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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, 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 13, 2010. 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 would like to address the commission, please fill out a Speaker card located on the table by the door on the parking validation table at the back, 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. For example, 4.A, 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 then call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of Chambers. Each speaker will have up to 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 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. 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 has raised at this public hearing or in written correspondence delivered to the city, at, 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. Roll call. Let the record reflect that all Planning Commissioners are here with the exception of vice chair Cahan and Commissioner Platten. 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 would like 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 the remaining agenda items past 11:00 p.m., to continue this

hearing to a later date, or to 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.

>> Staff has no recommended deferrals. However I do understand that there is a speaker card.

>> Commissioner Jensen: Thank you staff. We have a speaker card and I'd like to call you forward. Charnel James and this is for the request for deferral of item 3C and if you would like to speak to the matter of deferral.

>> My name is Charnel James and I'm a senior planner with NSA wireless. For this matter I represent clear wire. We were notified today by PG&E that there maybe an issue with the tower and so we are requesting a deferral at this time to determine whether or not we are going to withdraw our application.

>> Commissioner Jensen: Thank you. We have a number of other speaker cards on this item, and I'd like to let you know that we are speaking on the matter of deferring this item only, not listening to discussion on the item. But if you would like to speak to the matter of deferral, we would be happy to hear from you at this time. Okay. Motion to close public hearing? Thank you. Staff. No. Okay. So commission, we now are going to have a discussion, and I'd like to note that Commissioner Platten has joined us. A discussion on the matter of deferral of this item. Commissioner Kline. Thank you.

>> Commissioner Kline: Just like to move to defer item 3C.

>> Second.

>> Commissioner Jensen: There is a motion and a second to defer this item. Is there any discussion on this? Okay.

>> We need a date specific.

>> Commissioner Jensen: Okay. And do you have a date Commissioner Kline that you would like to defer this to?

>> Commissioner Kline: No more than two months out. It really is up to the applicant.

>> How about the next meeting?

>> Commissioner Jensen: Yeah.

>> It sounds as though I think -- and the applicant can speak to it.

>> Commissioner Kline: Applicant is okay with two weeks? Okay.

>> Commissioner Jensen: There is a motion to defer this item to Wednesday, October 27th. All those in favor? Opposed? Abstain? And that passes unanimously. This item has been deferred. Thank you.

>> If I can say something, we will get the speaker cards and if, for whatever reason, we find this application is withdrawn prior to that hearing we'll let the people know who came to speak that had an interest in it.

>> Commissioner Jensen: Thank you. So item 3C has been deferred, and at the earliest it would be heard October 27th. It may be removed. And if so, staff will let you know if you've submitted a speaker card. So you're welcome to join us for rest of the even, but if not, you're welcome to leave, as well. Consent calendar. 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. The only item on consent is 2.A, CP10-045. Conditional use permit to convert 12,880 square feet of existing

office space to church use on a .729 gross acre site in the CO commercial office zoning District on the north side of Moorpark avenue. Staff?

>> No additions to the consent calendar item.

>> Commissioner Jensen: And ideologic we have any speaker cards. Commissioner Platten.

>> Commissioner Platten: Move approval of consent calendar.

>> Second.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion? No. There's a motion and second. Is there any discussion? Seeing none may we vote by light? And that item passes unanimously with Commissioner Cahan absent. 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. 3A. Bicycle and clean air vehicle parking ordinance. Staff.

>> Laurel Prevetti: Thank you, Madam Chair. The item before you are modifications to our municipal code to essentially add additional bicycle parking requirements, as well as clean air vehicle parking requirements. This is an augmentation that is being motivated from new building codes called Cal green which is really creating state standards to encourage as much green building as possible. And what we're finding is that as the council gets ready to adopt these new codes that we need to align our zoning code so that way there's a consistent message to the development community about how we are going to be implementing. So with that, staff is very pleased to bring this forward. And we do look forward to working with the development community in terms of being able to meet these hire bicycle standards. We do recognize that Cal Green created an option to reduce bicycle parking, as vehicle parking is reduced. However, San José's going to take a slightly different tack on that. Because as

vehicle parking might be reduced we still want to ensure appropriate bicycle parking. And with that I'm available to answer any questions that you might have. Thank you.

>> Commissioner Jensen: Thank you staff. Does the commission have any questions? Commissioner Abelite.

>> Commissioner Abelite: Yes, I have a couple of questions of staff. I just have an overall question. This is a state Cal green piece of legislation that was enacted about a year ago, and we want to comply by 2011 January. What if we don't agree with -- what if we choose not to adopt this or portions of it? Or carve out let's say carve out small pieces?

>> Laurel Prevetti: Well, that's a possibility. However, San José has been a leader in terms of environmental sustainability issues. And in fact when we first saw the passage of this new building code, we were a little bit concerned, because we didn't know how it related to our existing green building policy and ordinance. And now that we've done the analysis we find that it 23rd complements San José's leadership. So we're not proposing any modifications at this time to our ordinances, or our policy. We have heard from the development community that they were hoping we would loosen some of it. But we're not proposing that at this particular time. It's my understanding that we, if we want to make some slight adjustments, we can do that to handle local conditions. But we can't choose to not implement large sections of there.

>> Commissioner Abelite: Right.

>> Laurel Prevetti: So we need to be consistent with state law. This is something that is being implemented statewide. The good news there, that means all cities and counties are playing by the same rule book which should make it easier for our communities and homeowners as they work statewide.

>> Commissioner Abelite: Sorry, I'm still speaking. I have some follow-on questions. One of them is the park table for the clean air vehicles. I'm trying to understand why it even needs to exist. Are we creating extra parking

stalls for clean air vehicles, or are we just locating them and designating them, and if we are, are we supposed to provide facilities to, let's say, recharge those vehicles, or is this merely an identification tool?

>> Laurel Prevetti: This is identifying that we will have parking available for a clean air vehicle. We aren't going so far as to prescribe electrical charge-in, et cetera. What we're finding is that as the plug-in product is coming out onto the market that developers and homeowners are on their own requesting that kind of electrical upgrade to be able to handle it. So we're really just making sure that we've accommodated it in our codes and we're clear about wanting to make sure we've got those parking spaces available for those types of vehicles.

>> Commissioner Abelite: And I'm not trying to be argumentive, but the parking spaces already exist through our parking codes and guidelines for number of parking stalls. And whether it's a clean air vehicle or not, I would think doesn't matter really, so I'm trying to -- I really don't understand why this is in here.

>> Laurel Prevetti: It is intended to motivate and help the market embrace clean air vehicles. Again by providing park it could be an unbundled resource that a developer might want to charge a little bit extra for. So it's a way to create more incentive and more recognition that as clean air vehicles come onto the market that we are in fact accommodating them explicitly.

>> Commissioner Abelite: Okay. Then I have a series of questions to do with your 20-190 table. I'll refer you to some of those as we go. So there's going to be a couple of questions. You've come up with park ratios for bicycle parking. I can see typically it's 1 per ten employees but then you also have 1 per X-thousand square feet of floor space or whatever, but I've got a few of them where I'm just trying to find out where staff got their thinking on some of these things. And I'll point out let's say the third page where it talks about a driving range, so we're talking about a golf course driving range and you have a bicycle parking requirement of one per ten full time employees. That's fine. But what I'm wondering is why you have one parking requirement for every ten tees? And the reason I'm thinking that is, is somebody on a bicycle going to be carrying a golf bag to the driving range? And I have a couple of questions like that throughout this document in that regard. So does anybody, does any staff here know --

>> I can answer. I mean you might assume that everybody drives a car to a golf course but in fact there are a number of people who ride their bikes. Because there is the ability to borrow a club, rent clubs or things like that or they're meeting up with somebody who they use their clubs. On the surface it appears to be odd but you also get a lot of you know younger golfers who actually get to the course that way. So it's -- you know, it's encouraging them. You know, there are some golf coalesce where you can store your clubs, things like that. So hence, why bicycle parking is also encouraged at recreation facilities.

>> Commissioner Abelite: Yeah, and I'm all for that. I just -- you know, one per ten tees, so that would create a requirement maybe let's say another 5 stalls. And what I'm really worried about is are these secured parking stalls? Because there's a ratio I think at times between short term parking and long term stalls, and the long term ones get expensive to implement and is anybody really going to use them? That's the basis of my question and the golf course one right below it is the same sort of thing. And then I'm going to flip forward a couple of pages like, you're also talking about a relocated card room. So you know, there's some ratios on there on card room floor areas. Flipping forward two or three pages there's also like a plant nursery requirement. So for every 3,000 square feet of plant nursery floor area, there's a requirement as well. And also, for retail sales of furniture. So these, I'm just trying to get my mind wrapped around how we came up with park ratios for those things beyond one for every ten employees. So for instance, retail sales of furniture.

>> Laurel Prevetti: Well, again, and I'll start, and staff will probably augment what I have to say. As we're going through kind of taking a bigger picture look at how we're hoping San José residents and business owners be more comfortable on a bicycle we're recognizing that we need to be more specific about these bicycle requirements. So it maybe true that today when someone checks out a new bed or dresser for their home, that they drive with a family member to a location to look at something. But in the future, we also know in practice now some people will want to say all I want to do is look at that piece of furniture. I have no intention of buying it. If I do they have a delivery service. So it's really acknowledging that as San José becomes more bicycle-friendly, we need to make sure that every use essentially has some kind of provision for bicycles for the consumer, and not just for the employee. So you're right. It may not be today. But we figured if we're going into the bicycle parking portion of the

Muni code which we really haven't touched for years, let's be thoughtful about what might make sense. And we may find that as we use these, that additional modifications are needed. But staff's idea was, let's just be clear. The other thing we noticed is that when you just have kind of a catch all requirement, that sometimes it gets overlooked. And so by actually having it enumerated with the use it will be easier for -- it will make the zoning code a little bit more user-friendly. So that way developers know up front what is expected.

>> Commissioner Abelite: Okay. No more questions.

>> Commissioner Jensen: Thank you. All right. Staff, I also have a question. On page 2, the analysis, staff report states that while Cal green's mandatory green building provisions address all new residential buildings that are three stories or fewer, the City of San José requires all new residential development that consists of ten units or more to obtain third party certification. Can you help clarify what that means?

>> Laurel Prevetti: Okay. Thank you for that, I apologize if this was shorthand and didn't really make it clear to the commission. Essentially, Cal green applies to all residential construction that is three stories or fewer. So it's -- and it's new construction. So if you're remodeling your home, these codes don't apply. But if you're building a new house or a subdivision, then these codes do apply. In addition, if that development is ten units or more, you not only need to meet Cal Green but you also need to meet San José's LEED certification policy. So we just wanted to make that clear, that the two again were in concert, they work together. So if you happen to have a building that's under three stories, but more than ten units, both rules apply.

>> Commissioner Jensen: Great, thank you very much. And on attachment 1, table 20-210, residential multifamily bike requirements. I just want to make sure I understand. It says one bicycle space per four living units. So for every four apartments there's one bike space? Okay. While we're on the discussion of modifying, my suggestion would be actually to increase that. Especially at multifamily where you know especially in a neighborhood like mine, where the vast majority of the multifamily dwelling units have families or college students, and everybody is on a bicycle and right now none of them have any parking spaces.

>> Laurel Prevetti: What would be your recommendation if I could ask?

>> Commissioner Jensen: I would say one per dwelling unit would be -- I think that that would be a good start.

>> Laurel Prevetti: Okay, thank you.

>> Commissioner Jensen: And then I would like to thank staff for doing this, and taking the initiative and bringing this forward, and not just complying with state law. But really helping San José to become bicycle-friendly and push the envelope on this. I have the pleasure of bicycling around the downtown area and out to Japantown and I ride to the bowling alley, and it's really nice, that over the past few years a number of bicycle parking spaces have been appearing. It wasn't very long ago that the only place you could park a bike downtown was at a parking meter. And parking meter people weren't very happy with your bicycles there. And I'm sure the businesses weren't very happy with the sidewalks being all clogged up like that. Bicycle parking on the paseo de San Antonio near the camera cinema, Starbucks a gym and yoga studio are frequently overfilled, and cyclists are continuing to lock their bikes to garbage cans, street signs, and other freestanding items not intended to secure the bicycles. And it is I think very encouraging and exciting to see that the two large racks that are there on the paseo are always full. And I'm sure that as we move forward, that we will put more racks out there. And I'd like to speak to the issue of biking to unusual places. When I was growing up, I lived in a surfing community. And the surfers there all had bike racks, or bicycle trailers. And drug their surf boards down the street for sometimes 15 miles to get to the beach and go surfing, and then drug it another 15 miles to get back. And in Europe, there are numerous bicycles that are being designed with either front loading carriage luggage rack areas that -- they look like large wheelbarrows on the front of a bicycle with a little wheel all their own or they have trailers that they trail along behind them. So I think it's not unusual. As the director indicates, as we become a large city with more and more people living in closer quarters, and increasing our cycling ability, it is likely that people will be interested in being able to cycle to place where they might not be interested in picking up a bed or armoire, I have a very small car I'm not interested in picking up any furniture. I'll get off my soapbox. Commissioner Platten.

>> Commissioner Platten: Yes, I'll move that we recommend this.

>> Second it.

>> Commissioner Jensen: Would you like to speak to your motion?

>> Commissioner Platten: I think you've said enough.

>> Commissioner Jensen: I will take that as a compliment, Commissioner Platten. Thank you, may we vote by light. Commissioner Kline.

>> Commissioner Kline: It is unclear that your recommendation was part of that motion or not.

>> Commissioner Jensen: Yes, my recommendation is part of that motion. I hope, is it? Okay, thank you. May we vote by light? And that motion passes unanimously. With Commissioner Cahan absent. Item 3B. CP10-015. Wireless conditional use permit for the ten foot extension of an existing PG&E tower to install three panel antennae and three microwave dishes with associated equipment cabinet on a .67 gross acre site in the R-1-5 single family residential zoning district located on the Northeast corner of Meridian avenue and Oakglen. Staff.

>> Thank you. As you stated this is a conditional use permit, application for a wireless communication antenna with a 6'6" extension with an antenna mounted on that extension. At this time, staff is recommending that the commission deny the request solely based on the fact that it violates the R-1-5 height limitation of 35 feet. And as we put forth in the staff report, on page 4, really, you know because this is proposing an extension on top of the tower, that violates the height regulation, it also doesn't qualify as a building-mounted because you're putting that extension onto the existing tower. It also doesn't meet the definition of slim line, and again, for those reasons, we cannot recommend approval of it. There are alternatives to this. Such that should they find a location, either on this tower or one of the other towers, within the corridor, and mounted on the existing structure, that it could go through -- it could qualify as building-mounted and be a true -- approved through an administrative

process. Again, unfortunately, because of the violation of the height regulation, we're not able to recommend approval of this. That concludes staff report.

>> Commissioner Jensen: Thank you, staff. And we have several speaker cards. Ms. James, I assume you're here to speak. So you're speaking on behalf of the applicant and you may have up to five minutes to speak and if you would introduce yourself as you come forward.

>> Hello again my name is Charnell James with NSA wireless and I represent clear wire. I did submit a letter to you for your guys' review based on clear wire's position. While it is true that there are exclusions in the code for their definitions of what makes a building mounted structure, which would allow addition of height under the Municipal Code, the general plan also takes into consideration what can be done when you have a discretionary permit. Which you guys have the discretionary ability to make a finding outside of what that definition of building-mounted. And what they're referring to is exactly that. It is a definition. The code itself only addresses in residential that they should be on top of PG&E towers, the wireless site should be on PG&E towers and that they should be 20 feet away from residential properties. Which we've accomplished. The other problem here is that this, by recommending denial of this site it is an actual interference with clearwire's federal right of placing cell sites according to the federal telecommunications act. It winds up being an actual denial because we cannot use the adjacent towers based on line of sight. And I explained a little bit more in the letter about the back hall. I do have engineers to speak to you guys about that during the question section, you can ask them more directly how that works for clearwire which is different than other wireless sites. The other point that I wanted to bring out that actually wasn't in my letter but when I was further going through the 2040 general plan is this parcel is actually being slated to go to open space with the adjacent parcel to the north. And so by -- it seems arbitrary to deny a co-location, which is the exact point of the general plan when it comes to wireless sites, on a site simply because a PG&E easement area is currently rated for residential, when it's clear that there's not going to be any residential development on that parcel nor to the north of it. Finally I'm going to save the rest of my time for rebuttal to address issues that the public might have but I would like to also bring up again in your packet the state law that allows for co-location. In which the state had determined and I actually worked on this ordinance with senator Cohen, and the whole idea of that ordinance was to allow co-locations such as this to be done in a

timely fashion, so that the consumers, which would be the residents in this area, would be able to have access to this service. Clearwire's providing a WIMAX Internet service which is going to be compatible or comparable to other wireless Internet providers in the area which maybe more financially efficient for a family or might be able to be faster for someone. And by denying their ability to be there denies their rights not only under the California code but also under the federal code. I'd like you to take that into consideration. I'll save the rest of my time for rebuttal.

>> Commissioner Jensen: You will have up to five minutes after the public speaks.

>> Right, I just want to make sure there's time available for that.

>> Commissioner Jensen: I believe we have questions for you now. Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. So you're making your supremacy argument here with respect to the telecommunications act.

>> Yes, I am.

>> Commissioner Platten: I'm not familiar with the T-Mobile case and didn't have the opportunity to read it before tonight. Can you summarize that case for me?

>> That case was a city in Washington, had -- T-Mobile had proposed an installation within the City of and I'm going to say the city wrong, Anacortes is what the city is. And that case they had tried numerous different alternatives because it is in an area where there actually were alternatives. And did everything through the Planning Commission, denied the site, city council denied the site. It went to court, the ninth circuit decided and the Supreme Court held on Satori, I don't think they've actually heard arguments but they're denying any appeals at this point. They said that once a carrier has shown that they have a significant gap, and that this is the least intrusive means of meeting that gap, then the burden shifts to the local jurisdiction, to prove that there is a

leasable property, and by leasable meaning that it is actually an affordable leasable property and that is technically feasible for that provider. Which they can't just say oh, you can use another tower and then that's enough to deny it. They actually have to show that based on our technology that that other site would be able to do it. The burden completely shifts at that point.

>> Commissioner Platten: Do you have a copy of that case to you?

>> I believe I do. If not I can e-mail it to you.

>> Commissioner Platten: If you have one tonight, I would like to look the it before we vote. And let me just indicate to your experts that I would expect that they're going to address the issue of significant gap and least intrusive means.

>> My expert can address that, that is correct. Let me -- No, I didn't bring the case with me.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. My question was do you represent AT&T or is this more than just, you know, cell phone service we're talking about? As I was reading the documents.

>> I actually remit clearwire for this installation.

>> Commissioner Kamkar: Okay. And do the antennas go with AT&T, as a carrier or is it for all?

>> Actually the WIMAX is for wireless Internet, not for cell phone use. So it will provide wireless Internet. I do know that -- again my engineers willing speak to this more directly, I have sprint, and I know sprint can access it. What it is, is a subscription to clearwire service, just like a subscription to Comcast or AT&T.

>> Commissioner Kamkar: Got it. So it would help other cell phone carriers too if they choose to subscribe to it?

>> I bleach they would have to subscribe to it for their clients, yeah.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Commissioner Abelite.

>> Commissioner Abelite: Thank you. Actually to follow up on what Commissioner Kamkar was saying I think what you're doing is you're actually trying to create a wireless network within the city at ground level and very little to do with the telecommunications business, cell phones, right?

>> That is correct. Clearwire is still considered a -- because there's really no classification for wireless Internet provider, we are classed in the same group as wireless telecommunications providers.

>> Commissioner Abelite: Right, but you're really trying to create a footprint across the whole city to make the whole city wireless?

>> We do, and we almost have the entire city wired to be honest. I have very few sites left. This is looking like it's going to be an incredibly strong network for San José for the residents of San José to be able to provide an option for them. U in the residential areas such as this, we don't have a lot of options. But that's going to be one of the greatest places that this is going to be used is in the residential areas.

>> Commissioner Abelite: And so I want to ask you or your engineers a little bit about the coverage, or is this appropriate now or later on? Well, actually let's talk about it now. So it seems to me since it's a wireless network you have actually two components. You have dishes that have to ping back and forth with other towers throughout the entire area network, the city, right?

>> That is correct.

>> Commissioner Abelite: Because they have to give feedback at what's going on at the local level to make that work.

>> That's correct.

>> Commissioner Abelite: So you've got that dish, and you have got a separate set of antennas that are actually like pointing, I don't want to say down, but they're really hitting the homes, right?

>> They create the net.

>> Commissioner Abelite: They create the net over the homes, right?

>> That's the best way to describe it.

>> Commissioner Abelite: So I think the sensitivity of this application is all about height.

>> It is about height. The biggest concern is the majority of our hub sites, and I think I addressed this in the letter, are on the big tall buildings down here in Downtown San José so you have and I'll have our guys come down here to address this more fully. But you have the major hub sites and you have to be able to have line of sight with the dishes for the hub sites. Without it, we might be able to show that yeah, if there was signal to it we might be able to put the panel antennas lower but without that microwave dish there is no service at that site.

>> Commissioner Abelite: Right.

>> And that's the critical part of it.

>> Commissioner Abelite: And given you have three arms of supporting PG&E supporters and conductors you you're either at 60 feet or you're north of it, above it.

>> And significant others because there are other carriers here.

>> Commissioner Abelite: And line of sight. I also want to know, I assume, if you go to 110 or 116 feet the frequency of required nodes is greatly diminished as opposed to being at 60 feet?

>> Actually, which one of you can address this?

>> Commissioner Jensen: Commissioner Abelite, can I ask you have your questions been answered?

>> Commissioner Abelite: Not necessarily but -- or we could -- may I ask why or are you trying to close --

>> Commissioner Jensen: I'm trying to find out if your questions have been answered.

>> Commissioner Abelite: No, I just asked the question about I want to know what the height and signal differential is versus 15 feet versus 60 feet.

>> Good evening, Planning Commission, I'm Stephen Lee, the RF engineer for this site. You know, just imagine if the antenna is radiating outwards, and if you place your antenna at a higher height, when it radiates outward it will create a larger coverage area where I suppose if you're at a larger radio center 60 feet as opposed to 115 then it wouldn't cover as much area and your signal will obviously, you know, die in a sense, die faster.

>> Commissioner Abelite: I get that but I'm trying to figure out, by going up taller are we getting rid of let's say -- let's say out of every 10 potential antennas you can knock down eight of them and just have two antennas at 110 feet? Right? There's got to be a big difference.

>> There's a huge coverage difference. Actually the maps that Stephen prepared for you guys in the packet it shows on the very first page of this packet it shows the site where our site is located. And this site is actually called CA-SJC 0200 so it's located right here in the middle. Now, this is what the projected coverage is, if all of -- and it's called back haul, the dishes are called back haul. So if he's got his line of sight and all the sites have it this is our loves signal. We have none in this area. There is absolutely nothing out there except for PG&E towers to provide that service. Do you want to go ahead and talk about the two different ones.

>> Yes, so let's on the second page it actually shows our proposed coverage.

>> Commissioner Jensen: I'm sorry, we're not -- can you address the question that was asked specifically?

>> We're trying to address it.

>> So basically what this site you see the proposed coverage and it's propagated at a certain height. Let's say 110 feet. If I ran a propagation to it a height of 60 feet this coverage area would shrink which would mean I would need another location, more antennas so to answer your question, it would increase, bigger service area.

>> Commissioner Abelite: I'm good.

>> Commissioner Jensen: We have no further questions for you. I'm going to call the speaker cards. Vince Piazzi, Arthur Gilmore and Jean La marka. If you would come and line up and introduce yourselves as you come forward, you may have up to two minutes to speak on this item.

>> Good evening. My name is Vince Diazizzi, and I have lived on Oakland way for 34 years. I'm also a member of the Oakland neighborhood association. And most of our members live pretty much across the street from that site. It's pretty much like that site is like a -- if you had a house across the street from your house that's where it is, that's how close it is. Very residential neighborhood. And so it does affect us. My speech will be a little short. I have read and I reviewed the conditional use permit. And I totally agree with the Planning Commission recommendation to deny the conditional use permit. CP 10-015. And I thank you.

>> Commissioner Jensen: Thank you, Mr. Piazzizi and my apologies for bung lick your name. Mr. Gilmore.

>> Okay, good evening commissioner. My name is Arthur Gilmore. On that map there I'm the fourth square so my house is right across from that site. I am also a member of the Oakland neighborhood association. And I reviewed the CP10015 conditional use permit. And I agree with the Planning Commission recommendation to deny the conditional use permit based upon the height. I also have to tell you, that that site has turned into a mini central office. There are numerous vehicles on the street almost every week. They continually do work on the site, it disrupts the neighborhood. Lots of times they work on the antennas late at night or through the night. And it's just basically a disruption of the neighborhood. That was a residential neighborhood. So in conclusion, I agree with the staff recommendation, to deny the permit.

>> Commissioner Jensen: Thank you, Mr. Gilmore and we have a question for you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. You explained part of question that I want answers to. What exactly is your issue with the case? Sit sight issues? You don't like to see something so high up? Or are you worried about, I don't know, rays, or what is your exact issue?

>> The exact issue is that is a residential neighborhood, and they first put in the first T-Mobile site, okay, and I was down here, and we objected to that. In that case, we were not given notification. Then the second site went in and they put another pad in and that's the AT&T site. Okay? So you've got to stop this. When we moved there,

you know, we have a park. And it was -- that was not our understanding. So those two sites are there. And we just want to stop it.

>> Commissioner Kamkar: You know, I understand that. It's just that the reason they put this in is for -- to gives, you know, security and to give connectivity. So there is a positive point as to putting these things, too. I mean how does it disrupt your life, though, that's what I'm trying to understand? How do them installing these antennas interferes with your enjoyment of your home?

>> Well, if they just put the equipment in and installed the antennas, and that would be it, there is no problem.

>> Commissioner Kamkar: Okay.

>> But they're constantly, there is constant construction trucks out there. The street is very narrow. You fear for an accident there. As you can tell the need for wireless, and cell service, is just off the charts. They keep on adding and adding and adding. So after you have to say enough is enough. Put it someplace else. There are other sites, there is a Verizon site on the other side of Macabee road which seems to be, and that is more out in the field. There are more PG&E towers to the north that are out in the field and are not by homes and we ask that maybe they consider those sites, too.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Thank you month Gilmore.

>> Thank you.

>> Commissioner Jensen: Ms. La marka, and if you would introduce yourself, and you have up to two minutes.

>> Good evening, my name is Jean La marka and I've been a resident on Oakland way since 1976. I'm here today as a representative of the Oakland neighborhood association who are in total agreement with staff recommendation to deny the conditional use permit for the ten foot extension on the existing PG&E tower to install the three panel antennae and the three microwave dishes that are on that border, Meridian and Oakland way. As a resident and a long term resident, we have seen transition. They have -- many things have happened in the park. The city has done a wonderful job of making that a pristine park, the T.J. Martin park. Now we look across the street and on that corner we see cell pads. When is this going to stop? As far as aesthetic value, it is damaging our neighborhoods. As far as property values, it does damage our property values. So we're having profit-making corporations come into our city, and it's not right. You know, that they now have more rights than we do in the neighborhood, we're paying taxes. We would like to maintain our neighborhood. We'd like to maintain the safety in our neighborhoods. We're concerned about who's hiding behind those cell pads, you know. In the evening. So -- and the street is very, very narrow. It's not real wide. And so when you have service vehicles in there, it is a safety hazard, too. But we don't want to look outside our doors and see nor wireless equipment. That's bottom line. We're those blocks right there and it's directly affecting us. So we highly recommend that the Planning Commission deny this permit to allow the wireless company to come in and to put in more equipment. And I thank you for your time.

>> Commissioner Jensen: Thank you, Ms. La marka. Ms. James you may come back and you may have up to five minutes to respond.

>> The first issue I want to address as far as the traffic at the site. I've been work in the wireless industry for almost ten years. I can tell you that it has never been as busy as it has been in the last 24 months. We, every carrier is upgrading antennas, make smaller antennas, providing greater range of service, the more technical your phones get, the more broadband we need, to provide service for you guys. So on a general wireless industry, I can see where they would say that there's sometimes a lot of traffic at a site, especially one that has multiple carriers. One of the great differences between clearwire and other carriers is we don't provide PCS service. It is strictly a wireless Internet service. Once the dishes are in place they provide everything that that system needs to work. Regular telephone -- PCS services are based on telephone lines so they have to upgrade fiber or they have

to upgrade lines or they have to switch out antennas or change radios that are different. There is a lot more involved with a PCS provider, especially as the uses expand. Once these sites are in place, it's anticipated that they would only be out there for maintenance. Which could be once a month, it could be once a quarter, it could be once a year. It's entirely based on how those dishes are communicating one to another. If those dishes are where they are supposed to be and they are hitting their line of sight there is no maintenance issues at these sites. There is a single radio cabinet that talks between the dishes, and the panel antennas. So there's not as much equipment as you would normally find in another PCS site. In addition, clearwire uses the space that's already there. We're actually co-locating our cabinets with the T-Mobile cabinets. Inside their compound. So we're not even adding any space outside of what is already there, with the exception of the antennas on top of the tower. They talked about not bringing, affecting their residential areas. 60% of the American population right now uses cell phones. 60%. Of those 60%, 25% of those don't have any land lines at all. The only thing they have are their wireless phones. As wireless Internet becomes more readily available, I anticipate that that number is going to go even higher. Because if your laptop is designed to pick up a wireless Internet and you have access to like a clearwire program you can get your wireless Internet whether you're in your bedroom or your living room or at work or at the coffee shop down the street, no matter where you're at. That's the whole purpose of a wireless Internet is to be able to provide that service to the residents. And it has to be available for their homes and it has to be available in commercial areas. We could put in 15 or 20 sites, put the antennas down lower, find ways to rig the dishes. But then that goes completely against what your guys' general plan is set up to do which is to minimize the number of sites that are out there and it also defeats what we're trying to do because we want to be able to make this cost-effective for clients. The only way to do that is to co-locate with existing carriers. They also talked about property values. That's a touchy issue. We don't usually talk about it that much, because the courts, while not coming down with a direct ruling, have stated that people claiming that property values are affected are in effect actually saying it's because of the radio frequencies and of course we're all limited of not being able to talk to that except for the fact that these sites operate well below the FCC regulations. So while I can't really talk about it that much I can tell you that if I'm going to go buy a house in the neighborhood I want to know that my cell phone works. I want to know that if my 17-year-old wrecks his car and calls me at 2:00 in the morning I'm going to get that call. You know, I'm going to want to know that I can use my wireless Internet from my house so I can be there when my 13-year-old daughter comes home from school and work from home. Those are the kind of things

that people who are buying houses are looking for. They're looking for the availability of their technical gadgets. This is what we're trying to provide for them. In the least intrusive way that we can. It's not really -- they talk about being a profit based corporation coming into your neighborhood. In reality, yes. All wireless carriers make a profit.

>> Commissioner Jensen: Thank you, Ms. James, your time is up. However --

>> That was the reserved?

>> Commissioner Jensen: No, we don't carry over time. You have time at the beginning and time at the end. Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chair. Mrs. James, I am going to assume for a second that the telecommunications act applies in the way that you have described it from the T-Mobile case. Tell me why the alternative offered in staff's report for a building mounted wireless antenna wouldn't suffice in this case?

>> For a building -- there are no buildings in this area that are high enough.

>> Commissioner Platten: But staff is recommending that that be done as an alternative as opposed to another antenna that's there now.

>> Oh, by going to another antenna at a lower elevation? We wouldn't have line of sight. These sites are communicating directly with downtown. So without that ability to have that line of sight to communicate with the hub system, there is no network.

>> Commissioner Platten: So the efficiency that you want to reach would not be available?

>> Would not be available.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Platten. Commissioner Abelite.

>> Commissioner Abelite: So I have a question. One of reasons you co-locate or maybe can you affirm to me when you want to co-locate one of the benefits is they probably have a T-1 or better pipeline into that location?

>> We actually don't use T-1s. Yes, but generally, that's why that one, and the fact that power is actually brought to the site, so there's less interference with neighborhood streets and things like that coring out new power.

>> Commissioner Abelite: Okay, and then knowing that the wireless, this is actually wireless technology not phone technology, would you, having gone through this application process would you characterize the city of San José's policy as it relates to wireless technology, is the policy thoughtful in that regard for wireless, or not, or it didn't anticipate it?

>> I think that generally, the San José code works well for all wireless providers. I think that there are some issues when it comes to residential, that there wasn't more further thought taken into consideration, of Senate Bill 1627, which is now part of the government code. I also don't think they take into consideration just the high use of wireless technology in residential areas. Which really limits our ability to provide that service there. So I think that that's where -- I've worked on a number of wireless codes in different jurisdictions. If I was going to come in and advise the jurisdiction, as a consultant, I would say look at that.

>> Commissioner Abelite: Thank you.

>> You're welcome.

>> Commissioner Jensen: Thank you, Commissioner Abelite. Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you, Madam Chair. I have a question to ask you about the current tower. Let's say if the current tower did not exist, and you had this proposal before you from your company, where else would you go?

>> If the PG&E tower line didn't exist there?

>> Commissioner Bitbadal: That particular one, yes.

>> Difficult question. We would have difficulty providing service in this area.

>> Commissioner Jensen: Does that answer your question?

>> To answer your question more specifically, there is nothing that can take the place of this tower. Even if you get on an adjacent tower you're probably looking at an even higher height in order to compensate the angle difference you would have to do on the dishes to get line of sight. So it doesn't become the least intrusive means. It becomes more intrusive, it becomes more prominent, where co-locating with other sites tend to blend in with other sites.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. What is the radius of coverage, assuming because if I'm not mistaken, in the adjacent tower, is less than would probably 500 feet away would you say?

>> I'm not sure what the tower distance are but I think they're more than 500 feet distance in this area. They're a little bit further than that. The search ring itself is less than a quarter mile on most of these sites. The coverage, we can't be too close to another site, because then we have --

>> Commissioner Kamkar: Echo coverage?

>> Yeah, it echoes -- it doesn't really echo, but it interferes with the other site. If you have it too far away, you don't have communication. As you can see in the propagation maps, once we turn this system on in December, we will be in front of you probably for other sites to fill in the gap coverage that we have.

>> Commissioner Kamkar: Okay. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. I also have a few questions. When you talk about line of sight you're talking about the angle in which the towers themselves and your dishes are pointing at each other?

>> The dishes themselves, specifically, uh-huh.

>> Commissioner Jensen: And you have dishes downtown that are pointing in this general direction, so to go off Commissioner Bitbadal's question, if there were no other, if that tower -- if that tower, if that area weren't there, would it be possible to reconfiguration the towers you have in the downtown area in order to point to an alternative site that was available?

>> You want to address this? No. The simple answer is no and I'll have him explain to you why that won't work.

>> Chairman, are you referring to the coverage or the microwave or --

>> Commissioner Jensen: No, the line of sight specifically.

>> For the line of sight, actually, they need to be lined for the microwave dish, to be connected to some other site in the downtown. So there need to be no obstructions in between. Plainly to take the signal from the site in downtown, to the site in this area.

>> Commissioner Jensen: And if this tower were not available, this particular site were not available, and there were another site, 500 feet away, a thousand feet away in some other configuration and you were to try and locate there, would you need to alter the configuration of your downtown satellite dishes in order to point --

>> No, we cannot, it is not the satellite dish, it would be --

>> Commissioner Jensen: My apologies for using if wrong nomenclature.

>> It would be one more dish in the downtown but we cannot reconfigure that. Suppose we have one in that area, that means we need to maybe we will go and apply for a new -- new pole or something, new monopole or something, that we'll build in the area to get the required height. Maybe we use to are proposing on the site.

>> Commissioner Jensen: And it would be required to be at this specific location, this exact spot?

>> The specific location.

>> Commissioner Jensen: And if there were already a house or a building at this specific location or some use there that couldn't have a tower, then this community could never have wireless?

>> Specific location means it all depends upon the coverage. Suppose it moves from one location to another location then the coverage deepen.

>> What is having is you would have -- can I approach so I can show her something?

>> Commissioner Jensen: Give it to the technician and he can put it on an overhead.

>> Okay. So on your screen, you have what's called the line of sight shot. So this one --

>> Commissioner Jensen: You need to be at the microphone in order to speak, so that we're taping this and we have a TV audience that is relying on your every word.

>> Can one of you be my pointer? I wish I had a pointer. So the way the line of sight works, if you change the alteration or the azimuth of the dish at the hub, you wind up altering not just this site, you alter another. So you can see in the very top as you're looking at the top right-hand corner how one dish is shooting at two different sites. See how that's done?

>> Commissioner Jensen: Uh-huh. You're talking about the black lines going to the green dot.

>> The line of sight. So if we alter it for one site it throws it off for the other. You also have the problem that if we turn it too much you have interference with downtown buildings, you have interference with the airport if it's within that area. You have interference with you know vegetation. The downtown hub was designed specifically taking into consideration what was everything around. Now if specifically --

>> Commissioner Jensen: Can I ask -- now that we have this is a beautiful diagram thank you very much so now that we have the line of sight diagram and I assume the green dots on the upper street which I can't read the street name but I assume that upper green dot is in fact the proposed location?

>> Right.

>> Commissioner Jensen: So there are -- this is a fairly long line extending out of downtown. Are there other locations along this line, or even extending out beyond that line that would be adequate?

>> If we go further this way, as you're looking at it, you wind up then losing the coverage and the communication net that you're trying to do close to it. If you look on the propagation maps that we gave you, you can see that there are other sites that we're also try to work in conjunction with. So not only do we have the hub sites that have

line of sight to each other. You have the individual sites that they're signal crosses like this to cover, make a net. So that it's complete coverage. Eventually, eventually we'd like to see very little green on these maps. So as you move the site more this way, which would be that way as you're look at it, you might cover some of this that we're missing that we haven't been able to find a candidate for. But then you lose this. So it's trading one for the other.

>> Commissioner Jensen: So it sounds like there is an alternative?

>> No, there is no alternative that works for this site.

>> Commissioner Jensen: We're not -- I'm not asking you about this specific site as the only location, I'm asking you if there are other --

>> The federal telecommunications act are site specific. They are not as a network as a whole they are site specific.

>> Commissioner Jensen: I'm asking you if there are -- one of the questions that came up from the audience is, is it possible to locate in another location and achieve the same result?

>> No, we would not get the same results.

>> Commissioner Jensen: And by same result, you're referring specifically to the green area shown on your map with site CACJSJC0200?

>> That's correct, that is our coverage objective.

>> Commissioner Jensen: Okay. And if you were to comply with the staff recommendation with respect to height, what would that mean in terms of having to -- if I heard you correctly, you indicated you would have to add another location.

>> We would still have to have the height for the dishes. In order to have line of sight.

>> Commissioner Jensen: So you can't go any lower than the item which is noncompliant with city regulations?

>> It's not -- it's compliant with the general plan which is also taking into consideration in part of your discretionary review.

>> Commissioner Jensen: Okay, thank you. I have no further questions. We have a question from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I just wanted to you know, make a disclosure. I live in this neighborhood. I'm very familiar with the topography. Play soccer under those towers. So you know, having said that, looking at the map we just put on, it seems like you're not looking for directly line of sight from this site to downtown, because there's a hill in front of you. You're trying to go East, to catch another tower, from there you go South, catch something up on the mountains, and then direct line of sight to downtown. Is that correct?

>> Yeah, we're feeding all of it together to create the net. Each one of the sites connect together.

>> Commissioner Kamkar: Right. So if that's the case then I can't buy your argument. You don't need line of sight to downtown. Could you just use a nearby tower, get the same line of sight to the tower trying to get to you know --

>> It's still line of sight. You're thinking in terms -- it's still line of sight because we're still connecting dish to dish to the hub. That's still line of sight. We are and then what happens like in that triangle area, that's where you get the

coverage from the antennas for the individual use. So you still have line of sight. So that isn't changed. The hub center is downtown. So we have to be able to get from that hub center out to each one of the sites. Sometimes it does require more than one connection.

>> Commissioner Kamkar: Right.

>> But by doing -- by doing what you're suggesting and moving to a different --

>> Commissioner Kamkar: Going West.

>> There isn't another line that intersects it.

>> Commissioner Kamkar: You know right where this tower is it's at the intersection of Oakland and Meridian. You cross over Meridian. And you go another 400 feet, and there isn't -- I know it's 500 feet, because I know how big a soccer field is, and you know you cannot fit two soccer fields between these two towers you know and that's 600 feet that's why I'm saying you know it's 500 feet.

>> 500 feet, which direction east or west?

>> Commissioner Kamkar: West, it's from this site going West, there is --

>> What happens when you do that, if you move that site more to the West, you lose the coverage objective between 200 and 211 which is what we're trying to catch right now, is 2211 and 200.

>> Commissioner Kamkar: Right and I understand you may not be able to get service to some homes but you are able to give service to a few more homes.

>> Actually it wouldn't be more homes. We would actually lose --

>> Commissioner Kamkar: Because of the double coverage?

>> We would actually lose the homes we're trying to cover so it would lose the coverage objective.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. We have no further questions from the commission. Thank you. Motion to close public hearing?

>> So moved.

>> Commissioner Jensen: Thank you. Staff would you like to follow up on some of this?

>> Thank you. Let me kind of start from the bigger picture of our general plan policies and our wireless communication antenna policy. Years ago, we were in a position of literally granting variances to these sorts of structures or location of structures, and the reality is, we truly were not making the required findings for those variances. So what the city did was, we actually went in and we amended our zoning ordinance to create more definitions for wireless communication towers. We have building-mounted we have slimline, we also have height exceptions to those. So our zoning ordinance really was amended to better implement the general plan policies. And in fact, in our industrial districts, the height regulations are, you know, certain thing or whatever's prescribed in the general plan. But in our residential districts we stick with the 35 feet. However, in the case of building-mounted which means not necessarily on a building, but also on a structure, you can have as of right, building-mounted wireless communication antenna and not have to go through a use discretion process. Again as we stated here, unfortunately, we, as a city, don't have the ability to allow for an increase in height to these utility towers. However, should someone go to PG&E and PG&E go to the PUC and the PUC grant them an extension to that tower, then they come back into us and say we want to locate an antenna on that, it then, is as odd as it sounds, a building mounted wireless communication antenna. Because again, we don't want to presume that we

know what should happen on a PG&E facility. So again, you know, our zoning ordinance, you know, pretty closely reflects our general plan policies as well as the city council adopted wireless communication act antenna policy. We do recognize as time has gone on, the one area that we need to continue to work on is how to facilitate additional installations within residential neighborhoods. I was in a meeting yesterday with a carrier who has a whole new system that they're trying to roll out within three months. So I mean to try and keep up with this industry is a real challenge. But what the city is trying to do is actually bring them together and look at it more globally, so that we can really address those issues through either policy changes or, you know, a holistic look at them, to better accomplish everybody's goal. Clearly, you know, we're living in an environment where this is part of our lives. It will continue to be part of our lives. And more so in the future. Taillight, you know, this really comes down to the simple issue of, they're violating the height. And we don't have the ability to, you know, recommend approval of that. Nor, if it came in on a variance, we would find it, I think, virtually impossible to make the required findings. But again, as I said, should another entity, you know, get the approval through their approving body to have an extension added to that tower, then it would potentially come back to us through a different process. And if you drive along any of the corridors, 280, 680, you know you see a variety of utility towers with different top hats, different configurations and things like that. So again, we're really not looking to inhibit growth of these service facilities. We're just -- you know find ourselves in this case in a position where we're unable to support their request.

>> Commissioner Jensen: Thank you, staff. There were a number of legal issues that were raised and I'd like to call on counsel to address some of the things that were in the letter and whatever it is that she may be able to add to the conversation.

>> Thank you, Madam Chair. I was provided a copy of the letter right before the meeting, so if the Commission would like an in depth response, legal analysis, then I would probably need till the next meeting to go ahead and look at this more in depth. But I can generally respond at least for part of it for the benefit of the applicant, that as the commission probably knows, what we do not have here is a city or a Planning Commission that has unwarranted fears about, you know, EMF emissions and so I know we heard some testimony on that. But the commission and the city is fully aware that, so long as the FCC regulation are being met, that the commission

doesn't second-guess the health effects of the emissions. So we're not in a situation where the commission would attempt to do that. The commission has quite a bit of experience. As staff noted, we're also not in a situation where there are fears about unsightliness. I think staff alluded to the fact that you know we're the capital of Silicon Valley. We have these sort of technologies all over the City of San José. As a matter of fact, I think the applicant answer representative stated that almost the whole city is covered. So I think again that's everyday that you're not dealing with a city that has some sort of hesitancy to place these sorts of equipment all over the city. To the stent that there were allegations made that this would comport with 2040, envision 2040, just a reminder that that has not been adopted yet. So whether it does or doesn't is still speculative in some sense, because envision 2040 has not been adopted. We're also not dealing with the situation where the city has any general moratorium on this type of equipment, has any general ban. As staff has alluded to actually over the past decade the city has done quite a bit of amendments and zoning code to actually streamline more of these and make more of them permitted as of right. So let me also note that there has been no discrimination in terms of we treat all the providers equally. And I just wanted to note that we are familiar with the government code section that's alluded to in the first page of the letter, California government code section 65850.6. We've had to address it for the commission on a variety of occasions and of course the city supports co-location and I think the applicant is trying to assert that this is a co-location facility on an existing wireless telecommunications co-location facility. That's nomenclature that is out of the statute. What hasn't been done before, and so I'll just note that again, there is no discrimination because the city has never approved something like this, is that we've never used those California government code provisions to approve a structural modification to a tower that would actually change the height of the tower. So the applicant is asserting that you know, this tower did go through a process, and hearing, and a permit, which is true. But not for the particular height that is being asserted. So that the tower may have had a hearing, or at least been approved by the CPUC and then we acknowledged its existence and we've added, you know we've co-located equipment on PG&E towers before, commissioners who have been on the commission for a while have seen quite a few of them. But they've always been located somewhere on the tower that did not increase the height. So I don't know and the staff can address this, to what extent co-locating on the tower, but not increasing the height of the tower, has been explored. I know there's been a lot of discussion about line of sight. The existing tower is so many feet high. I don't know how important that additional six feet is. But I did want to note that we've never utilized the California government code provisions to structurally alter a tower to increase

its height. But rather we've recognized it and we've certainly co-located antenna and various facilities on the existing PG&E towers. We also are familiar with the telecommunications act and federal law. Obviously I think I alluded to that. That's why we don't delve into the health impacts because we recognize our preemption. But we do feel that the telecommunications act does recognize the traditional land use role of local governments. Than we have not been preempted at least with regard to generally applicable height requirements. Again, I don't know, I know there's about some discussion about alternative sites and I will of course allow the commission to weigh and balance the testimony that you received on that. I don't know how much alternative designs have been discussed. Again, there may be other alternatives on this tower. I did not hear any testimony on exploration of alternative designs, even utilizing this tower, that didn't involve an increase in height, or, again, the placement of antennae on other towers I think also has been alluded to. So really, the -- and I'd be happy to read the case, again, that would require a deferral of the item for me to do a more in-depth analysis of the particular cases. The cases that I have read have, again, recognized your local land use authority, have recognized general height limitations, you know, especially in a city that doesn't have a ban that is not averse to the technology. As a matter of fact it is blanketed with this equipment all over the city, as alluded to by the applicant who stated you know we've pretty much got the city covered, this is just the only area that's causing us some difficulties. Again, I don't know of anything that would preclude us from applying our height limitations. As a matter of fact, I'm not quite sure how we can ignore them. I know that the applicant has stated that they think that there's some ability by this commission to ignore the height requirements. But, you know, I'd have to look at it more closely. But just skimming it tonight I'm not aware of how the commission would be able to do that. So again, that's just on a review of the letter prior to the meeting. And I'm happy to do a more in depth analysis but I would request a deferral to do that.

>> Commissioner Jensen: Thank you, counsel. Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you, Madam Chair. I really like the idea that staff alluded to which is a holistic way of looking at communications and towers. Because if it's not this location it's other location that we're going to be facing. I'm not entirely convinced by the applicant's request for us to not adhere to our own zoning regulations. As a commissioner I feel like I'm here to adhere to those laws and regulations that are enacted, and I

cannot look to the 2040 plan, although it's in the works. And I also feel that, well, the truth is, it violates the zoning regulation. That's what the staff has stated. And the zoning, it is more strict in residential, I'm sure that height or maybe that height would be fine in other areas, more hill areas, hilly areas or not in R-1-5 zoning district which this is, a residential district. I feel that also, when we steer away from our own codes, and zoning regulations, that we have really to have a compelling reason to do it. Such as extreme circumstances, outdated policies, and truly looking at it for the greater benefit. And I'm not totally convinced that this really meets all those criteria. I feel like there are other -- if one has to go back to the drawing board maybe one can find other alternatives. So those are the comments I have at this point.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Commissioner Platten.

>> Commissioner Platten: Thank you. I move that we defer this matter until the second meeting in the month of November and if there's a second to that motion I'll speak.

>> Second.

>> Commissioner Platten: Thank you. The evidence that we have and we can only work off the evidence and testimony that we have is that technically we can't meet the need of coverage without locating at this location. Counsel is correct in my judgment for all of the reasons she listed that there's a serious supremacy question here with federal law and I think we owe it to ourselves to the applicant to the neighbors to fully vet that issue. And I have great confidence in counsel to the commission appropriately advising us as to the application or nonapplication of the city of Anacortes decision. I'm going to ask the applicant, please, to redraft your proposed findings and conditions, number one, correcting the typo in paragraph 8 of 15 feet. In parens you have 155 feet, it should be 50 feet. And I want you add a 15th proposed finding and condition if you would, and present that to counsel laying out exactly what you believe is the facts supporting a finding of a significant gap in coverage and that this proposed alternative is the least intrusive means to cover that gap. If in fact that's the argument that you're relying on with respect to the city of Anacortes decision. So if you'll do that, that's appreciated. Fourth and finally I would like the applicant to reach out to PG&E as staff has suggested to determine whether or not any

change in that tower is considered or could be considered in PG&E in dealing with the PUC, which would make this argument superfluous from the beginning and permit us to, as Ms. Hamilton has very cogently pointed out, mount on that a taller antenna through a PUC certification. Because of all these things, because this isn't an intriguing significant issue I'm going to request that we defer the matter.

>> Commissioner Jensen: Thank you, Commissioner Platten. We have a number of other commissioners who would like to speak including the City Attorney.

>> I just wanted to note when I come back I'll give the framework. I of course am not going to weigh and balance the evidence for the commission, but what is appropriate for you to consider. I just wanted to note that. I know the commission is aware of my role but just so the applicant is aware, I won't be making a determination, I won't even be making a recommendation. I'm just be making the construct from which the commission operates.

>> Commissioner Jensen: Thank you counsel. Commissioner Kline.

>> Commissioner Kline: I'm supporting this deference for a few reasons. One, it's a real interesting argument that they're both making. The other issue is, I find the statement that we can't find findings to prove this difficult to take. We already have a tower that is over 65 feet, we're up to 65 feet here. They're actually asking for 6.6 additional feet or six foot six inches more an that's what our findings would have to -- the variance would actually have to be able to support the findings would have to be able to support. We can't create findings here to support six feet six inches, I'm not sure -- what are we doing here then? So I think that's within our jurisdiction to do. If we want to do that. I'm not saying we should, I am saying that would be feasible if we decide to do that. I'm also concerned that if we do not really understand this and make adjustments or make zoning or zoning or our general plan or -- we will -- this will be taken away from us. We will no longer have this authority. We have to be able to apply this intelligently and move forward and provide broadband as quickly and as feasibly and as reasonably less impacts to our systems as possible but this is not going to stop. The state will take this away from us if we start preventing this arbitrarily, which I'm not sure we are doing right now but an additional six feet six inches appears to be a very small addition to this power. If it is co-location, if you move to another tower, you got to have

power, you got to have new boxes, new pads, more people driving trucks to different locations. That's one of the reasons the bill was set that way. I remember that bill, that bill was designed because local municipalities were causing obstructions to wireless carriers and cell phone carriers. That's why it was passed, and we're just continuing that obstruction to a certain degree. Obstruction is a bad word. But again, I'd like to know more about the legalities here and I'd like to know about what we are possibly able to do as far as findings are concerned to allow variance for this, even if the PUC and PG&E gave this away at the next time it occurs and the next time it occurs. Then it will be occurring constantly over the next, you know, unlimited amount of time here.

>> Commissioner Jensen: Thank you, Commissioner Kline. Commissioner Abelite.

>> Commissioner Abelite: Thank you, I have a question for staff and this has to do with policy 6-20 which is the wireless policy. So the policy that I printed out off the web has an effective date of 1991 but it was last revised in 2003. And my question is, has it been revised since then?

>> The policy itself hasn't but the code, zoning code, regulations have and we've successively gone from you know, virtually all wireless communication used to be CUPs now we've deregulated and significantly and you see very few of them now, because theory either as of right because they're building-mounted or they're special use permits and they go before the director. So again, probably, the only gap that we've been encouraged to work with the wireless community on is residential. At the same time, in talking with a lot of the different providers, there is a whole host of technologies out there that they're exploring on getting this technology into the residential neighborhood, so they're not dependent on high towers, high structures, stuff like that. So they literally get it into -- into the neighborhoods, at heights that are -- that are not out of line with the other structures, that are already existing. In fact, you know, they're going on utility, wood utility poles now. And those we don't even deal with.

>> Commissioner Kline: Okay. And then I have a question for ReneÉ Gurza and this I'm going to try to trigger your memory. I saw a memorandum you signed on behalf of Richard Doyle dated 2007. And it had something to do with the attorney's office recommending that they draw up its validation of policy 6-20, which is the wireless policy and based on case law. Were you at that meeting and do you know the result of that was?

>> I can try to refresh my recollection.

>> Commissioner Abelite: Maybe you can bring that to us when you do your research.

>> Tell me what the subject was.

>> Commissioner Abelite: The subject is drop, you're recommending they drop 2.6C to the city council, invitation of the city council policy 6-20 which is the wireless policy. So there's a recommendation memo, and you're saying in light of a case called sprint technology PCS vs. county of San Diego, the case in the ninth circuit invalidated the county's San Diego wireless telecommunications ordinance.

>> That is an old outdated memo and the ninth circuit since reversed themselves so that's an outdated memo.

>> Commissioner Abelite: Okay, thank you no more questions.

>> Commissioner Jensen: Thank you, Commissioner Abelite. Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you very much, Madam Chair. One thing that I forgot to state is obviously, I'm a user of these two parks, both T.J. Martin and Jeffrey Fontana parks. As applicant can see, there are residents here in this meeting, and I would really recommend for them to continue talking with them. And from some of the history I heard, this has been an ongoing issue with the current neighborhood and I think it's good to resolve it, some of the issues that either this particular organization has or applicant has or other ones. Because if you are going to come back for more requests, it's always good to start on the right foot. So thank you.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. We have a motion on the table to defer this to the second meeting in November, which is Wednesday, November 17th. May we vote by light? And that motion passes unanimously. This item is deferred to the November 17th, or I should say, appropriately, it is

continued. With all commissioners voting in favor with the exception of Commissioner Cahan who is absent. Thank you. That concludes the public hearing portion of our meeting. Moving on to petitions and communications. Public comments to the planning. Commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, The Planning Commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. I see no speaker cards on nonagendized items. And referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: There are none.

>> Commissioner Jensen: Thank you. Good and welfare. Report from city council.

>> Laurel Prevetti: Thank you, Madam Chair. The city council has moved ahead with the rezonings for the Alum Rock series of annexations. And have ordered the annexation to be moving forward at a subsequent council hearing. As I reported last time the Cambrian 36 rezoning and annexation will be heard by the council on October 26th. For those of you who are following it. In addition, the council has approved zoning code changes per your recommendation. The minor anatomies we brought to you a couple of weeks ago, those have now been approved. And that concludes staff's report. Thank you.

>> Commissioner Jensen: Thank you staff. Commissioners report from other committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan is absent this meeting and we look forward to hearing at the next meeting. Envision San José 2040 general Plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: The last meeting was on 9-27, we haven't had any meetings since. I believe the next meeting will be Monday, October 25th. Okay, so Monday, October 25th will be our next meeting.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Review and approve the synopsis from 9-22 and 9-29. So let's see here. Commissioner Platten, and Commissioner Kline may have -- unless you've had the opportunity to reconstitute -- you did, excellent. (inaudible).

>> Commissioner Jensen: Okay, thank you. And -- thank you. There's a motion to and a second to approve the commission action report from 9-22 am all those in favor, please say aye, thank you. On the commission action report from 9-29, Commissioner Kline, did I hear you say that you reconstituted yourself?

>> Commissioner Kline: I did.

>> Commissioner Jensen: Thank you. So I believe then we have a -- we have a quorum. I don't see here whether -- oh, yes, okay, excellent. So is there a motion?

>> Commissioner Kline: So move.

>> Commissioner Jensen: And a second?

>> Commissioner Bitbadal: Second.

>> Commissioner Jensen: All those in favor? Super, thank you so much. Subcommittee reports and outstanding business. Discuss the creation of subcommittees to work on issues that may be brought before the city council. Commissioner Cahan requested at the end of the last meeting, that we hold this item for discussion until the next meeting when she would be available to join us. I will entertain a motion to defer this.

>> So moved.

>> Commissioner Jensen: Thank you. All those in favor? Thank you. Commission calendar and study sessions. Set a study session on October 27th on reasonable accommodation and set a general plan hearing for December 1st. Is there any discussion? Is that okay with the commission? Seeing a lot of nodding heads I'm going to say yes and we are officially adjourned. Thank you very much.