complain about Verizon coverage. And I believe Verizon, the main purpose of them is, number one to increase the customer density and capacity of this area. Number 2, is they are preparing for the new technology like the 4G wireless network which is RTE network communication. So I'm strongly against the application from Verizon wireless. Thank you. Bye.

>> Commissioner Bit-Badal: Thank you sir. Next speaker is way Lee. But before you start speaking sir I'm going to call out the next three speakers, him so Shay or Shaw. And min jeng. Please state your name.

>> My name is way Lee, a resident of Evergreen. To point out points would really appreciate so I'm totally against the Verizon proposal to build the cell tower, adjacent to our elementary school. I would like to briefly summarize two reasons to support my point. First I didn't hear any of my neighbors and friends living in this area, complaining of coverage of Verizon signal. And I just found out that even on Verizon's Website they show good coverage for signals. My point is if we don't really need a new tower over there, please don't risk our children health. Second, regarding our property's value. Although FCC doesn't officially admit the negative impact of cell tower on people's health, most people do have concerns on this, especially when it's related to the children's health. Many of my friends and co-workers expressed who don't live in that area expressed their strong concerns on this. And everyone I spoke to clearly said, they will avoid living near the tower if they can. So people are, and will try to avoid buying a property in this area. If Verizon builds the tower. This can significantly drag down our house value, in this whole community. Thank you.

>> Commissioner Bit-Badal: Thank you sir, next speaker would you state your name.

>> Hello I'm man so Shaw. Some of the points I would like to make today verizon they have not done adequate alternate site analysis. In the first alternate site analysis, all good technical explanation and the same sites were considered for as a viability solutions. No progress were reported for almost six months, for the site analysis. Another point it said that all alternate technical options were not explored and exhausted. Changing the angle of built to existing antennas or some of the existing poles were not considered. Possibility of putting an higher pole on the East hills was not considered. T-Mobile antenna on the lamp post on the end of Phelan way

was not considered so they could use an alternate or not. And more important to me it's that our kids which are being there in the school for so many hours daily we can't put their health at risk with this particular solution. We have to find out some alternative solution. Thank you.

>> Commissioner Bit-Badal: Next speaker. We have a question for you Mr. Shaw would you return? Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Did you say that there is already a cell emitter or -- on Phelan way now that T-Mobile has?

>> Yes, there is a small lamp post on the Phelan way and there is a cell tower there for T-Mobile.

>> Commissioner O'Halloran: So are there similar emissions? Does the community have any information about that or has that been discussed?

>> No I don't think so there is lack of much exposure from that particular lamp post.

>> Commissioner O'Halloran: But it's a cell phone transmission facility is that right?

>> Stars I know it is just an antenna over there.

>> Commissioner Bit-Badal: Thank you, next speaker, please.

>> Good evening. My name is min gin Jong. My daughter goes to Evergreen elementary school. I strongly request to deny this permit. My point is first, even though there's no specific conclusion on the health -- the nearest from the VMI, at best, there's a 50 feet chance that there's a danger or judge we put our kids under this great risk when you look at the map the elementary -- the Evergreen elementary school is right under the dark shadow of this tower. I don't know why we put our kids under this risk. Second, Verizon is look for alternative site,

then why do we need this permit? If they are looking for alternative site why do they need this permit for this site? Thank you.

>> Commissioner Bit-Badal: Thank you sir. Next speaker before you come forward I'm going to call out the following three speakers. Quan Lynn, rashm beingsi Koshok and Dr. Hani Codon.

>> My name is i'm a resident in San José first of all I just want to make my point, simple. Basically, we are simply common sense are using our health, condition to trade off the signal. The clear signal. As a gentleman here pointed raising the questions very, very good to Verizon company people, there is so many people network companies, have their cell phone signals there. If there are so many companies, Verizon, T-Mobile, AT&T, everybody competing clear signal competing each other the human being will suffer multiple times signal damage. So our world is very polluted already. The more people get cancer, brain tumor recently compared 20 years ago. So we have enough pollution here. So my question is: Why people keep arguing, this is not right size. We should go some other place. But this is the question we should asking, why so many companies competing when their company want more clear signal but our health is suffering. So which one we want? So basically, there's a new technology helping people helping human beings make living better but in a way sometimes they will destroy human being, too. So we better control this. Finally, thank you for gentlemen ladies here, listen to our voice. You are the decision maker, you are in the position help us, help Silicon Valley help this city in this moment to be more clear, less polluted. I also want question passing the message to the Verizon people, picture if you're in the position, think about it.

>> Commissioner Bit-Badal: Excuse me sir, think about it. Sorry.

>> Sorry, I got my point.

>> Commissioner Bit-Badal: And next speaker, Quan Lee.

>> Good evening, my name is Quan Yee here. I want to point out some especially some technical issue. First, on this chart you can see, that proposed the cell phone tower the antenna actually is so each has a maximum radio frequency power 400 feet away from the tower. Where the council under the programs are, so second, what they need, because the technology right now is very advanced and it has a very complicated detail, I'm an engineer in the -- I'm an electrical engineer. I know that this science is very complicated. Also, the gentleman over there he says, why does the wireless network. I want to point out the difference of the wireless network under the cell phone tower. The cell phone tower has a lot of users. So the cell phone tower always has radio frequency. All the time. But if you are a wireless user, browse the Internet or when you watch a movie or anything related to the wireless network, you are just a user, it's a pass. So it is like a take a shower you can take a shower every day, that's fine but water for when you take a shower six hours every day, it will damage your body, right? That's a difference between the wireless network and the cell phone tower, that's my words. So last I want to say, I'm a father. I have a son. If he were attended this school. I -- I'm sorry. I love my son. So I don't want he be hurt. I think that you all of you are parents. You have your kids. I want to ask you, before you make your final decision, can you ask yourself? Whether you would like to send your children to such an elementary school which has a cell phone tower just 200 feet away? That's my request. Thank you.

>> Commissioner Bit-Badal: Thank you, sir. Thank you. [applause]

>> Commissioner Bit-Badal: Rashmi Kashai, would you please come forward.

>> Good evening, everybody, my name is rashmi Kashai, I'm a resident of Evergreen and my daughter goes to Evergreen elementary school. Evergreen is one of the highly sought out two months ago. Had I known that this issue was going on, that a cell tower was going to be put right next to the school, one I would not have bought the house that I am living in right now. Two, I would have never enrolled my daughter in the school. So cell tower which apparently emits 100 million times EMF than whatever is allowed, and it is linked to stress birth defects headaches memory loss heart condition, Alzheimer's et cetera, and it has been categorized in the same category what are we going to be start using lead and DDT too? I would like to know sooner than later that I have already lead and DDT in the food I am eating or the produce and Evergreen is one of the neighborhoods that has carried

on the value of the property and we all paid a pretty steep price to live in the community and given this the tower location is that comes into existence we can all be very sure that the property values are going to drop, which is no way okay by any of the residents and it should not be done given how the economy was growing and how people have sustained in that community. It is not going to be fair. I wish we had known this before and I hope this never comes to existence and the 600 plus students in the Evergreen elementary school will never have to even question will their brains be damaged will there be any stress related to this. I hope everyone will take this into consideration before taking this into thank you.

>> Commissioner Bit-Badal: Actually we have a question for you Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you Madam Chair. How far away are you from --

>> My daughter goes to Evergreen school she is going to be within 300 feet of the cell site. By is absolutely unacceptable.

>> Commissioner O'Halloran: So you bought.

>> To go to good schools. I live very close to delta. .

>> Commissioner O'Halloran: Okay I was just asking, thanks.

>> Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker please and before you start speaking I'm going to call out the next three speakers. Jay Singani, amarit Singh. Scott Duan. Please state your name.

>> Good evening, respective commissioners my name is honey Hodos and I'm here today to request you to for all the Planning Commissioners to deny the permit for the Verizon tower to be built near the school. I live right across

the street from the school and I'm a mother of two very young children who are now in the school. My main concern as a physician is the health of my own children and of the local Evergreen community including all of my friends who live in this neighborhood which was one of the big reasons that we moved here. I work daily, tirelessly to upkeep the health and wellness of the families, the young children and the adults in this community. And at this point I would like to draw your attention to the fact that the EMF radiation that has been presented to you very objective evidence, we have that it causes not just cancer, it causes several health hazards including visual disturbances memory loss reading problems and mental retardation more so in the young children who whose cells are in a very developmental stage. I feel for my children and the 600 children that go to the Gomer academy their growing brain cells and their blood cells are very prone to developing leukemias lymphomas, I have very recently lost a friend to a very aggressive form of cancer and I could confidently speak that this is a very health hazard this is an important decision for you today and I would -- and I think you should make a decision in favor of our people and not to jeopardize the health of the community and the local children the health and the lives of several hundreds of people who live in this community, thank you very much.

>> Commissioner Bit-Badal: Thank you. Next speaker, please. AJAY. Will you come forward, please and state your name.

>> Amajit, I don't know that name Ajay.

>> I have three times a the speech and I don't want to read it. You know why? Maybe decision is made. Maybe decision will be made will we answer to the future. I'm asking everybody here, you know why? I moved with my two year son to Evergreen. I drove around last week with their friend who was going to buy couple of houses, family members. In Fremont. I told them Evergreen is great. When I heard this news I was disappointed. I would have not bought my house, why am I saying all this? I promised two-year son, Evergreen is great. It is developing. We need to live today to make it develop. And I have worked with microwave technology. We're talking cell phone technology. I don't use Bluetooth. I don't use head phone on my wired phone. I have installed a lot of wireless around the California. To my company HP had given a lot of benefits for that and I know the bad part of the wireless. Cooking the children under the roof, is not what America is about. Let's look at our own

future. 19 years later I cannot answer my son that I was part standing here, begging for his brain not to be cooked. If this tower comes up there I promise my son will not study there and my friends will not move to Evergreen. This is my appeal request humbly to you does your heart have the feelings? Do we want to cook the future? Under those towers, just to make some people rich? It's not Verizon, also, we need to explore the technology. I grew as a kid in the medical profession families. I have a hard time to speak, my teeth have been implanted but I want to speak. My little son is crying in front of me. You know why? I don't want to see his brain cooked 19 years later. Thank you.

>> Commissioner Bit-Badal: Thank you so much for your time. Next speaker would you please come forward. Todd Duan.

>> Good evening, my name is Scott Duan. I'm an Evergreen resident. And I have two kids are attending Evergreen elementary consume. I just have a question to ask of the Verizon. Why do we need this cell tower? I think our whole community post office this application. First, we already have the good-enough cell phone signal. Second, what will this store either damage our kids health or it will damage our whole property value. So we don't think we need this tower. Of course, we also understand that the Verizon's concern, there shouldn't be a way for Verizon to find a sport to need their technical needs. Maybe it's not optimal or best but less intrusive to our community. As a worldwide company I think it should put our community's best as a priority. Over its own business revenue. So if it can't spend and afford the money and the time to find the alternative support and to me the requirement. So that is -- so that may be less intrusive solution to our community and to reach a win win result. Thank you.

>> Commissioner Bit-Badal: Thank you sir. Next three speaks are Ajai singani sin Han and Jeff Chang. Would you please come forward. Please come forward and state your name for the record.

>> Okay, my name is Song Han I'm a resident of Evergreen. The reason I'm here as you understand is, I want to just -- want to have my voice heard by everybody that we do not want the tower to be built in our neighborhood. The reason is very simple because I love my family. I love this neighborhood. It's a good

neighborhood. It's booming. We do not want anything that's going to happen to harm this neighborhood. So I think you have already heard a lot of different reasons why we do not want this tower to be built, so I don't have to really repeat what other people have already said. The only thing I can think about is when we have conflict, in terms of interest you know between the big company and the residents, I think that I do want commissioners to be on our side, to be with us, with the residents, with the people living in this neighborhood, beautiful neighborhood. So that I think my message is clear and thank you very much, just deny this application, that will make sense. It's going to harm our neighborhood, it's going to harm the value of the property. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, please.

>> Hi, my name is Jess Dong and I live in Evergreen this area. And the only question I just want to know, the Verizon, they provide a lot of technical reports, show all the any spec for this tower but did they provide the healthy report? To show this tower will not harm for people's healthy, will not how kids healthy and do they have any evidence to show this tower will not affect people like after 20, 30, 40 years? If they cannot provide this one why do they want to harm the people that live in this area, to live under the tower, and for their life, right? In this life. So I don't like the tower in this area and I don't like the tower in living area. I only hope the tower can build in the business area and the area didn't have a lot of people, but living area I think it's not good. Because I think nobody can provide evidence that the tower will not harm people's healthy in the future, they cannot promise that. So that's why I don't -- I hope you can help us to make this -- to ask the Verizon, not build this tower in this area. Under a school and that's go -- that's my propose and thank you for listening.

>> Commissioner Bit-Badal: Thank you for your time sir. I'm going to call out Ajai singani again and the next three speakers are Uan Woo James Wong and Sashin Singh. Would you please come forward. Please state your name.

>> My name is Ichi Wu. I'm a resident I have been living here for 12 years. Actually I love this place and my family love this place, because there are good schools and the neighborhood is very quiet and very nice. Now suddenly we heard that Verizon build a very intrusive high cell tower there and make everybody freak out and afraid to you

know, that is really become a building here then you know, our fear our life will be is miserable. So have several concerns on this cell tower. First is the health of the people living here because my house is really close to the tower. Where I would be stood 24 hours a day, so every second I will be there and my kids will be there so then our health is exposed to very high risk. And so that's the way we don't want. The second one is, our property value will be devalued by this, you know, intrusive high tower. And the third one is, okay, in I think Verizon when they consider in their business? Close to the build they make more profit on the business but they should also balance the local community, the interest of the people, and of the harmonic of the environment. So I come here to strongly object this proposal. And I urge community members and the city to deny this proposal. Thank you very much.

>> Commissioner Bit-Badal: Thank you, next speaker.

>> Good evening, commissioners. My name is James Wong. I have a couple of simple points. They are mainly just resonating upon the what other parents have already said. By that, you have a big decision in front of you, and you may be thinking that the evidence about a health issue is not conclusive. And but I would like to bring everyone's attention to history. Remember the asbestos health issue? It took mankind 100 years to discover finally the linkage between asbestos and human health disease. And I'm reading from history. I quote, the record referring to some asbestos cases in the United States was similar, early observations were largely anecdotal in nature and did not definitely link the occupation with the disease. Followed by more compelling and larger studies, that strengthened the association. One such study published in 1918. So I think when I heard that a company wants to build a cell tower next to an elementary school, I thought it was just completely unethical to even suggest a tower like that should be built next to so many children. And each of these children has a whole life in front of her. And commissioners if we have to err tonight, I hope you guys will err on the side of being too conservative about where to put a cell tower and not put a cell tower next to an elementary school. Thank you.

>> Commissioner Bit-Badal: Thank you. Before the next speaker starts speaking I want to call out the following three speakers. Sin Voss Jay Jo jo Wu and so song. Mr. Jung.

>> First of all I really want to thank you all. You are hearing all the neighbors, you are hearing all of their concern. I am RF junior I have a Ph.D. in engineering and my focus was in RF engineering I have a focus out of biomedical engineering to put things in perspective because one person from Verizon said WiFi is everywhere, okay sure. But what's the difference? WiFi AP can maximum output, one Watt of power. They never emit that because of the technical reason. At the Moss, they emit 1/10 of that which is about .1/10 volt. AndEP.

>>> You cannot compare WiFi to cell phone, cell tower. I just like other neighbors, I want to request the councilmembers, please denial this application, and make Verizon choose a cell site where it's away from the Evergreen elementary school. I am a parent. And I share everyone's concern and I just want to request from all the parents. Thank you very much.

>> Mayor Reed: We have a question for you from a Planning Commissioner. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. For my own understanding, the WiFi that you're talking about that emits 1 watt is that for a single household, or would that be enough for a whole school?

>> It is an access point. Whatever you have a router, which is connected to the cable, and if you want WiFi you connect it to the access point. The access points at the most could emit from the city regulation they could emit from 30 DBM and they never emit 30 DBM because technically none of the WiFi chips could choo achieve the linearity that one volt. Sorry.

>> Commissioner Cahan: To so that would be even for a whole building there would just be that one point?

>> Usually there are more AP sites, they cover small area. So it wouldn't be -- I mean it depends on okay, let's say 10 meter or 20 meter, if you want a really good, so for one household you would need one AP.

>> Commissioner Cahan: Let's say at Evergreen school if you were going to WiFi the whole school what do you think it would be?

>> I don't know the approximate area.

>> Commissioner Cahan: Just take a guess.

>> Probably five.

>> Commissioner Cahan: Okay, thank you.

>> Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, please.

>> Good evening, everybody my name is Sinamas Jamala. I have same concerns of other parents. My concerns make sense, I just move here one week ago. If someone would have told me they had an application for a cell phone tower I would not have moved here. I have two kids one year old and four years old. They will be living under the cell antenna pretty much, they will be going to the school and playing under the cell phone tower every day. If the application were to be approved I have no option but to move from there, thank you.

>> Commissioner Bit-Badal: Thank you sir next speaker is, please come forward and state your name.

>> My name is Coldrashian Caldera. When I was coming I compared Cupertino, Fremont and other places I chose Evergreen because of the excellent Evergreen schools, and the excellent value that Evergreen offered to me. If I had known that my kids are going to be exposed to the cell phone radiation, right next with the tower right next to their school and with the tower right within 100,000 feet of my home I would have never bought a place in Evergreen. And dear commissioners we're bringing this appeal to you today because we would like you to deny Verizon this permit today because they are forced to look at alternate sites. There are good alternate sites, they could co-exist and will cover their concerns. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker, Verjugal.

>> Good evening, my name is Sue Wong. I'm a resident of Evergreen area and I'm a working mom of 18 month old toddler and I purchased my first home two years ago in Evergreen area, just 200 feet nearby the Evergreen school. I work every day to afford my house because I think the school district is good, neighborhood community is good. When I purchase my house I think 200 feet nearby the Evergreen elementary school is a plus. If a tower is to be built there I cannot imagine how close it would be to my daughter and I don't think it's a plus anymore. So I think I'm not going to be a -- I'm not going to be a good mom if I still send my daughter to the school. If I still keep her under exposure for five, for six hours a day five days a week and for five years. If I cannot make any changes, if I still -- if the tower is still going to be built there, I tell you over time what I am going to go next. I'm going to work harder to afford a house in not this area in another area anymore. Going to just to the cities just mentioned no tower anymore or I'm going to send my daughter to private school. To avoid the tower. And the most important thing is I'm going to persuade all my colleagues, all my friends who are in the house marketing, not to -- never ever buy a house in Evergreen because of the or the. Because no matter how I present myself here my voice is not here. I think I'm going to tell my friends the City of San José, they are not care about our kids, they are not caring about our feelings. So before I end my --

>> Commissioner Bit-Badal: Sorry, your time is up.

>> I want to say one thing --

>> Commissioner Bit-Badal: Your time is up but you can have one of your friends continue that. [applause]

>> Commissioner Bit-Badal: Next speaker please and before I actually have you start speaking I'm going to call out the next two speakers, Lynn Van Johnson Lu and I'm going to call Clara Fu for the last time. State your name.

>> I'm a new mother here for the hearing my son is at home crying and as a new mom I'm excited. I didn't seek a drop after graduation from graduate school because I know being a mom is the greatest job in the world. I want to have more time to stay with my son and show him this beautiful world but I was terrified when I heard this project. I don't want my kids go to a school with potential health issue. Don't know whatever happened that the tower will bring to the kids. But maybe something will happen in the future, we just don't know now, but we cannot like allow this project to just because we don't know the potential issue that will bring in the future. So I can't imagine how I will explain to my son if he don't go to the school with potential health issue in the future. Please reject this plan. If it is allowed in the future, how answer his question if he ask? Even people know it has potential issue to the -- to our health, why people they still build it? How can it answer this question if people know? It has potential it has issue we will still build just 200 feet away from the elementary school. I really I'm terrified you know. Please don't give me this chance to answer this question. Don't give him this chance to even ask this question, if there's no tower there! Please reject this plan, thinking about how ultimately there will be a plan. Thank you for your attention thank you for your time here. I know you are maybe all parents you have family and at this time you are still listening to us but please give us some --

>> Commissioner Bit-Badal: Thank you so much for your time. Time is up. Next speaker please.

>> Hi, my name is Lynn Van. Thank you for your time as well. You take time away from your family so thank you. I'm a resident in Evergreen. I am against the tower being placed near so many schools and residents. It is a visual blight. It is out of cast for the neighborhood. It is a health concern to me and my family. But in regard to the previous speaker who said property values are not affected, and health is not a concern either, then let me ask you, what is the law when I sell my house? What am I disclosing? I think the law is, was designed to protect or raise a concern and protect something. Whatever it is, I think all of us here are here to raise that concern. And thank you for listening to us. And I would like you to consider and deny the permit. Thank you.

>> Commissioner Bit-Badal: Thank you, next speaker, please. And before you start speaking I'm going to call out Ager singani, Joe Pham and Claire Foo. Please state your name.

>> My name is Johnson Phan. I actually didn't plan to speak this evening but something compelled me to speak. I'm standing before you as a father and my two kids are up there in the stands. And I want to be able to look at them in the eyes and I want to be able to let them know that I have spoken today. I want to let you guys know my feelings about this. First of all, listening to everybody's discussion, I want to make sure that I make something clear about why this emission and cell tower system. I work for Cisco systems for 17 years. A lot of this infrastructure we build it. As far as wireless transmission is concerned, the power is emitted 1 watt, the cell phone tower is 2,000 watts so there's a big difference. Regular microwave, maybe 800 to a thousand Watts so we are talking about two to three microwaveovens, pointing another a school 24 by 7 so imagine that. We can't even operate the microwave oven without closing its door. So imagine you have something of that magnitude pointing at the schoolchildren for 24-7? That's definitely one of the concerns. And lastly what I want to tell you guys is that, technical sense wise if you tell me that a proposal size is optimal in a technical sense I would definitely believe you. If you tell me that proposal is optimal in economic sense, I would believe you however if you tell me the site is the only solution possible, I'm sorry, I can't believe you. There must be a site available away from the school in a safe distance. That's all I want to say, thank you.

>> Commissioner Bit-Badal: Thank you, sir. Next speaker.

>> Good evening. First I say thanks all of you for tonight for your time and your patience to listen to us. And I think you all enough, so I don't need to say anything. But I think you will consider for the, you know, the permit, to deny the tower. Thanks very much.

>> Commissioner Bit-Badal: And your name for the record?

>> Claire Foo.

>> Commissioner Bit-Badal: Thank you so much. If you've already spoken you cannot speak any more even though we called your name. Thank you it came up given. But you only have two minutes per person.

>> That's fine.

>> Commissioner Bit-Badal: It was my mistake. Zing Dong Wang. Is our last speaker. If there are any other speakers on this item, this is your opportunity to hand in a card, a speaker's card. Please sir come forward.

>> Hi, my name is sin Don Wong I'm living in the Evergreen area. So I just, I think that you can give me an opportunity to express my concern here. So my concern is, the position to select the state has the power the position is too close to the Evergreen elementary school. This doesn't make sense, you know. Many skids now -- I have one kid. My kid now is studying in elementary school some I am very concerned about that. So another is, I just saw the reports from the that take off the picture, the picture is above the tower, they used a different -- I think they use a different lens to take out that picture. The picture, the tower, the lens is lower than the actual lens. They use the wide angle lens to do that. That is different from we take. We have -- we have slide the picture the tower the excess, you can see below, the 40 feet or 60 feet. That is excess but why they taking the picture the size of the lens is a lower lens extra set because they used wide angle lens to take that picture. That's all the comment I would like to take from that. Thank you.

>> Commissioner Bit-Badal: Thank you and that was the final speaker on this item. We do not have any more cards. So I'm going to close the public hearing portion of it. Actually I'm going omove forward with the applicant, we still have the public hearing moving forward. The public comment would you please come forward after the public comment going to have the appellant speak. As I stated earlier in the evening each appellant will have five minutes so you can use that time to either continue your presentation or do rebuttal and the same applies for you sir you have five minutes to answer any questions, actually make any case. Please state your name.

>> Madam chair, Paul alBritton, sure we don't get ten, the giants did win 8-3. We appreciate very much your listening to the community and participating with the community. I understand how difficult your job is and it takes a lot of patience and a lot of thoughtful listening and we appreciate that. I said I appreciate them. And in terms of I want to say we did meet in April with the appellants and we have been working diligently since that time. Communication has been through the Verizon wireless public relations department. Not through me. And

they have been corresponding by e-mail with the councilmember and the appellants and they said repeatedly that we don't have any information to provide but there has been an ongoing dialogue and Verizon public relations has not seen a need for a subsequent meeting. We've -- but it's not out of an unwillingness to continue to pursue the alternative or to continue to communicate. There has been a large volume of e-mails from, actually a small group of people, but they've done their best to keep up with them. I want to touch on a couple of points. The appellants talked about your code, obviously not here tonight to change your code but to follow your code. And we've complied with all the provisions of your code. Your code was there was a council update in 2006 so it is not up to date. And San José I've been representing cell phone companies for 25 years and appeals and have to say this is the first time I've come before you and I think that's because of your staff and the good working relationship that you've had in providing good planning services to the wireless company and you haven't had that many I think citizens complaints. So the system is working. The -- in terms of technology I think you probably know Clarkstown case is you can't dictate technology to us but you can obviously help us find the right solution. Your code says we file an alternatives analysis in order to determine the least obtrusive location. Your code does not require us to find a significant gap, in fact that is a federal law protection that the wireless companies have if there's a significant gap and we've shown the least intrusive means that we can hurdle that your city imposes on wireless companies to identify significant gap. You heard about property values. This is also been the subject of case law AT&T versus Carlsbad 2003 case, says that the depreciation of property values, based on fear of EMF is equivalent to to a regulating based on the environmental effects of radio reflects emissions. AT&T have done studies and others have done studies by good broadband transmission would increase property values by 3%. You've heard some debate on that. T-Mobile is right across the street from this school and has been for quite some time. With respect to schools generally, I myself have done cell cites on schools it is an opportunity to earn money and concerns of a school, here particularly concerned me and there seems to have been maybe this is more personal than it should be, a concerted effort of teachers and others at the school to strike a certain amount of fear in the students and parents and that isn't what Verizon wireless certainly ask trying to do, education is an important part of this, but it is information that is difficult to transmit. with respect to schools, Cal poly, in the event of any kind of trouble on the campus. Apple computer has asked Verizon wireless to install distributed antenna systems, those are Verizon wireless facilities in schools and partner schools my son goes to one and I'm very happy that he's going to have this additional service. So this correlation of schools and fear is not universal I

guess is the best way to put it. We -- we did offer to do postinstallation testing. The calculation is that the effective -- the emissions at the school will be 80 times below the federal standard, and that's the worst case scenario, there have to be thousand times below that. The landscaping came up. We have offered to put in 18 trees, and have the neighbors determine where the trees should go. This 42 foot pole is the same height as an existing utility pole on a property and would have similar aesthetic impacts to a typical 42 foot pole. I would ask you to not deny the site tonight. Somebody said that would make it go away. Unfortunately your denying the 30 days statute of limitations with respect to Verizon wireless. We don't want to go that route. An inventive solution that I have seen would be actually to approve the site and delay the effective date of the permit to March. It might avoid your having to go through this type of review again. I can assure you Verizon building permit wouldn't have a ten year term it wouldn't have 18 trees and a lot of other things like that. So I leave with you those thoughts. Again, appreciate all your time in reviewing and hearing the testimony this evening. Verizon wireless has every right to move forward with this facility and has worked with the community over the last six months.

>> Commissioner Bit-Badal: Your time is up we do have questions for you.

>> I sit to assist the councilmembers and the community.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: So granted you're the counsel for the applicant so obviously there could be bias but I think for the benefit of the audience and all of us can you give us your interpretation of our ability to make a decision based on health issues and proximity to cell sites? I think it would benefit the audience and everybody here. Now we'll have our own counsel here.

>> City Attorney Gurza is quite familiar to all of this.

>> 47 USC 332 (c) 7 (b) 3 states that no local jurisdiction shall regulate wireless facilities based on the environmental effects of radio frequency emissions. And so long as the -- it's been shown that the emissions

comply with the FCC standards. We have provided a report that shows the emissions will comply with FCC standards and a representative of the engineering company that did that report is here this evening to answer any questions you may have.

>> Commissioner Abelite: So my interpretation of that is that we can't even bring health issues into our deliberation because we're explicitly prevented from doing so by law.

>> And that has been long since litigated across the country that law is firm and established in every case. The law has been effective and the carriers have won in those cases.

>> Commissioner Abelite: Thank you.

>> Even where the EMF has considered to be a proxy like property values and that was the AT&T versus Carlsbad case that I mentioned in 2003.

>> Commissioner Abelite: Okay that's all for now.

>> Commissioner Bit-Badal: Thank you, Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. First Madam Chair can I ask questions of just the counsel, Verizon counsel or also other Verizon representatives?

>> Commissioner Bit-Badal: You can ask -- the counsel can bring the experts in the field and they can answer your questions accordingly so they can do that.

>> Commissioner O'Halloran: Okay, maybe -- let me just ask the question. There was testimony that there's not an issue there as far as cell coverage. Does Verizon have response to that?

>> Well, I mean the first -- I mentioned that it's not in your code that we show a significant gap. But second to that it's the RF statement that's attached to the letter that I provided to you and the federal case, there is federal case law on significant gap. And the general standard is to provide coverage maps and drive test data to show a gap in service and that's exactly what we've done and they were prepared by Russ Benson who is here. We also provided drop-call data to show where calls are being dropped and they are being dropped at a rate of about ten per hour. Now all of those things confirm and that's the generally accepted standard. There's no firm standard for establishing a gap in coverage under federal case law.

>> Could I ask Mr. Benson then a follow-up.

>> Absolutely. The online maps are prepared for consumers. They have a legend at the bottom where they may show areas where there is no coverage and they don't have the granularity of the maps that Russ prepared.

>> Commissioner O'Halloran: That's the question I was going to ask Mr. Benson could you for the record give your professional opinion how your data your results might differ from that which was presented by others tonight?

>> Quite. One it depends on one, the time of day because the usage goes up at times like 5:00 to 6:00 at night during our busy hour and that's when we experience the most dropped calls. So test drive during that period as compared to maybe midday are going to be different. The frequencies of which the test drive was done at can also vary these readings.

>> Commissioner O'Halloran: Okay, thank you.

>> And we operate on four different bands. I'm not quite sure where the report was brought up from some other company what frequency range they were looking at.

>> Commissioner O'Halloran: Okay. Another question. Do you have any knowledge of that T-Mobile --

>> I've seen it.

>> Commissioner O'Halloran: But do you know how it compares to this proposed?

>> T-Mobile operates on a single set of frequencies and the PCS range is limited to three channels. We Verizon in turn have four different frequency ranges and operate on anywhere from 1 to 8 channels. So we have four services to support. Where T-Mobile has one. And they can put small cell sites in on poles like that. They've done a lot of that in San Francisco for example. Where I have to be able to put a set of two or three antennas in order to provide service on all four of our frequency ranges and types of transmissions we have.

>> Commissioner O'Halloran: Okay so the emissions from this proposed tower presumably would be greater than ours because it's different --

>> Yes by a factor of probably four.

>> Commissioner O'Halloran: Okay, thank you.

>> Can I clarify though that by the inverse square rule, the distance, the effective radiated power declines by two for every one area of distance so that the distance of our site from the school is actually quite a bit more than the T-Mobile site. So I don't know what the emissions of the T-Mobile site are but it's not to say it's 1 to 4 by any means. For the same reasons you wouldn't put your head in a microwave oven. Same kind.

>> Commissioner Bit-Badal: Thank you.

>> Any other questions?

>> Commissioner Bit-Badal: Yes, we have a lot of questions. Commissioner Kline.

>> Commissioner Kline: Let me ask a legal hypothetical. Unfortunately there is an impression here if for whatever reasons we stated findings that would deny this, there's an impression here that this would simply go away. But my experience is that because the legal protection your industry has, that you probably would not allow that to happen, that you'd want to protect that particular legal precedence in your legal professional opinion what would be the course of action if we hypothetically denied this?

>> I'm glad you're asking hypothetically. There is no polite way to say this but I would not want to come and threaten a litigation but if this is denied I have a 30 day statute of limitations under federal law to file a claim for the denial. And the grounds that I would -- the grounds that I would envision would be lack of substantial evidence. There's been absolutely no evidence provided that would justify denial based on the findings that you need to make. And then prohibition of service where we've shown a gap and least obtrusive means and from if the testimony tonight obviously the denial whether its was patently stated as such would be on the effects of radio frequency, I think we would have very strong claims. In general Verizon wireless tries to work with communities rather than to file litigation. I have been involved in litigation, it's -- we have filed a few, only a handful of suits over the last decade. More often than not we are defending communities after a site has been improved we indemnify City of San José against lawsuits from surrounding homeowners. We have been 100% successful these days.

>> Commissioner Kline: Just a quick follow up it sounds like your preference is still to find and another site, is that correct? Your preference is to find another site.

>> Yes, we've had this other opponents to that site speak tonight.

>> Commissioner Kline: The timing issue of the appellants is six months. I just wanted to remind everybody in the audience that we spent looks like three years now on a project that approved extending two hours for a whole week a theater. So unfortunately, public moves kind of slowly to a certain degree sometimes. And not only companies but public does. So --

>> And in fact the federal law one of the other prongs of the Telecommunications act is that local jurisdictions cannot take an unreasonable period of time to approve sites. And the FCC has recently come out with guidelines for how long a period that actually is and it's for a tower such as this one it's 150 days.

>> Commissioner Kline: Thank you.

>> So we have -- I have litigated that issue successfully as well. We would hope not to have to do that in this circumstance.

>> Commissioner Bit-Badal: And Commissioner Yob.

>> Commissioner Yob: Hi, thank you. Keeping in mind our scope of review which is of course limited to issues raised in the appeal and one of the issues raised in the appeal is the availability of feasible alternatives. And specifically the staff report quotes the wireless communications policy which says where feasible architecturally preferred approach, over the free standing monopoles. So I understand from your testimony here tonight that this option at the plaza dental group and perhaps others are feasible alternatives, so I'm wondering why or what your response is to that in terms of why that shouldn't be a basis to grant the appeal.

>> Yes, and I apologize if I gave the impression that the plaza dental building is feasible. We do not have a signed lease. We do not have tonight a willing landlord to sign a lease to allow us to build a design that he's comfortable with for a building-mounted facility in that building. If that were the case, then you are absolutely right. We would have a feasible alternative but we do not and that is why we thought we would continue to pursue that, as best we could, which we are doing. The appellants wanted to move forward tonight and so as of tonight and Mr. Singleton called the landlord today, we do not have concurrence. And it's nobody's fault. We're working with the staff, we're working with the landlord, we're trying to come up with a design that's aesthetically second floor tenant. And other issues that come up in this kind of negotiation. When we did our alternatives analysis we absolutely followed your code and the first items, the first sites that are reviewed are building-mounted locations. And we go through the three building-mounted locations where we try to locate and why they don't

provide the radio frequency propagations we want or because they are unfeasible. Until we get to a separate pole here or at another school site and the last alternative is a building mount but on a residential building so we put that as our last. When we do our alternatives analysis when we do our review, we look for lowest hanging fruit what company wouldn't and that's how we got to this site. It's been a three-year process and it is very difficult to site these facilities as you might imagine. And the staff is very good in directing wireless companies to the location that's going to fit within their code as best as it will. And that's how we got to the place where we are now where we had an approved site. There was quite a bit of public effort to demonize the site I think and you heard more about that tonight and having seen that we were trying to go back rescrub the list.

>> Commissioner Yob: Just to follow up a little bit on that I think what I've heard you saying is that you have not definitively determined that these sites are not feasible, because you have had to stop your analysis now, they are not feasible for that reason is that correct?

>> I would say with respect to that one alternative that's correct. I think we've said earlier, we haven't been having regular meetings with the appellants because we've been working directly on an alternative. But that alternative has not come to fruition and so there were discussions last week about continuing this till February and it was Friday that we found out that the appellants did not want to continue it.

>> Commissioner Yob: Thank you.

>> Thank you.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: I'm sorry I'm going to burst the momentum in the direction of appellant, I did want to ask Mr. Benson a real quick question. You have kind of answered it before. I'm an engineer by background, so I understand that the signal strength of anything like that falls off with the cube of the distance is that what -- is that the -- is that what Gaust said, right, the Gaust theorem --

>> I'm not quite sure of your question, sir.

>> Commissioner Abelite: Well, signal strength or I guess EMF structure, does it fall off with the cube of the distance?

>> One over the square of the distance.

>> Commissioner Abelite: One over the square. I thought it was a cube.

>> As you go out two feet the signal goes down by a factor of four. You go out three feet the signal goes down by a factor of 9.

>> Inverse square root.

>> Inverse square root.

>> Commissioner Abelite: Got it, thank you.

>> The calculations that were performed by Hammet & Edison, consulting engineers, come right out of the FCC guidelines OET 65 and they pretty much dictate how the emissions are calculated for purposes of the EMF report and as I said they are on a worst case scenario assuming that all channels of the site are operating at the same time, which doesn't happen and that's where you get these calculated levels. But the actual usage when we do field measurement subsequent when the site is operational are usually quite a bit lower and for the school site it was 80 times below the federal standard. Thanks for jury patience.

>> Commissioner Bit-Badal: Actually I do have a couple of questions for you. I don't see any more speaker lights from our commissioners. Did you really look into other alternative sites? I know we talked about one certain site that you had been working on.

>> Yes, our alternative analysis has seven sites in it.

>> Commissioner Bit-Badal: Were you negotiating with the landlords in those locations as well?

>> James is the guy on the field I know at least two occasions the two schools the administrations were not interested. There was a building mount location at the Evergreen school administrative offices. And there's one at the Laurel school. And I don't -- James you can tell us if you talked to the --

>> Yeah, we early on this dates back to 2009 when we first went out and investigated these sites. We started with the Evergreen elementary. They have what is central to the search ring area itself that we were positioned with and that is adjacent to the AT&T switch building that's out there, a maintenance or warehouse building that we considered to be a prime option for this facility. I did make several phone call attempts to the school district to which we had no success. I had one or two conversations early on with one of their administrators but it led to nowhere. Our impression is that generally the school district was not in favor of it and that was also due to I believe some controversy we are relating to a AT&T facility, I'm not sure where that facility was exactly but somewhere on the schoolground or within the school district grounds on one of their properties. Alternate grounds that were cadwallader water tanks, we have tried some avail to work with Muni water on that location. It is also at a distance which is quite further away from the intended coverage area that's out there. And it's also understanding from Muni water, that there have been failed attempts by other carriers, the existing poll that's out there right now structurally cannot accommodate additional carrier options. It would require conformance with present day code requirements so essentially what that would mean is there would be setback criteria. In this case it is a nonconforming pole, it would be extremely difficult for us to get anything done on that location. There are other infrastructure requirements that Muni water requires with regard to their tank systems, requiring us to look at structural capacities and whatnot and the impacts associated with that. It was determined more or less in

relations with the director of real estate, Jaime Reyes, I believe, that we were basically not going to get anywhere in locating on that property. They had prior security grounds on that property as well to which we recognized it was just not going to happen. Other alternatives that were considered in this case, the original med plaza location actually when we first investigated this area that building was not even constructed at that time. It did come up pop up as an alternative later on we have evaluated that option, we are in negotiation with the landlord on that property. But Mr. AlBritton is correct to date it is elusive at this time. We do not have a confirmed alternative at that location. We are still in negotiation and we're trying to make something work and that may come to success at some point in time. But that is also I believe some of the information which has been communicated back through public relations at Verizon wireless as well which has also been disseminated back onto city staff as well as Councilmember Herrera's office. The other alternative that is in the area would consist of the Evergreen valley senior living center. There is presently an additional residential construction project in between where the med plaza building stands and the Evergreen facility. Those areas keeping in mind were not really the primary areas of coverage. They are further South or to the South of where we're targeting. Buildings height we would have some obstruction to date with what is presently under construction next door or adjacent to the med plaza building. We know from those locations they're not going to work.

>> I had them put up the map but it's the last page of the packet we gave to you, the Google map of all the alternatives we looked at.

>> Commissioner Bit-Badal: And Evergreen Village square was another alternative?

>> That was an alternative presented to us by the appellants. We have investigated that area it is further East of the desired coverage area we do have some coverage maps provided in those packets which were distributed to you today. Basically it is not optimum coverage at that location for the area we're trying to achieve.

>> It doesn't hit the residential neighborhoods to the South of the coverage thatter described in the --

>> In the engineer's statement.

>> And there are coverage plots that are shown in your packet.

>> Commissioner Bit-Badal: And let me see, I have several questions to ask you. So one of the yes, sir that came up was, hiring of an impending consultant to review the coverage access, is that something that the appellant asked you to do?

>> We received a letter from Councilmember Herrera requesting that, she was requesting on behalf of the appellants, that we asked if we would pay for a a third party engineer to confirm the gap in coverage. And we responded affirmatively, to Councilmember Herrera's letter, saying that we would do everything that she asked, in that letter. That was in anticipation of avoiding a hearing this evening. And moving forward. The appellants responded with additional requests with respect to that response. We actually responded, and said that we would also allow our alternatives analysis to be reviewed by third party engineer. And all I can say is here we are tonight. And we had --

>> Commissioner Bit-Badal: So you had accepted that proposal to hire third party engineer? But because of this hearing you could not?

>> The expectation frankly was that they would save the expense, the expense of me having to come and participate and prepare packets and be available for this meeting. Now, Verizon wireless does participate in third party engineering review. They have two requirements, one of them was that the engineer be a professional engineer licensed in the state of California. There are a number of less than supportable engineering reviews that are done by the third party consultants. And that the -- if there is additional information to be required for theness third party engineer that the consultant be willing to sign a nondisclosure agreement so that our proprietary information is not made public and we give the proprietary information not to you because of the sunshine laws but to the consultant. We have participated in third party reviews in Berkeley and Pinole and Pacifica and a number of other places. I personally don't believe that that is required at this stage of this application. We're not required to show a gap. I think we've certainly shown a need and we demonstrated the need with the technical

information that's required. Because we're working on an alternative, that kind of study seems a little bit superfluous at this point. Because this as we know may not be a facility that we construct, if the alternative is available. So it would be -- it has been very difficult to continuously comply with the informational requests of the appellant. We thought it would be worthwhile based on the councilmembers request, to avoid this hearing, the councilmember sent a follow-up e-mail saying they're offering these things to review the alternatives analysis and there was no response that would have avoided this hearing so I guess you're sensing the reluctance in my voice. It's expensive we're in the sure it's warranted in this case.

>> Commissioner Bit-Badal: Thank you and I do not see any more questions from my colleagues. Thank you.

>> Thank you very much for your time. At this point I will call on the appellant. Either David Cook or chinmayo. It's truly your choice who wants to come first. You will each have five minutes.

>> Point of explanation since we have two appellants we are going to yield one appellant's time to our technical expert and then I'll speak at the end.

>> Commissioner Bit-Badal: And that is okay with us. As long as you stay within your time.

>> Yes, of course.

>> Good evening, my name is Peter Grushaka cord communications. I was asked to review the application before you and I reviewed the application with the following definitions and guidelines in mind. Telecommunications act of '96 states, significant gap in service. As stated by the ninth circuit the relevant service gap must truly be significant and not merely an individual dead spot within a greater service area. Second point, least intrusive means. As stated by the ninth circuit the least intrusive means will require a showing less intrusive alternatives. That the provider has considered less sensitive sites, alternative system designs? Alternative tower designs, placement of antennas on existing structures, et cetera. If you choose to find in favor of the appellant, the ninth circuit also says that local agency decisions must be supported by substantial evidence. The

Telecommunications act requires that a local agency denial of a permit for a facility will be in writing and supported by substantial evidence contained in the written record. The 9th circuit follows the general rule, the court may not overturn the board's decision on substantial evidence grounds, if that decision is authorized by applicable local regulations, and supported by a reasonable amount of evidence. More than a scintilla, but not necessarily a preponderance, so that's probably a rule you normally go by. If more than a scintilla of evidence exists, it's legally sufficient. More than a scintilla of evidence exists if the evidence furnished some reasonable basis for differing conclusions by reasonable minds about a vital fact's existence. I also considered in part the city policy number 6-20, the wireless communication service providers are encouraged to design new monopoles to accommodate future co-located services and in California Senate Bill 1627, states in general, a co-location facility shall be permitted use not permit I'll tell you why I brought that up later. So first I looked at the application. The applicant states that a significant gap in coverage exists in the application. I have not found any peer reviewable evidence of such submitted by the applicant. The applicant submitted coverage maps. It is unclear which antenna models were used and I can go through that a little further in discussion. At first the applicant requested a 60-foot tall monopole that was layered changed to a 42 foot tall monopole reducing the lower antenna mounts the lower set of antennas to 34 and a half feet. The tree mitigation was changed during the application process as well, which are will add denser canopy in the direct path of the signal. Trees attenuate signals. And those trees that were stated I've looked up grow to 60 feet so they will eventually at some point start passing the antennas. All three factors will have an effect on the predicted coverage yet the coverage was never Reeved through this process. My conclusion also is the coverage map cannot be peer reviewed. The maps that were submitted with the application of which there were two before and after did not provide even basic information about parameters used to generate the map. The map is virtually meaningless to anyone outside of Verizon. In order to peer review the coverage represented by the map one must know at a minimum the map has little colors on the map that indicate something but it doesn't say what those colors indicate. There should be something to say, a scale of signal strength, whether this is street level coverage in vehicle and building or what they're trying to signify. They should also signify the frequency band they looked at when they produced the map because each of their four frequency map have different propagation characteristics. They should state what antennas they use what transmit power levels they used. The resolution of the map is not defined, it's made of little squares that you can look at there. And if you look at that resolution of the map that's produced, you can't tell if that signal strength

would cover walk on the street, driving in a car, being in a building. Because one little pixel of one color will cover buildings, streets and people in cars. So it is saying that within a square block of that area defined, if they're representing as a weak signal they're saying it's weak on a building or in a street. If they're saying it's strong it should be.

>> Commissioner Bit-Badal: Sir your time is up and I don't know if you have a lot more to discuss so there are going to be questions for you so maybe you can incorporate part of your presentation into answer he as you're answering commissioners. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Just for the record you were giving what seemed to be legal analysis and technical analysis. Are you an attorney or registered engineer? If you are just state your qualifications.

>> The legal part I gave are the laws I have to follow in the field. I'm licensed by the federal communications commission, I have 40 years of experience in the industry.

>> Commissioner O'Halloran: What kind of license is that?

>> FCC license, federal communications commission. I have to follow the rules of the FCC so I do follow the standards set for emissions, I do follow whatever they're saying, what evidence I need to look add if I'm going to review an application. I'm quite familiar with cellular installations, television radio, weather rarity, all kinds of uses of the radio frequency spectrum. And what I cited there is to set the limits.of what I will be addressing. I'm not addressing anything on speculation, just address being what's there.

>> Commissioner O'Halloran: Okay, thank you.

>> Commissioner Bit-Badal: And there are no further questions at this point. I'm going to call the other appellant as well to come forward. Thank you. Up to five minutes Mr. Cook.

>> Thank you very much for your time this evening. It's been a long evening, and I think you've seen a good cross-section of our neighborhood. And cross-section of the concerns. I know that as Planning Commissioners you have to follow the zoning ordinance, and the county, state, federal regulations. We think that you have discretion within those, ample discretion, and I'll just repeat the grounds under which we think you can create the substantial record that would justify denying the permit. The first point, though, I could go back and talk about some of the points that have been raised. First of all, WiFi or the kind of home access points or around buildings, is a totally different technology than the cellular technology. They're not really comparable. Second of all, the existing tower on Phelan road is also an older like first second generation power, much lower power, we think it's about 700 watts. What Verizon is proposing is about 2400 Watts. The technologies have changed and some of these radio frequency generations are able to penetrate skin and bodies and whatever, but we're not going to argue health concerns. A lot of people are concerned about it, a lot much medium have seen things develop, asbestos was once thought to be you know a miracle insulator. Now people know it causes significant health damage. What I do want to say is I'm an engineer also, that's why I don't speak like a lawyer or a politician. But this whole process is a difficult one for citizens because we're on unequal footing with the cellular companies. And it's difficult for the city to evaluate, because they bring the technical experts, they bring you the legal opinion, of course you have your own counsel to listen to. But it's not an equal footing for us, it would be much better if you had the access to independent analysis that could go through point by point the technical arguments and of course the legal arguments. That would one of the things we would like to see if you have that in your discretion is ask the Planning Department to either require an independent analysis and a lot of cities are doing that now. So I just want to go back to the start what we said we would tell you. We think there is -- this would cause impact to property values, I think that's something appropriate for the Planning Commission. You heard testimony from three people tonight who already would not have come to the area but we also have a scum of documented examples from Realtors of buyers that walked away, once they knew there was going fob a cell phone in their backyard. This is in a packet that should be in your greeting package as of today. We want to emphasize again, we think there's a zoning code violation in that sections 2020.200 and 2020.300 require a 300 foot setback for any cell towers if there is an impairment in the value of the surrounding property. And specifically, this is kind of towards the last page or two, but specifically the code says it does not limit the causes of impairment or define a

minimum amount of impairment which can lead to a denial of the setback exception. The only site is only 300 feet wide. It's not possible to meet a 300 foot setback. So we think there's ample grounds just in the zoning code for the denial of the permit. Last Li, we don't see Verizon as necessarily opponents. We would like to work with them to find a site that is setback from schools, doesn't impact the community, and the only reason why this has come forward now is that as of the end of last week we asked their approval to hire an independent analyst for both the site analysis and the -- I think I'm probably over.

>> Yes, just one minute.

>> Commissioner Bit-Badal: You only have 20 seconds.

>> Quickly David quickly. We wanted to find out that the singular structure is only 40 feet and the height of the pole is the height of the house which is only right in front of us and that height is only 35 feet. We would like to know if there's independent verification of the height belongs to a common property, with AT&T and the school as well because that property is outside the gate of the AT&T, and we have seen places where it says just right outside the outline of stat boundary. And the height is I don't think it's 42 feet it's less than that.

>> Commissioner Bit-Badal: So your time is up now at this point and we have a question for you from Commissioner Abelite.

>> Commissioner Abelite: I think you already know it, I presume that having heard some of the questions coming out of the commission that you do understand that why have a very difficult item to deliberate here. And I think our hands are fairly tied. So earlier I asked you it seems to me the Verizon group ask prepared to go out and continue looking for alternative sites and I'm going to ask both appellants if you would consider allowing them to go looking for a deferment? Would you cooperate with a deferment at this point of the issue or do you want to see it voted on tonight?

>> Well I think we have been cooperative and Verizon has been very cooperative. One sticking point that maybe we can clarify is that my understanding from talking to the Planning Department is that if Verizon wants to build a cell tower at another location that would require a new building permit. So basically I'm all in favor and I'm glad they're making good progress looking at alternate sites. But my understanding is that's going to require a brand-new permit and permitting process and abandoning this permit so my challenge to Verizon if they have that confidence that there are other sites and they agree that the standing firm on this application process, why not drop this site and we'll support them if they go to another site that meets our basic goal, a cell tower at least a thousand feet from cell sites. I may be wrong, but another site would be great that's what we're after, it's all about location location location.

>> I can't speculate what their thought is but I'm going to hang onto this one before I go for another one. Again I'm going to repeat my question with regard to the deferral option, would you consider that?

>> I'm one person of --

>> Commissioner Abelite: But you are the appellant.

>> I think what we're looking for is any path that takes us to a cell tower at a different site, and that we have good confidence in the study that is done. I heard something new tonight from representative from Verizon that we didn't hear on Friday that's why we're here, because we didn't hear that. We would agree to paying for an independent analysis of the gap but they reduced and we have the e-mail response from their -- you know, their PR person, that they refused to include the analysis of the alternate site as part of that independent study. That kind of levels the playing field for us, for the city and for them is if we have a third party. Otherwise they have all the experts speaking in favor of their own proposal. It's just a conflict of interest. So any path that would get us to another location, all in favor of.

>> Commissioner Abelite: I guess let me rephrase. I'm sorry, I don't want to lose the opportunity to speak with the public, once we close the public section of the hearing we can't have an interaction anymore. So I'm going to

drill you with a couple of questions. And that is, when this Planning Commission is faced with an appeal, we have to act on that appeal tonight. We have to vote one way or the other on this appeal. If you give us express permission to defer this item, as they have already, we don't have to take that action tonight because the appellant has said okay, let's give them more time. I appreciate it's not totally up to you, you have a whole audience right behind you, I know because I'm looking at them. But you are the appellant, if I may speak for the staff, we usually -- we have to have both parties agree to defer the appeal from a legal point of view. And that's why I'm not letting go of that question.

>> Chin Mae represents the wife of the other appellant. Is she allowed to speak?

>> Commissioner Bit-Badal: She can answer the question.

>> So the only, as I said there's no independent verification of the alternate site analysis. And we heard from Verizon that they did agree to it but what we heard on Friday was Verizon was not willing to pay for the alternate site review by independent consultant and that's why we said we are not agreeable to the deferral because these are two sides of the coin. You do the coverage but don't do the alternate site it doesn't make sense. So if you're going to do an independent review you can do for both for the alternate site by an independent third party consultant as well as for the coverage, yes, if that were the case and they also said they would do by a registered engineer in California and our RF expert here we have talked to them and we closest which comes to an RF engineer is an electrical engineer and if you go the Planning Commission has to go look for an electrical engineer who is an RF expert as well and that may be really rare to find an electrical engineer who has RF expertise and is California registered so we think that scope should be brought in that not only a PE registered engineer we should look for one or an FCC registered independent experts who can do this kind of alternate site reviews as well as the data coverage reviews. And if these two could be done and they are looking then I think we are amenable to a deferral.

>> Commissioner Abelite: If I may ask the chair, this may be out of process, I don't know but if counsel can --

>> Commissioner Bit-Badal: It may be but if it's going to solve some issues I know where you're going. I'm all for it.

>> Commissioner Abelite: I'd like to get some direction as to how the appeal process works and how we might be able to defer or not.

>> Renee Gurza: Thank you Madam Chair. Pursuant to the zoning code 20.100 there is a subsection 3 that says within a reasonable period of time after you decision on the matter. So it doesn't require you to make a decision on the appeal at the initial hearing. And I don't see anything that prohibits a deferral. With the caveat being, the counsel for Verizon did allude to the fact that there is something called the FCC shot clock rule. Which requires you to take action on an application within a certain period of time. However, it's Verizon who has been requesting the continued deferrals. I'll ask the planning staff to confirm that. They've been diligently keeping track in writing of the numerous requested deferrals on this item and it has been Verizon who's been requesting the deferrals has it not or has it been the appellants?

>> Thank you, Madam Chair. It's actually been a concurrence between the appellants and the applicant.

>> Renee Gurza: Okay. So, so far, we've been abiding by and we've been acquiescing to the requests for the deferrals. I don't know, where is Verizon, I don't know if Verizon is asking for yet another deferral. You've heard concurrence but I don't know if you've heard a request for an additional deferral in order to continue to investigate an alternate site. So in answer to your question, you are not compelled to act on a hearing and act on the decision tonight you request have a deferral but it needs to be for a set period of time and for a set reason. So does that answer your question?

>> Commissioner Abelite: It does except for the fact that what's reasonable, are we bound by the reasonable period of time statute and what might be reasonable in terms of a process of getting an alternative site. What might be reasonable to the public might be different than what is reasonable to the actual ability to get an alternative site in position.

>> Renee Gurza: Correct, so I believe that's why the zoning code doesn't set forth a one size fits all. So in terms of what would be reasonable in this instance you know I would caution the commission to be cognizant of the FCC shot clock unless Verizon is actually going to request or enter into you know compliance with the -- not compliance but concurrence with the appellants as they have been. Unless you actually have a request for an additional deferral. If you don't then I would want the commission to be cognizant of the FCC shot clock rule and not defer more than 150 days out .

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: Question to legal staff. I don't know of any limitation besides this shot clock just to continue this for 90 days, 120 days. I don't see any newing in our ordinances or state law that would prevent a Planning Commission from doing that. And if -- and we do have findings and testimony today that Verizon actually has requested and continued to request a deferral. So I'm not sure if there's any differential between continuance or deferral in this case and that can just be done by Planning Commission motion.

>> Renee Gurza: Historically the distinction the commission has made is a continuance is when you've opened a hearing you have taken testimony but you don't want to make determination yet? So that's a continuation. You've opened your hearing you want to continue it for a reasonable period of time to obtain additional information. A deferral is really item 2 I think on your agenda where you haven't even opened the hearing and you would were deferring it out. In this case you would be asking for a continuance on this application.

>> Commissioner Kline: Thank you.

>> Commissioner Bit-Badal: Thank you. I do not have any more questions for you at this point. But we thank you for your time. Staff, oh, I'm sorry, I'm going to close the public hearing portion of this item. With that I'm going to move forward, staff.

>> Thank you, Madam Chair. There certainly has been quite a bit of testimony and points that have been raised by the appellants and the members of the community with respect to the health or perceived health-related effects. Staff feels that that has certainly been addressed through the staff reports. And through discussion by the applicant. In terms of other comments that have been raised, in terms of the project's conformance with the city's zoning ordinance and council policy for wireless, staff continues to consider that the application is consistent with the City's zoning code requirements in terms of setbacks and height and in terms of the distance from residential, as noted in the staff report, and in terms of the conformance with the wireless policy for the reasons stated in the staff report, the project conforms, to the wireless policy. In terms of the alternative analysis and the thought that there are potentially better locations, staff feels that the applicant has done a good job of considering alternative sites. There certainly may have been sites that were potentially feasible for technical reasons but for various other reasons, may have fallen out of being potential locations for an alternative installation because of unwillingness of existing owners, stated by applicants in terms of not being able to technically achieve the objectives of the installation in this area.

>> Just to add to Mr. Baty's comments, this is not the first time the commission has seen proposals over the years for wireless facilities in residential areas or near schools. In fact it's been my personal experience to have been involved in several such wireless facilities and just to cite a few examples, we have approved them at Lynbrook high school near San José's border with Saratoga, we've approved them on the school site at Ida Price middle school in the Cambrian district, we have approved a number of wireless facilities within churches that are within residential neighborhoods. Some of these churches have 62less. Two examples that I know of are one at the corner of Meridian and Curtner in Willow Glen and then there's also one about a quarter of a mile south of that also on Meridian. So we do have several examples, and there's been no evidence as part of those particular projects that those have had negative impacts on the value of those neighborhoods. Those are both -- those are all very desirable neighborhoods. And so we, staff feels that with this particular facility, the trees proposed along that the careful attention to the height of this, that that's not going to impair the value of this site or surrounding properties as well and so we feel very comfortable that we can make the findings to justify the approval of the special use permit as we originally noted and for that we'd hope that the Planning Commission would support staff's position and deny the appeal. Thank you.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I move that we continue this, until, I am going to pick March, Verizon picked March when they were asked what date, that is something they asked for and I'll get legal counsel to see if that will work but since they asked for it specifically I'm using March as the date for a continuance.

>> Renee Gurza: Thank you. I'd like to request the commission reopen the public hearing for the purpose of consulting with the Verizon representatives. If a continuance until March is something that they still feel -- they would feel is a reasonable period of time in accordance with FCC rules about acting within 150 days of the filing of a complete application.

>> Commissioner Bit-Badal: Thank you, counsel I will reopen the public hearing portion of this application.

>> Paul albritton. Counsel for Verizon. Can I pound agree to it. And we have no intention I can say very firmly we have no intention of taking any action with respect to the shot clock at this time.

>> We wouldn't mind an approval even if it was postponed until March but we would certainly agree to the continuance you're suggesting.

>> Renee Gurza: Thank you for putting that on the public record.

>> Commissioner Bit-Badal: Thank you. With that I will close the public hearing portion of this item and you had a motion and I will second that motion. Commissioner Abelite.

>> Commissioner Abelite: Thank you. I just want to congratulate Commissioner Cahan for making the motion. One school site I do want to mention that this commission just acted upon was, the Montessori school at

the Normandon site at capitol expressway and pearl and that site was a school site we just approved in September and it has a cell site sitting right in the middle of that school, just adding onto staff's potential list of sites. I think it's wise at this point and I think it's going to generate a win win for a lot of people.

>> Commissioner Bit-Badal: Thank you. Commissioner Cahan would you like to speak more to your motion?

>> Commissioner Cahan: Thank you, Madam Chair. Part of your concern as a neighborhood was losing momentum and losing neighbors to -- ability to come out and speak and their losing the passion. So fortunately you were able to all come out this evening and we have heard all that you have to say. And it is on record. And so you did you lose the passion. And we are all very, very aware of the situation and your concerns about it. This will allow Verizon to hopefully find an alternative site, and hopefully, avoid any legal action that could occur. And hopefully, will have a win win as was said, where Verizon finds a good site and it's away from where your area is. [applause]

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan. I will just say wow, I was so impressed with the evidence and information that the residents put together. This is quite a bit much work that you have put on this item. Even though when you're working you're a stay at home mom and you're busy with your lives this has meant so much to you. What I think was quite interesting is you have gathered the support of your school district as a representative from Verizon said quite a bit schools go out and request to have or work with phone companies to have poles on their sites and with your district it seems like it's different. I want to congratulate you for the great work you've been doing. And if I was being tough on you at times I didn't want you to lose your speakers either. The longer a subject matter takes the more speakers leave the room so I wanted to make sure that everyone's voice was heard this evening. Again for the appellants I truly urge you to work with Verizon, and I also want to congratulate Verizon. What you had said tonight was extremely refreshing. You really are stepping forward to work with the community and it really shows. With the fact that you are agreeing to continue this item it shows your good faith in your community and I'm actually really now proud that I own a Verizon phone, actually two of them. With that I will ask my fellow commissioners to vote by light. Motion carried, unanimously and thank you for your time this evening. And all your efforts. Wishing you the best. Moving on with item number 3D. Staff.

>> Thank you, Madam Chair. Members of the commission. I'm Andrew Crabtree in the Planning Department, give a quick overview of the proposed ordinance. Before you this is a proposed amendment to the City's zoning ordinance, title 20. Should I continue?

>> Commissioner Bit-Badal: So moving on with item 3D.

>> Excuse me. The proposed amendment to the city's zoning ordinance or title 20 is related to height limits and specific height exceptions that are included within the zoning ordinance and by way of background as the commission is aware, about a year ago the city adopted a general plan update. The previous general plan included a number of height exceptions, within the general plan. And the zoning ordinance included references to those height limits. As part of the general plan update process the decision was made that it was more appropriate to regulate height through the zoning ordinance than within the general plan. And so the new general plan didn't include those exceptions. At the time the general plan update was adopted we brought forward, staff brought forward a zoning ordinance amendment that included incorporation of most of those exceptions into the zoning ordinance. One issue though was that any change to height regulations within the zoning code within the areas subject to referral to the airport, the airport influence area or AIA, requires a referral process to the airport land use commission. And there was not adequate time to do that. So the ordinance that was brought forward in November of last year included a line that basically said, the following height exceptions do not apply within areas subject to the airport land use commission referral process. Then, in March or April of this year, the staff brought forward, made that referral to the airport land use commission another ordinance amendment that would essentially delete that line from the zoning code, and also address some other issues that had come up in the interim. So the airport land use commission went ahead and considered that change that would then basically allow those height exceptions related to certain geographic areas or certain land uses within areas of the airport influence area. And with some minor deeds agreed to those changes. Following that, there's been some community concern around the downtown Diridon area, and so to allow further time to address those issues, the staff has, and you've been provided with a supplemental memo, to the effect that basically, re-inserted that exclusion for the downtown areas that are within the airport referral area. So we basically backed out upped the

ordinance or pulled back on the scope so that it doesn't address the downtown anymore. This ordinance became of would leave more or less intact the current text in the zoning ordinance as it relates to the downtown but it would move forward height exceptions for other areas particularly North San José. Also within this ordinance is a provision that would allow for higher building heights in portion of North San José north of Montague expressway that is particularly of importance to the city at this point because as the economy is picking up we're actually seeing office development projects in North San José that want to go tall. And so we're trying to support that economic development opportunity with this be zoning ordinance. I've had some conversations with the community members representatives of this area and there's some things I should clarify just through those conversations. First is that the Diridon area as colloquially referred to is largely within the downtown according to the zoning ordinance definition of the downtown. There is a Diridon plan that's under preparation that has a planning area that goes to some degree overlap with some of the urban villages or some areas that are not technically in the downtown. For the most part when you look at where the development potential is within the Diridon area that's been considered part of the City's downtown within the general plan. Second thing I should clarify, the zoning ordinance is a legal Document that's closely drafted with the cooperation of the attorney's office so through this process there's sort of a hierarchy that's established within the code of exceptions. would the lower one or the higher one apply or what would be the case. So that's something that was taken into consideration when the ordinance was drafted and so the hierarchy establishes that the way the ordinance is drafted establishes a hierarchy. In this particular case the downtown, if something is near be Diridon, that's also near the light rail station, the downtown high exception would prevail rather than the 2,000 feet within the light rail station provision that's in the code. So with that clarifications I conclude my report and am available for answering any questions. Thank you.

>> Commissioner Bit-Badal: Thank you, we do have a question for you, Commissioner Kline.

>> Commissioner Kline: I know you're expecting this question so I'll blurt it out, where did that 315 feet report and it stated the outcomes of this would be the subject ordinance would increase maximum allowable heights for all types of development within the specific areas of influence areas for the airport basically, basically it says it's going to allow higher from alt areas I kind of said okay fine I'll read the report but I didn't take as much time as

maybe I should have and when it was brought to my attention by the same community outreach that you were talking to today, downtown association which I got an e-mail later today and pointing out the 315 feet I was kind of shocked a little bit because I knew how much work was going on in the downtown. Was there some type of overlapping zoning ?

>> The text that you're referencing is in the supplemental memo it might be helpful if commissioners look at page 2.

>> Commissioner Kline: It's on page 10 of our report, too.

>> In reference to downtown, and you'll see it's actually in ~~strikeout~~ on the current draft of the ordinance.

>> Commissioner Kline: That's the major change in the supplemental.

>> Right, so it's no longer part of staff's recommended ordinance. Where did the language come from? It was in the general plan and as we went through our process, the airport, City's airport staff actually recommended that it be deleted. They said it was potentially misleading. The way the planning staff reads the ordinance or the jeopardy as it's been written that those numbers are prided as exceptions. Excuse me, as examples, the prevailing limitation was FAA regulation i don't know how that got drafted it's been in the City's general plan for years but I would expect that the intent was that providing some numbers would be helpful to people to understand what the FAA might allow. But that we do also eventually note that it's accurate and so our proposal was to delete it just to remove the potential for confusion. And so as I said earlier for a large part we're backing up the scale of this orange to not address the downtown areas, bit this is the exception in that we decided that this clarifying text that didn't really change the substance was worth going ahead with at this time.

>> Commissioner Kline: I'm not playing gotcha with staff, I'm reminding myself that the 2040 plan is simply the blueprint, and as we go forward with it, the implementation, the changes in our ordinance, we rely on the staff a lot to do that but we're going to have to be on our toes too at the same time to make sure that these things like

overlapping issues don't squeak through. I just got to remind myself read the details as they do it so we're not surprised either. The other issue I came out is just kind of a wording issue, it's the same -- it's kind of an English problem. In 7, I don't know if it's the supplemental or the analysis, and I think it's exactly the same in the actual ordinance. It basically says and it changes a little bit but it basically says building heights shall be defined by the aerospace requirement of the Norman Y. Mineta San José International Airport, as determined by the Federal Aviation Administration. That language can be taken two ways. That language could say basically that the administration says the San José airport administration sets the guidelines with the approval, which are actually, okay, I'll do it one of way. So the federal aviation administration sets the guidelines and the airport administration interprets them and applies them to us. It could be analyzed that way, or it could be analyzed the other way. It could actually say the airport administration sets the guidelines and that's because the federal administration louse them to do so. So is this basically saying there's existing guidelines that the federal administration has that's being interpreted by the international airport, our airport that we're following or is this saying that the federal aviation administration has delegated, the airport commission has set the guidelines? It can read either way?

>> So the process that has been folled on a project by project basis, typically there will be a referral to the Federal Aviation Administration, they will then make a determination on a particular project as to whether or not it's acceptable. It's not theD. and it's a reference to which airport is of concern is why the airport is referenced here. But the determinations are made by the federal aviation administration in reference to what is here in this language.

>> Commissioner Kline: So we're actually sending this to the airport administration, we're sending this directly to the federal aviation, which is giving us the --

>> The project proponents are.

>> Commissioner Kline: Right, and so there's no going to the airport administration for this? They're not involved in setting the height limitations --

>> The city's airport?

>> Commissioner Kline: Yes.

>> That's correct.

>> Commissioner Kline: Okay. So I was reading it wrong. All right, those are the two issues that I have. Just want to say that the height, I love the airport, I live pretty much close to it, I love going to it, personal opinion but it's countered to it too, height limitation imposed to having a downtown airport my person opinion is one of the major reasons we have serious issues in downtown as far as economic development. That's kind of an obvious statement. There's no other downtown airport in the country except San Diego, which doesn't really count. They've all moved out. There's good economic reasons why they haven't. That horse has left the barn, we got to pay a big mortgage now, so we want to make this airport as efficient and as profitable as possible. But we also want to make downtown as efficient and economically successful as possible too.

>> Commissioner Bit-Badal: Thank you. I do not have anymore. Actually Commissioner Abelite.

>> Commissioner Abelite: I've got energy until 1:00. I've got two quick questions. I'm going to ask a question about top hats as they relate to really tall utility high KVA voltage lines and as it relates to possibly cell sites that sit on top of them. So I'm going to ask a question about that third page of the report and then I'm going to ask about F.A.R.es, F.A.R.es, I'm embarrassed to say I don't know if we have F.A.R. rules or they embedded in the entire system by having X, Y, Z setbacks. So if somebody can start talking about F.A.R.s and give me an education as to, do we have to change F.A.R.s to match the height change?

>> So I'll start there. San José's zoning ordinance does not directly have four ratio F.A.R. caps like some cities do. It can come around indirectly through height limits and setback requirements. Some caveats for example the credit single family house project recognizes F.A.R. in determining process. But generally the answer is no. We don't by raising the height limit we are potentially allowing for greater floor area ratio greater than density on

site. We don't have to do some other change to also allow that range. North San José you do have in the past we had a floor area ratio cap in the north San José area development policy that's been replaced, as well.

>> Commissioner Abelite: All right, you don't need to belabor it. So we don't really have an F.A.R. policy that we have to dovetail into this?

>> No, we do not.

>> Commissioner Abelite: This is the F.A.R. policy basically in a sense?

>> Yes.

>> Commissioner Abelite: Okay, and for the sake of time, in the report talking about the utility, structure towers and the limit is up to 160 feet, I'm sorry I'll give you a reference of what I'm looking at in a moment. Staff report, page 4, item 10. So for the benefit of some of the newer commissioners we just went through an exhaustive cell site determination tonight and there are opportunities top hat that mounts on a large high KVA voltage line. I'm just wondering how this 160 foot height limitation is that going to preclude us putting those sorts of sites on most of the utility structures do you know offhand? It's a tough question I know but --

>> I would say no. And I don't think -- my experience is that most of the high voltage power lines are not more than 160 feet in height or not near that might. I think they're typically in the 60 to 80 maybe 90 -- I've seen some as high as 120 I think. But again and this was language, you know most cases maybe less is more. You know we took the process of taking the text that had already been developed and worked into the general plan as a height exception and just moved it over without really exploring changes to it. But this is what the City's been implementing for the past several years and so the intent was to continue to implement it but through the zoning code rather than through general plan.

>> Commissioner Abelite: No more questions.

>> Commissioner Bit-Badal: Thank you. Seems like we don't have any more questions from commissioners. We do not have any speakers cards on this item. So with that I will close the public hearing portion of the item. Commissioner Cahan.

>> Commissioner Cahan: I'd like to make a motion to -- to approve the ordinance amendment of title 20 per staff's recommendation. I have a supplemental memo with the supplemental memo changes.

>> Commissioner Bit-Badal: Wonderful. And do I have second from Commissioner Yob. Would you like to speak to your item? At 11 o'clock at night, thank you. With that I will ask commissioners to vote by light. And the item carries unanimously with all the commissioners present. Thank you so much. Now, we're going to be moving forward with staff, do we have item 4 petitions and communications, do we have any petitions this evening.

>> Laurel Prevetti: We have no petitions. Judge item 2, referral from city council.

>> Laurel Prevetti: No referrals.

>> Commissioner Bit-Badal: Thank you, staff. Item 6, good and welfare. 6A, report from city council.

>> Laurel Prevetti: Just quickly to note the city council did take action last night on boards and commissions. There are no changes to the Planning Commission, no consolidation with the historic landmarks commission. There is follow-up work. It's not clear whether it will necessarily affect this commission because you are a chartered commission, you have your own bylaws. But as this rolls out if there are obligations for you we'll certainly make that known to you. And also just a quit note. The HCP council is expecting to consider, in December, so just wanted to give you an update that they did not take action in October, and that concludes staff's report. Thank you. Okay, I wasn't sure you wanted to hear all the detail. Last night the council also considered the appeal of the denial of smog doctor car wash. You may remember this was an application on the south side of Camden Avenue, it did not have environmental clearance, it was very close to residential. Staff

again, we were recommending the denial of the application. After much testimony the council referred the matter back to the staff to continue working with the applicant to see if there would be a way to fit the car wash on the site, in full acknowledgment that it may require the applicant to demolish existing structures and really rebuild the site in a completely different configuration. So we do expect that we will be working with the applicant. They will need to complete CEQA and it will be coming back before you as an item, when it's ready. Thank you.

>> Commissioner Bit-Badal: Great, thank you for that report. 6B commissioners reports from committees. Norman Y. Mineta. Commissioner Cahan.

>> Commissioner Cahan: We met briefly on October 1st and just got a review of the noise monitoring. There were two people that were calling in complaints but they didn't seem to be justified complaints. Sometimes it was reported to us that sometimes people have a schedule change where suddenly they were working night shifts and now they're working day and then they notice the noise of the airplanes that they never noticed before so they start calling in. And both of those calls only lasted about a month and they didn't-d there was no correlation between the two calls and it wasn't taken as being a real serious issue that the airport had. Otherwise things are pretty much on par. The planes that were coming in late were mostly due to weather issues and those were all approved late flights.

>> Commissioner Bit-Badal: Thank you for that report. With that we're going to be moving on to 6 (c), approving synopsis from 10-10-2012. Do I have a motion, do I have a second? All approving please say aye and no abstains. Thank you. And Commissioner Cahan were you able to reconstitute yourself? No you were not so you're going to be abstaining, great, thank you so much. Item 6D, subcommittee formations do we have any reports? Thank you. Item 6 E, commission calendar.

>> Laurel Prevetti: Thank you. In your packet is a resolution with the proposed dates. Please note that for the most part it continues the pattern of the second and fourth Wednesdays of the month. We have also identified the date for the capital improvement program study session in coordination with our city budget office. Thank you.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I was wondering because of all the discussion today that perhaps we should have a study session in relation to cell towers.

>> Laurel Prevetti: Happy to put that on the list, we'll get back to you at our next meeting with a specific date for that study session. Thank you.

>> Commissioner Bit-Badal: I will accept a motion to accept that, all in favor, motion carries. 6 F.

>> Laurel Prevetti: According to your bylaws in order for the commission to consider a bylaws change you need to give at least two weeks notice. Tonight we are not asking you to make any changes to your bylaws but rather to acknowledge notice of proposed amendment to your bylaws, this is a follow-up from the discussion we had at the Planning Commission retreat in September. I just passed out for your benefit correspondence that was received by a former Planning Commissioner and city council member. And so we will have a full discussion under public hearings at our next meeting, but we did want to provide you with the staff report and the context of the actual bylaw language now, so you would have time to consider it and really think about it and then we will have a full discussion on next time.

>> Commissioner Bit-Badal: Thank you, and with that we will adjourn this evening's session. Have a great evening.