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San José Planning Commission Hearing
March 11th, 2009.

[Gavel] good evening.

COMMISSIONER KAMKAR: Good evening. My name is Matt Kamkar. I'm the vice 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, March 11, 2009. 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 validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed cards 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 the submitted speaker cards in The order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After 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 commissioner 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. Planning Commission may request staff to respond to the 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 the public hearing or in written correspondence delivered to the city, or prior to, the public hearing. The Planning Commission's action 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. Section 20.120.400 of the Municipal Code provides the procedures for legal protest to the city council on rezoning and pre zoning. The Planning Commission's actions is appealable to the city council in coordination to section 20.200.220 of the municipal code. Agendas and binders have been placed on the table near the door for your convenience. Is okay, roll call. Let it be known that all commissioners are present except for chair Zito. Item number 1 would be matter of 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 the 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 the concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting and additions on how to be heard by the Planning Commission no later than 11:00 p.m. okay, I guess staff.

SPEAKER: Thank you, Mr. Chair. As noted on the agenda, the only item that staff is actually recommending to be dropped is file number PDC 06-'07, West Fleming avenue and Nob hill drive. Staff is recommending that be dropped, and renoticed if it comes forward. That's all.

COMMISSIONER KAMKAR: Commissioner Campos

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Move staff recommendation on the drop.

COMMISSIONER KAMKAR: Any discussion? All those in favor, all those against? That's unanimous, the matter is dropped per staff request. Next item is the consent calendar. Okay, so is there any -- I got to read that, too. Okay. I have to read it. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time.

SPEAKER: Thank you, Mr. Chair. There are no additional comments, staff comments on any of the consent calendar items. Thank you.

COMMISSIONER KAMKAR: Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I don't think you have any cards on this, so I move the staff recommendation on consent.

COMMISSIONER KAMKAR: Motion and second. Any discussion? Hearing none, all those in favor, all those against, that motion passes unanimously. Consent items are passed. Next would be the public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to a later agenda for public hearing time management purposes. Since we only have one item on the agenda, I guess that was moot point. Okay, so for the matter of CP08-073, staff do you have a report?

SPEAKER: Thank you, Mr. Chair. This application is for a time centered monopole. A time currently configuration if any longer that, then the antenna would have to be building mounted. Staff is also recommending that the monopole be surrounded by a seven foot fence. And per the city's land use policy on siting wireless communication facilities. Commissioners have indicated that the project site success used as an offstreet parking facility, and just -- staff just wants to note that that would require a separate conditional use permit for that use. Thank you.

COMMISSIONER KAMKAR: Okay, thank you for that report. Is the applicant here?

SPEAKER: Good evening vice chair Kamkar and commissioners. My name is Sandra steel, for the applicant. At 2448 Story Road. My report is very brief, we agree with the conditions and we respectfully request that you approve the application before you. I'm happy to answer any questions you have.

COMMISSIONER KAMKAR: We do have a question from Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. So that flatbed tow truck that's there every day, does that -- is that T-Mobile's vehicle?

SPEAKER: Yes. With the equipment on top of it.

COMMISSIONER CAMPOS: There is no equipment on top of it. There's a truck. It's a towtruck. It's a flatbed towtruck, a white truck and it has a long, flatbed on it, and it's there, every day.

SPEAKER: And that has nothing --

COMMISSIONER CAMPOS: And I've actually even seen vehicles parked on that -- on that lot. Doesn't happen all the time. But that truck is always there.

SPEAKER: The existence of the -- the existence of the truck, I would have to check with the other than, obviously it is a T-Mobile truck, there is construction that -- well, plans of construction. But I know the T-Mobile facility, if they're doing any maintenance, routine maintenance checks, the people typically are supposed to come out once every four to six weeks to check the facility. So there shouldn't be any proliferation of vehicles from the T-Mobile site. I'll check in with T-Mobile and the property owner.

COMMISSIONER CAMPOS: Just to make sure we're talking about the same thing, because you had said that the truck was T-Mobile's so this truck you think I'm talking about, could somebody get in it and drive it off the property at any time? Or does the equipment actually have to physically be moved by something, towed or put on the back of a flatbed truck?

SPEAKER: It has to be put on the back of the truck.

COMMISSIONER CAMPOS: So there's a truck that is there every day. I know because I live 1500 feet from the property and drive by it every day.

SPEAKER: Okay.

COMMISSIONER CAMPOS: And so -- I remember when the building burned down and I actually remember, I don't know if it was you that came before us to put the

monopole or to put the pole in the building which you know, did a good job there. But there is a truck that's there. It is a towtruck. And I've seen vehicles stored on that property. And so to the extent that it affects your business, I'd be concerned. Because you know, we're here, determining whether or not that it's the appropriate land use for that. And I think that, you know, we're in consensus that it is. But that doesn't make it -- that doesn't allow for this other use on there. And as staff has said, that if they're going to use it for that, they need to have a permit to do it.

SPEAKER: Absolutely. And if, you know, I'd be happy for that to be written in as a condition, that there shouldn't be additional vehicles that are stored at the facility. But I would like to check back in with T-Mobile and perhaps get back in touch with the planner just to make sure that they are, whether they are in fact T-Mobile's vehicles.

COMMISSIONER CAMPOS: Okay. My other question has to do with the pole. Why was -- why was a decision made to put the pole so close to the fence initially?

SPEAKER: I believe it was most likely because the existing equipment is right there at that fence line. And that they would be getting the parent telco within the cabinets in that area. That's typically the reason. They typically tend to have the antenna as close as possible to the equipment.

COMMISSIONER CAMPOS: When the building was there, the antenna was on the rooftop. When the building was burned down and you had to replace the tower, why did you choose to put it so close to the fence? And I think you answered my question. I think it would have been a better gesture to the neighborhood, because I've heard complaints.

SPEAKER: Absolutely.

COMMISSIONER CAMPOS: From neighbors around there. That you know, one was the electric magnetic issue, and others were, you know, I can't even go into my backyard and enjoy sun bathing and barbecue than having this monstrosity looking over me. I know you're taking care of it now, but I wanted to relay to you that it's been there over a year and it's been a nuisance.

SPEAKER: Right. And as you just mentioned and as I have discussed with staff, T-Mobile is as per the conditions of approval this evening going to move the facility. That would take approximately a week to move it, the required 32 feet away from that rear property line. So that will be done very promptly. And also, just to show, you know, in good faith to the commission this evening, we do actually have an appointment for a permit adjustment intake for a permanent facility that we're looking to locate at, and that will be a replacement for this cell site on wheels facility. We are moving as quickly as possible to get a permanent site away from that property.

COMMISSIONER CAMPOS: Okay, thank you.

COMMISSIONER KAMKAR: Okay, thank you Commissioner Campos. Thank you for your testimony. Is there any other questions for the applicant? Hearing none, you have another five minutes of presentation left if you're interested. Otherwise –

SPEAKER: No, I'm fine.

COMMISSIONER KAMKAR: Thank you very much. Motion to close public hearing. Motion and second. All those in favor? All those against? That motion passes unanimously. Okay, staff, any -- or actually, Commissioner Campos, did you have a question for staff or -- okay. Commissioner Campos.

COMMISSIONER CAMPOS: So staff, is there any way, and I know that you're inundated and you know, because of the workforce reduction, but is there any way to be able to check back with the property owner to ensure that they are complying with whatever permits they have for the use of the land to ensure that they don't have or prevent parking there? Because there is a towtruck that has been there seven days a week. And I'm pretty positive it came from the corner of Hopkins and Story, you know, where that new development is? And they used to park it there and store it behind a fence. And so I think once that new development came in, they needed a place to find, you know, to leave their towtruck and that's where they wound up. So can you guys check back to them or relay that to Code so they can check with the property owner to make sure that if they're going to do that, they need to come back for a permit.

SPEAKER: Thank you, Mr. Chair. We can add the condition that no offstreet parking facility is permitted at this time, into the permit. Which will go to the property owner as part of sending out of the permit. And yeah, we've been in contact with code enforcement over the monopole so just contacting them about the park onsite is no problem, thank you.

COMMISSIONER CAMPOS: Okay. And with that, and I know that more public -- or more discussion can occur, but I'm prepared to make a motion, just to -- for more discussion. And move the hearing on. So I recommend Approve a conditional use permit to allow a temporary wireless communications antenna facility on wheels where generator on a .47 gross acre site in the CP pedestrian commercial zoning district as recommended by staff. To include the condition that we just discussed about the offstreet parking on the site.

COMMISSIONER KAMKAR: Okay, we have a motion and second. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Can you help me understand, why the -- why this permit has taken such a long time to move through process?

SPEAKER: From the date of application?

COMMISSIONER JENSEN: Correct. I'm looking at the letter from the neighborhoods and they're pretty concerned about the time it's taken.

SPEAKER: Thank you, Mr. Chair. This was a permit adjustment, which was noted in the staff report in error. The applicant, after the permit adjustment expired, the applicant approached the city about renewing the permit adjustment and was informed that a conditional use permit would be required. Staff encouraged them to file. They filed in October. We asked for revised plans because of the neighbors' request that the antenna be guyed down to the site, to ensure stability. There was one revised plan. In addition to that, to make sure that the project conforms to all of the conditions, led to the hearing date we have today.

COMMISSIONER JENSEN: Thank you. And can you tell me, so this witness isn't technically going to be mobile because it will be guyed down to the site that it is. But do we have any similarly quasimobile towers in San José?

SPEAKER: Thank you, Mr. Chair. Not as far as I know.

COMMISSIONER JENSEN: Okay. And the parking, I have to assume that the representative for T-Mobile probably was not aware that a vehicle was parked there illegally and I'm Commissioner Campos has raised it. And with the commissioner's permission, since he's both a neighbor and a commissioner, if we could just formally request code enforcement to go out there and deal with it, since it's technically their jurisdiction. Thank you. And then in the previous permit, the note from the neighborhood residents, says that the temporary trailer was to be located 50 feet from the property line. And so why are we now moving it to -- and I understand that that wasn't being complied with at that time. So why are we now moving it to 32 feet?

SPEAKER: Thank you, Mr. Chair. There's -- there are provisions in the code for temporary monopoles for testing of coverage. And that process is actually an administrative process, not a public hearing process, and subject to stricter requirements such as the 50-foot setback. Since this is a public hearing and the 32-foot setback complies with the council policy on land use, or on wireless facilities, that was the direction that staff is encouraging. Thank you.

COMMISSIONER JENSEN: So it was because it was temporary specifically and because temporary has much stricter requirements imposed on them than permanent?

SPEAKER: That's correct.

SPEAKER: Okay. And do we have a warm fuzzy that because the previous requirements, the previous conditions were not being complied with that we will be in compliance with the new requirement?

SPEAKER: Thank you, Mr. Chair. The previous permit actually allowed the monopole in error on a 12-foot setback. So this is substantially better.

COMMISSIONER JENSEN: So the letter from the neighbor, shall be located a minimum of 50 feet from the property line, is that incorrect?

SPEAKER: Again, that's a provision in the zoning code specific to temporary trailers, and that's a direct quote from zoning code. That was not implemented as part of the original approval.

COMMISSIONER JENSEN: Okay, great, thank you.

COMMISSIONER KAMKAR: And I suspect that you know, when you guy the trailer down, that definitely adds to the stability. So locating a 32-foot-high tower, even if it does tip over, it's not going to hit something 32 feet away. That's why I think the 32 feet is the right number. Any other speakers or any other commissioners want to chime in on that? If not, okay, we have a motion on the table, you know, it's the staff's recommendation with some minor tweaking, some minor adjustments and let's go ahead and vote by light. Okay, that vote passes 6 with commissioner Zito absent. Okay, that ends the public hearing section of the commission. Next section is petitions and communications. Public comments. Please fill out a speaker's card and give it to the technician. Each member of the public may But in response the commission is limited to the following three items. We can respond to question, we can request staff to report back On a matter at a subsequent meeting or directing Staff to place an item on a Subsequent agenda. Next item is referrals from city council, Boards, commissions or other agencies. None. Next items, my goodness, set a record here, great. Good and welfare. Report from city council.

SPEAKER: Laurel Prevetti: The report from the city council consists of the item to the Rules Committee regarding the title 20 change that this commission considered last year. That item was deferred off of this afternoon's Rules Committee and is now scheduled for next week. We understand that Commissioner Platten has a previous engagement for that time so we will be contacting the chair to ensure that he will be able to cover that meeting. If not, we will request deferral again. Thank you.

COMMISSIONER KAMKAR: Okay, thank you. Commissioners report from committees. And Norman Y. Mineta San José international airport noise advisory committee. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Haven't met yet. I believe we're meeting in April.

COMMISSIONER KAMKAR: Okay, thank you. And next, envision San José 2040 general plan update process, Commissioner Kamkar. We had a meeting last Monday. Monday, March 9th. We talked about the recent trend, and projection data, it was sort of a group type of a meeting. And we were divided into five or six groups. And we talked about what we thought of the four or five different options that have been pretty much narrowed down. And the options consist of different scenarios, what if we get so many

jobs and so many houses. And there were varying numbers, I think there were 334,000 residents which like 179,000 jobs. No, actually, it was the other way around. It was more jobs than houses. All the ratios were designed so that we bring the City's imbalance into balance or into surplus, if you will. We had the option of balancing at a 1.0 ratio, 1.1 or 1.2, how many jobs we create versus how many housing units we build. So we are sort of working through that scenario and those type of discussions. And Commissioner Jensen did you want to add anything else?

COMMISSIONER JENSEN: I would just like to say that I found the breakout session to be extremely helpful. And although one of our task force members indicated in the beginning of the meeting that there was a strong objection to the breakout sessions, I understand that that member had an epiphany at the meeting and decided that they really enjoyed it as well. It was very nice to have a full-on discussion with a much smaller group.

COMMISSIONER KAMKAR: Excellent, thank you. Next is synopsis of February 25th meeting. Is there a motion? Does any commissioner want to offer a motion?

COMMISSIONER JENSEN: Move approval of the minutes.

COMMISSIONER KAMKAR: Thank you. We have a motion and second. All those in favor, all those against. Okay, that passes unanimously. Got it. Thank you. Okay, next item is item number D, and we have an amendment to that. We have an amended agenda, item number D.

SPEAKER: Yes.

COMMISSIONER KAMKAR: Consider study sessions, dates and/or topics.

SPEAKER: Thank you, Mr. Chair. We appreciate the commission sort of understanding and patience with us. I think over the last few meetings, staff has pushed very hard to try to get a large number of applications through the process into hearing. And what's happened now with the reassignment of projects, we're in a temporary lull, we find. And so for the March 25th Planning Commission hearing, we realize we really only had one project that was noticed and published for that meeting. So we're recommending that you all cancel the March 25th meeting. And then, because of that, that would push the study session schedule out so that then, as noted in item number 2, the BART/mass transit investments study session would be moved to April the 8th, the historic process update would be moved to the April 22nd meeting, and then lastly based on previous discussions, I think at your last meeting we would drop the study session on the convention center expansion and bring that back in the fall, when it was more timely. The only other comment that staff would make, Mr. Chair, is that again, I think over the next couple of months, staff will be looking very diligently at trying to manage agendas, and so it's quite possible that as we go forward, there may be other meetings that would need to be cancelled because there may not be enough, you know, projects to bring forward. But we'll try to be more cognizant of that in advance and let you know in

advance, so that we can keep you apprised. There is the first meeting in May, is a mandatory meeting because of the referral on the capital improvement program. That's a hard and fast date. So there again, chances may be good that we would only have two meetings in May as opposed to three, for instance. So we'll keep you posted in that regard as we go forward. Thank you, Mr. Chair.

COMMISSIONER KAMKAR: Thank you for that report. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Move approval of the staff recommendation to cancel our March 25th meeting which would effectively then push everything else back, including the drop of the study session on the convention center expansion to be rescheduled for the fall of 2009.

COMMISSIONER KAMKAR: Okay, we have a motion and second. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Can I ask staff what the load looks like for the meeting on April 8th, if we were to cancel the March 25th meeting?

SPEAKER: Thank you, Mr. Chair. We don't know definitively at that point. But that is one thing we'll be looking at right away now, so no, I can't tell you unfortunately what there will be.

COMMISSIONER JENSEN: Do you have a feel for how many items would be on the March 25th schedule?

SPEAKER: Just one item.

COMMISSIONER JENSEN: Just the one item.

SPEAKER: That's the reason we are suggesting you cancel that.

COMMISSIONER JENSEN: One reason I asked, last meeting we had ten items on consent and three items on public hearing and we were still here after 11:00 at night. So it seems like maybe a little bit of load balancing would have been helpful, maybe push a few of those to tonight.

SPEAKER: True. But there again, because of the circumstances we were in, we were trying to push projects through while we had staff do that. What's happened because of staff reductions and the reassignment of, say, around 300 projects, there's a little bit of a lull, as project managers get up to speed on their reassigned projects. So this will be a temporary blip probably for the next month or two and we'll work our way through it but right now that's why we say we appreciate your understanding and patience in that regard.

COMMISSIONER JENSEN: Great, thank you.

SPEAKER: Laurel Prevetti: Mr. Chair, let me add that we are very well aware of the commitment that each you make as commissioners, and we know the work that each of you put into visiting sites and reading staff reports. So to the best of our ability we will try and balance the workload in addition to meeting our time goals in terms of meeting our customers' expectations. It is a balancing act and we are well aware of what you did for us earlier this month, last month when we had the very late meeting, so thank you.

COMMISSIONER KAMKAR: Okay, thank you. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. I want to congratulate and thank staff for their dedication to this issue. I understand the issues we are facing with regard to the number of projects that are and aren't going forward. I appreciate the staff efforts here, giving us a heads-up. Let me also indicate and remind the commission that for those of us who are anxious about getting together for some reason on the 25th at 3:00 that tavern California high speed rail authority will be meeting in its first public scoping meeting here in San José at the Roosevelt community center right down the street on Santa Clara. There will be a meeting we can attend if we are so inclined. I appreciate the motion.

COMMISSIONER KAMKAR: That's right, that item will be coming before us ultimately, so we might be able to catch up with some of the background on that. Commissioner Do.

COMMISSIONER DO: Thank you, Mr. Chair. I simply want to say that I also appreciate the changes. I think all the changes make sense. And so -- and I think that we should be also cognizant that the special study sessions also take staff time. So in these times of staff cut back, it's necessary to minimize that. It's probably a good idea. Thank you.

COMMISSIONER KAMKAR: Thank you. And I, also, would like to send my appreciation to staff for that, you know, that helps us out, too, who have to take off from work early to be here. And also, we have a planners, I guess, conference going on, is it in San Diego? Or Anaheim. There's a planners' conference in Anaheim that we can -- so this will enable commissioner who are interested to be able to attend the full day on Wednesday. Okay. With that, we have a motion, we have a second, all those in favor? And all those against? Hearing none, that motion passes unanimously. Also. So, that brings us to the end of our meeting. Motion to adjourn, is there a second? Meeting is adjourned. Thank you.