

PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, JULY 7, 2010, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Gilbert called the Planning Commission regular meeting to order at 7:32 p.m. Ms. Lambert called the roll:

Present: Commissioners Arthur McIntosh, Alexandra Von Feldt and Leah Zaffaroni, Vice Chair Nate McKitterick and Chair Denise Gilbert

Absent: None

Staff Present: Leslie Lambert, Planning Manager
Tom Vlastic, Town Planner
Dan Siegel, Assistant Town Attorney
John Richards, Town Council Liaison

ORAL COMMUNICATIONS

Virginia Bacon, 205 Golden Oak Drive, asked Commissioners to speak up so that everyone could hear.

Joe Coleman, 70 Sioux Way, said that trail overgrowth is really serious this year and there are trees down. Meeting with Public Works Director Howard Young, he and his wife have volunteered to help with the cutting. Chair Gilbert said that Mr. Coleman's comments would be forwarded to the Trails Committee.

REGULAR AGENDA

- (1) Public Hearing: Review of Proposed Conditional Use Permit (CUP) X7D-170, Wireless Communication Antenna Facility, Intersection of Golden Oak Drive and Peak Lane, T-Mobile West Corporation

Chair Gilbert explained that staff would first give its report, including comments from a representative of the Town Attorney's office and an outside consultant, followed by applicant comments, then a question period with Commissioners and the public hearing.

Mr. Vlastic referenced the July 1, 2010 staff report setting forth background and a number of attachments, as well as April 7, 2010 staff report packet. He said three alternatives have been considered by the Planning Commission and the ASCC for a wireless T-Mobile facility at the California Water Service Company water tank site at the intersection of Golden Oak Drive and Peak Lane. The first application included a 50-foot monopine with a 45-foot antenna within a faux-tree structure that included a 5-foot addition of branches above the 45-foot pole. The next proposal was for a 50-foot slimline monopole. The third was a 60-foot monopine to accommodate collocation and conformance with policy provisions of Portola Valley's wireless guidelines. Any options supported by a Planning Commission action would be subject to further ASCC review, Mr. Vlastic said.

At its April 7 meeting, Mr. Vlastic continued, the Planning Commission determined that a peer review of data provided by T-Mobile would be appropriate and requested additional detailed information from the Town Attorney regarding the scope of local authority, preemption by the FCC, burdens that fall on the local jurisdiction and actions in other jurisdictions. This is related to the FCC's position that wireless competition should be encouraged, thus radio frequency (RF) emissions are preempted by federal standards and the Planning Commission is more constrained in its review of the application than would be the case in most circumstances. Working within that framework and results of the peer review, Mr. Vlastic indicated that there are a number of options for the Planning Commission set forth at the end of the July 1, 2010 staff report.

Vlastic added that the peer review, conducted by RCC Consultants on the basis of its expertise and availability to do the work, used data provided by T-Mobile as well as independent drive tests. It determined that a significant coverage gap does exist, and after reviewing alternatives for micro-cells and a distributed antenna system (DAS) technology concluded that neither alternative was appropriate to fill the identified gap.

Vlastic advised that a number of suggestions for alternative sites have been offered, none of which seems appropriate due to the undulating topography and the need to be closer in. It has been suggested that the Town develop regulations to set a fairly significant distance between a property line and a pole, which is problematic

due to conditions in the Town, and the Town has been advised that it cannot create zoning regulations that in effect prohibit options for wireless service. Towns with flat, commercial and light industrial areas have more opportunities for alternative sites. The high points in Portola Valley will be water tank sites or residential properties, particularly in the northern part of the Town.

Mr. Vlasic reported that the Town received a number of communications on T-Mobile's application, some of which spoke to legal issues and most of which urged denial of the application. Most of the conditions neighbors requested if the CUP approval was unavoidable are included in the staff's recommendations. Mr. Vlasic noted that the three closest neighbors suggested lowering the monopole's height from 60 to 45 feet. He explained that ASCC had recommended the taller facility to accommodate possible future collocation of other carriers. T-Mobile's original proposal was for a 45-foot pole within a 50-foot monopine. Mr. Vlasic said that if the Planning Commission decided to go in this direction, the pole diameter probably could be reduced from approximately 36 inches to approximately 24 inches, for even less visual impact. Although a 10-year permit period appears mandated by State law, recommended Conditions of Approval include two-year reviews to evaluate ongoing conformance and potential technological developments that would have less aesthetic impact. Other conditions include substantial landscaping development and maintenance for the entire site and bonds or sureties to provide for removal of the equipment if it falls into disrepair. Mr. Vlasic said that Condition f. could be modified to incorporate a suggestion regarding independent confirmation of noise and RF emissions.

Mr. Siegel alluded to Town Attorney Sandy Sloan's letter dated June 11, 2010, which explained that in order to provide cellular service everywhere, expansive federal laws give individual jurisdictions no input regarding effects of RF emissions that fall within federal limits and a modicum of control over aesthetics. These preemptions require determination of whether a significant gap in coverage exists, which Mr. Siegel described as more a matter of science than urban planning. He quoted a summary from Ms. Sloan's letter: "If the telecommunications company has demonstrated that there is a significant gap in coverage and that the proposal is the 'least intrusive,' the agency must be able to show that another alternative is available and feasible to cover the gap and is 'less intrusive.'"

Mr. Preiser described his firm and the peer review conducted for the Town, which included a review of all application materials against industry standard practices, including design drawings, drive data, site selection criteria, alternative sites and alternative technologies. Because the application materials provided by T-Mobile left some questions unanswered, RCC asked T-Mobile for additional data, including parameters for coverage predictions, parameters for micro-cell equipment, drive testing for existing coverage, T-Mobile's designated parameters, including margins for in-vehicle and in-building coverage, and frequency information. T-Mobile provided all of the information requested, although some of it remains confidential. Mr. Preiser indicated that about 65% of cell phone calls originate within buildings, and a high volume of 9-1-1 calls are placed over cell phones. RCC also conducted independent drive tests on June 16, 2010, using a test receiver manufactured by Berkeley-Veritronics. RCC's analysis of its data confirmed the gap in coverage in the target area, consistent with T-Mobile's analysis.

Mr. Preiser noted that T-Mobile also provided additional conceptual design information about the DAS alternative that would use a series of utility poles. Although this approach would improve coverage, it would not meet the design target of improved in-building coverage. Further, Mr. Preiser explained that the existing poles probably are not tall enough, engulfed by vegetation, have questionable structural integrity, appear to be substantially loaded already, and have accessibility issues for maintenance. RCC also reviewed a femtocell alternative. Femtocells are in-home devices, mini-base stations that use broadband connections to provide a signal into the cellular network. They are subject to loss of service when broadband connections are lost. In any event, T-Mobile does not have the network architecture to support these devices.

In summary, Mr. Preiser stated that the need for this site is demonstrated based on T-Mobile's stated design objectives, the company's drive data and RCC's drive data. He said the design proposed is reasonable, consistent with industry standards and meets FCC guidelines related to RF emissions exposure.

T-Mobile Consultant Mr. Greg Guerrazzi indicated that Paul Albritton, T-Mobile's outside counsel, Ali Hagenberg, a RF engineer who's been working with the design and the requirements of network, and Bill Hammett, who prepared the RF safety study and acoustic analysis, were present to address specific technical questions in their areas of expertise. He confirmed that T-Mobile considers its design the least intrusive means to fill a significant coverage gap and worked with staff extensively on the design alternatives. He presented photo simulations of the three design alternatives from four perspectives. T-Mobile's original proposal was for a 50-foot monopine at the

highest location on the property, where it would not affect neighboring trees. A second design, developed at the he ASCC's suggestion, used a 50-foot slimline monopole tucked into trees at an elevation 5 to 8 feet lower. The ASCC also suggested a multi-carrier option, which necessitated increasing the height to 60 feet. He emphasized that T-Mobile had not sought a height extension, but was responding to ASCC's direction.

Considering that line-of-sight drives the technology, Mr. Guerrazzi said that the proposed antennae must have a clear view over the covered objectives, and at an elevation of approximately 800 feet, the site selected is one of the highest in Portola Valley. Site-wise, he said, there are no other options. To locate in a commercial area would require a tall, perhaps 200-foot pole to serve the coverage objective.

Mr. Albritton credited Ms. Sloan and Mr. Siegel for their good reviews of the Federal law, and pointed out that studies of RF emissions show that they are 50 to 100 times below the Federal standard. As for the aesthetic effects on property values, he said that the first issue is to substantiate the negative aesthetic impact. When he stated that T-Mobile agrees with the staff report that there are no substantial aesthetic impacts. He said that 50- to 60-foot trees will be adjacent to the faux-tree. He reiterated topographical and technological rationale for the site selected, and also indicated that the U.S. Court of Appeals for the Second Circuit, in a case involving a Clarkston, NY, specification of DAS technology for wireless service, ruled that local communities cannot dictate the technology a carrier uses to provide service.

Responding to Chair Gilbert's invitation for questions from Commissioners, Vice Chair McKitterick asked Mr. Siegel for clarification as to whether California court cases have determined a significant gap in coverage might be as little as two blocks. Mr. Siegel reported that no defined circumstances or bright-line tests have emerged, but a number of cases have indicated the area can be quite small. Turning to Mr. Albritton, Vice Chair McKitterick asked what largest gap a court has determined is not significant. Mr. Albritton said that he could answer Vice Chair McKitterick's first question; the leading case in the Ninth Circuit, which includes California, involved Metro PCS vs. San Francisco and determined that it was a two-block area based on in-building signal strength. Vice Chair McKitterick repeated his question. Mr. Albritton referred to the decision in Sprint vs. Palos Verdes Estates in terms of a community's ability to regulate aesthetics in the right-of-way. Sprint was not able to establish that there was a significant gap in coverage, but it was based on lack of evidence rather than the size of the area in question. The issue is the balance of evidence, Mr. Albritton said. Scan test data and coverage maps are examples of such evidence. Richmond has adopted an ordinance in which a significant gap has been identified as an area larger than one acre. Vice Chair McKitterick asked whether any Ninth Circuit cases show other than in-building coverage as the standard; Mr. Albritton said that is aware of none. Vice Chair McKitterick asked whether nationally any cases have addressed the issue of population rather than area in measuring significant gaps. Mr. Albritton said no, because the standard is substantial evidence. The significant gap is identified by a series of facts. Because of its population density and the topography, two blocks in San Francisco was determined to represent a significant gap. Mr. Albritton acknowledged that population density is one factor considered; it is not a bright line but a combination of facts.

In response to Vice Chair McKitterick, Mr. Preiser said that RCC Consultants does not work for cellular carriers. Its clients are strictly municipalities, counties, states and federal entities, primarily designing public safety radio systems. Asked what percentage of the time RCC's reviews conclude that a wireless siting application is unjustified, Mr. Preiser—noting that peer reviews are not a major part of its business—said that in his year and a half with RCC he has performed three peer reviews, one for AT&T, one for Clearwire and another for T-Mobile. In all cases, the review confirmed coverage gaps and the permits were eventually granted.

In response to Vice Chair McKitterick's question about the technical feasibility of undergrounding at the site, Mr. Vlasic said that it is problematic, given root systems, rocky environment, ventilation requirements and security issues. Chair Gilbert added that as she understands it, some above-ground ventilation equipment would be necessary in any case. Mr. Vlasic confirmed her understanding, also indicating that a fence would be needed for security. He said that staff and ASCC both recommended substantial landscaping instead of undergrounding, whether for a single carrier or collocation. In terms of noise, Mr. Vlasic confirmed that one of the CUP conditions requires annual reporting on conformance with Portola Valley's noise ordinance, and that data provided by T-Mobile demonstrates that it would function within the noise limits. In response to Commissioner McIntosh, Mr. Vlasic explained that although he understands there will be no generator at the site, equipment cabinetry emits some noise from backup power, cooling equipment, etc.

Commissioner Von Feldt said that she finds it difficult to reconcile RCC Consultants' coverage map with T-Mobile's, including two strong areas of signals on T-Mobile's map that do not appear on RCC's. Also, T-Mobile

shows no coverage at the proposed tower site, whereas RCC shows significant in-vehicle coverage there. Mr. Preiser replied that T-Mobile's maps are created from a computer-based predictive model, not measured coverage. He said that T-Mobile also submitted measurement data that RCC reviewed and found substantially the same as RCC's drive test data. The actual measurements go beyond the T-Mobile's predictive model, but the T-Mobile measurements are confidential. He said that both T-Mobile and RCC data clearly indicate that while there is on-street coverage, in-vehicle coverage is inconsistent.

In response to Chair Gilbert, Mr. Preiser confirmed that RCC's drive test did not include in-building coverage. Noting that there is on-street coverage in the area of the proposed site, she asked the source of that signal. Mr. Preiser said that he does not know conclusively, but is not unusual for a hilltop to pick up signals from surrounding sites. Mr. Guerrazzi said different sites—sometimes five miles away, sometimes from the Priory—could produce a weak signal, and that the source of a signal can vary from moment to moment. He also said that the signal is so weak that although you might be able to initiate a call, you probably cannot hold it and will drop it if you move just a few feet. That is the kind of coverage that he said is currently available at the high points Chair Gilbert indicated.

Commissioner Von Feldt asked if in deference to neighbors' requests for the lowest tower possible the Town agreed to a single-carrier option, what would happen if another carrier came in later with its own application. Mr. Vlastic said that collocation is possible with a 50-foot pole, but it would depend on the needs of the other carrier(s), so multiple poles at the site might be necessary. In any case, based on staff and ASCC review, a significant landscaping effort that deals with view lines around the whole property, including filling gaps around the water tank as well as mitigating the antenna, would be among the conditions. He said that both T-Mobile and Cal Water would be parties to the agreement to fulfill the landscaping conditions and provide bonding.

Commissioner McIntosh asked whether a 60-foot pole would be sufficient to serve three carriers. Mr. Preiser said that because it depends on a particular carrier's objectives, it is difficult to give a definitive answer. However, he pointed out that many 60-foot sites do accommodate three carriers. Mr. Guerrazzi, who said that T-Mobile's preference would be to go above the tree line, has counted more than 50 trees at the site. Near-field trees block signals, and one 80-foot tree stands within 20 feet of the proposed tower location. A carrier collocated at the lower level on the tower would have such limited coverage that it might not be worthwhile to locate there.

That being said, Mr. Albritton added, different carrier-specific frequencies carry different distances; a 700 MHz LTE installation lower on the pole would not cover the same distance as T-Mobile's 1900-MHz equipment at the top. Commissioner McIntosh said it's a critical question, because we're talking about making decisions on the assumption that the 60-foot pole would accommodate three carriers. Chair Gilbert asked Mr. Siegel to comment. Mr. Siegel said that under current law, the Town does not have the authority to regulate the number of poles, nor can it compel or prevent leasing decisions on the part of Cal Water, as the private property owner. When Commissioner McIntosh pointed out that as part of this process, Condition g. covers those circumstances, Mr. Vlastic explained that it was worth pursuing so that all parties are on record as to the Town policy in not encouraging more than three carriers collocating on one pole. Mr. Siegel said that he believes the language could be made into an enforceable agreement.

Chair Gilbert asked whether the tower height could be lower if the design anticipates two carriers instead of three. Mr. Guerrazzi said that it would depend on the particular carrier, its technology and equipment, but that T-Mobile could work with a 50-foot tower. Chair Gilbert summarized the options as a 50-foot tower with one or two carriers or a 60-foot tower with two or three carriers. Commissioner Zaffaroni remained concerned that we'd be right back in the same position if another provider were to approach Cal Water for a second tower on the site and Cal Water isn't bound to turn down that proposal.

Mr. Vlastic indicated that it is difficult to get information from other carriers as to what their needs might be. The limit proposed is based on the number of carriers that seem to be interested in coverage in Town, but even that is subject to change. It puts the Town in a difficult position, compounded by the FCC regulations. Despite all efforts to minimize impacts at the proposed site, later on pressure may come up to build another antenna at another water tank site.

Exploring the issue of the 10-year term of the CUP, Commissioner Zaffaroni asked whether it is a function of Federal preemption or State law and whether the Town has any flexibility to specify a five-year period with respect to wireless communication facilities. Mr. Siegel indicated that the Town's land use policies would be the first to be preempted, and the industry standard appears to be 10 years. From the Federal standpoint, he added,

the time period has to be significant enough to provide the carrier with an economic return on investment, but again, there are no bright-line rules.

According to Mr. Vlasic, based on what Assistant Town Attorney Leigh Prince provided previously, the State appears to mandate a 10-year minimum. Mr. Albritton cited California Government Code Section 65964, amended in 2006 and effective in 2007. He said that in interpreting the law, jurisdictions are generally seeking reviews within the 10-year timeframe to confirm compliance with CUP provisions, conditions of approval, RF emission standards, etc. He said that as he understands the language of the code, anything less than 10 years is considered unreasonable. Commissioner Zaffaroni said she would like to retain the language in the Town's existing policy if the code provides any flexibility to make that possible.

Mr. Vlasic indicated that from earlier interactions with the Town Attorney's office, a memo late last year had said, "...Pursuant to Section 65964 of the State Government Code, the Town is not allowed to limit permits to less than 10 years unless there are substantial public safety or land use reasons. Based on the comments from the Town Attorney, we understand the Public Safety and land use issues to be related to aesthetics or risk of safety of the antenna due to, for example, unstable ground conditions." Mr. Vlasic said that language would suggest that there may be some flexibility. Mr. Albritton found and read the applicable section. "...a city or county shall not...(b) Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site."

In response to a follow-up question from Commissioner McIntosh, Mr. Albritton explained that the Town has the ability to 1) proceed with enforcement procedures at any time, as with any other condition of approval associated with any land use permit, and 2) initiate revocation proceedings if the problem is not corrected. Further, either the Town or any resident could file nuisance actions.

Commissioner Zaffaroni suggested that it would be a good idea for the conditions to specify that landscaping requirements with respect to Cal Water property will be both within and outside the T-Mobile lease area. She also suggested language to address maintenance of the monopine itself and removal within 90 days if the equipment is no longer used. Commissioner Zaffaroni also asked Mr. Preiser to verify that no other viable site exists to fill the coverage gap. He replied that while a thorough analysis of other sites was beyond the scope of his work, having driven the area twice he couldn't see another single site providing equivalent coverage.

In response to Chair Gilbert, Mr. Siegel said that he is unaware of any prohibition against cellular towers on residential properties at either State or Federal level, and at Town level, it is a matter of policy rather than code. As to whether the CUP would be held by T-Mobile rather than Cal Water or a combination of the two, Mr. Vlasic said that it is appropriate for T-Mobile to be the permit holder because the permit is for the antenna facility. However, he added that the conditions are worded as they are because it was considered important for the property owner also to be a party to the permit.

Chair Gilbert asked how tall the cellular tower at the Priory would have to be, at least theoretically, to eliminate the coverage gap. M. Guerrazzi said he did not have data available, but it is based largely on ground elevation and shadowing. There are capacity issues as well, he added. To overcome shadowing, the antennae need to be taller than the terrain over which the line-of-sight must travel, so Mr. Guerrazzi supposed it to be several hundred additional feet. Mr. Preiser said that he and Mr. Vlasic had discussed this possible option and determined that, as he recalled, it was 190 feet, but even so a substantial shadow would remain.

Referencing a Palo Alto coverage map, Chair Gilbert asked what the markings represented. Mr. Guerrazzi said they represent sites that may use micro-cells, but most are macro-cells, located on towers similar to the one proposed for Portola Valley or on rooftops, multi-carrier facilities, structures on commercial properties, faux-trees and some utility poles. Chair Gilbert asked if there had been discussions about the specific location of a ground enclosure large enough to accommodate three carriers, and Mr. Vlasic said no, but the landscaping should anticipate construction of such an enclosure, so that if the situation arises, no further landscaping modifications would be needed. At this point, he said, no fencing should be necessary beyond what is needed for this request. T-Mobile would come back with planning details for the antenna facility, subject to ASCC review.

Referencing Condition g. in the proposed Conditions of Approval, Vice Chair Nate McKitterick asked whether PG&E might decide to lease one of its utility poles to a wireless carrier. Mr. Vlasic explained that it would require a use permit. He also reported that Cal Water did not have a negative reaction to the proposed condition when it

was presented. Asked if he considers Condition g. enforceable, Mr. Albritton said that a jurisdiction cannot unreasonably discriminate between carriers, but if there is a reason to discriminate, the jurisdiction theoretically has the right to do so.

In response to Commissioner McIntosh, Mr. Guerrazzi said the distance between providers collocated on a pole would vary depending on the provider and its frequency, but a five-foot gap tip-to-tip would be typical.

Before opening the Public Hearing, Chair Gilbert laid out ground rules: 1) one presentation per speaker; 2) two to three minutes maximum; 3) minimize side conversations; 4) limit discussion to areas that would help the Commission reach a decision (e.g., the Town has no say regarding the issue of health effects of RF emissions). The three most important issues on which the Commission wants input are aesthetics, coverage gap and alternative sites (whether this is the least intrusive alternative for the particular coverage gap).

Mary Jane Kelly, 10 Peak Lane, said that a lot of people who may have wanted to comment already left the meeting. A lot of reference to the trees, she said, implies that the presence of the trees addresses aesthetic issues. An arborist has indicated that the tallest trees are old and probably will fall down soon. Thus, she wants to know what to do about the pole that might be there for 10 years with no tall trees around.

Bob Nebrig, 20 Grenada Court, lives about two houses away from the proposed tower. He said he does not object to the tower as long as he doesn't see, hear or smell it. He does not believe there are 25 or 30 buildings that signals will reach from the proposed antenna, and that a lot of the people in the buildings don't want the coverage. The coverage map includes a slice of Portola Valley with a 25-house gap, so every 25 houses, a carrier could come in and the Town would have no authority to say they could not erect a pole. He said that the Town's only real authority seems to be in aesthetics. On the site visit, T-Mobile said they would use a pine tree, limited in height, and that Mr. Nebrig would not see, hear or smell it. Now he's learning that the project is growing into something that might be a major pole that he might see. He said he cannot imagine the economics, if it will serve only 25 houses, many of which probably are not T-Mobile customers. He asked how all of this would be paid for and how much the typical lease rate would be if another carrier wanted to collocate on the same pole to serve the same 25 households. If the Town's only leverage is in aesthetics, he said he wanted to make sure that T-Mobile really toes the line and the facility is unobtrusive to the neighbors and the community to set the standard for other carriers in the future.

Marian Suliteanu, 160 Fawn Lane, wondered how many customers T-Mobile has in the area at this point, and if T-Mobile isn't serving customers now, does it have the right to come in? There's a difference between whether the company is serving existing customers or wanting to attract customers. Chair Gilbert said the Town cannot make a determination on the basis of whether there is a market, only if there is a coverage gap.

Bill Kelly, 10 Peak Lane, said that he thinks collocation is confusing the issues. Given that the Town has been forced into a position it does not want to be in, the principle should be to do the minimum necessary in order to comply with Federal law. Putting in a 60-foot pole to possibly accommodate other carriers in the future strikes him as the wrong way to think about the problem. He would prefer focusing on a single carrier and keeping the tower as low as possible. As practical matter, he said, AT&T and Verizon don't worry much about what T-Mobile does and Portola Valley is not so appealing because it is so thinly populated.

Bill Kunz, 235 Golden Oak Drive, said he is among those who noticed the discrepancy in coverage on Alpine Road versus what was mapped. He went on T-Mobile's website, where you can enter the ZIP Code 94028 and see the great coverage. The area where there is supposedly a coverage gap, is marked in gray to indicate service provided by a partner. Mr. Kunz also asked if eight poles (indicated in connection with the micro-cell alternative) were insufficient to meet T-Mobile's design objectives, how many would it take? Because that would be a less intrusive solution.

Carol Sontag, 280 Golden Oak Drive, thanked the Planning Commission for the time and energy being put into handling the T-Mobile application and other neighbors for their input. Marty Tenenbaum, a neighbor who could not come to the meeting, asked her to read a message. Mr. Tenenbaum met with Ramesh Rao, who is Director of the UC San Diego Division of the California Institute for Telecommunications and Information Technology, a Professor of Electrical and Computer Engineering at the Jacobs School of Engineering and a national authority on mesh network solutions for communication networks. Upon reviewing the T-Mobile proposal, he said, "I want you to listen to me. 'Least intrusive' does not mean least expensive." He said there are far better ways of doing this. Single towers are becoming less necessary as technology is improving. Smaller distributor antennas are

much more efficient than large cell towers, comparable to a drip irrigation system in that they do the job without wasting water. Dr. Rao indicated that he consults with towns and is agreeable to work with Portola Valley and T-Mobile to come up with a mutually beneficial mesh network solution. He said that he disagrees with RCC Consultants' findings. Ms. Sontag said that there are also residents willing to work with T-Mobile, the Town and Dr. Rao in identifying an alternative to the conventional cell tower so that cell carriers could be satisfied. She said that Portola Valley could be a wonderful example in California of a city that had the intelligence, the resources and the motivation to make this work for everyone.

Lynn Poland, 366 Wayside Road, said she wants to know about the materials that would be used in the monopine, and if those materials could be considered in any environmental impacts.

John Vedder, 285 Golden Oak Drive, reiterated concerns expressed in prior ASCC and Planning Commission meetings. The proposed site for the monopole is approximately 89 feet from the front of the Vedder home, and 78.5 feet from the property line along Peak Lane. The proposed site for the monopine is approximately 100 feet from the property line, even if the site is moved to the edge of the excavation for the water tank, as requested by the Planning Commission. Mr. Vedder said that Cal Water failed in its obligation to screen the tank by planting and landscaping; trees planted died due to lack of care or were cut down and not replaced. The Town should require maintenance and frequent monitoring of future plantings. Sound emission from the proposed facility could be intrusive, but sound levels won't be checked out until after construction. Artificial lighting and noise from maintenance vehicles also would have a negative impact on the neighborhood. Three homes have front entries on Peak Lane, so the street should be designated as a primary, not secondary, thoroughfare, with setbacks of more than 30 feet for any new structures. Town policy and procedures adopted in March 2009 included the statement, "Committees are encouraged to develop and communicate to the Town Council recommendations under their purview that will enhance the quality of life for residents." The proposed T-Mobile facility not only would be detrimental to the quality of life for nearby residents but also substantially devalue their property. Mr. Vedder said that it is disheartening to think that commercial enterprises may supersede aesthetic values in our Town.

Gary Fanton, 265 Golden Oak Drive, focused on three issues. He said that Mr. Vlastic and Mr. Guerrazzi are inaccurate in saying the visual impact, the aesthetic impact, is minimal. He also said that the ASCC came out twice and unanimously agreed that this is not a good site, after which the Planning Commission reflected that same thinking in the first meeting following those site visits. Mr. Fanton claimed this goes beyond the scintilla of evidence criteria. He said looking at the size of the crowd also is evidence of the impact. Like Mr. Vedder, he said that Cal Water has demonstrated poor stewardship; there is nothing but a fire hazard and dead trees on the Fanton property line. He is concerned that those conditions will reflect of Cal Water's behavior going forward, and wonders whether Portola Valley wants to police it. For those reasons, he said opposition on aesthetic grounds is justified and cannot be addressed by T-Mobile. In terms of alternatives, he said that he contacted NextG Networks, a DAS provider based in San Jose. He asked whether RCC Consultants brought in any DAS representatives to present an alternative solution; he has heard nothing to suggest that the consultant went out and independently looked for any alternatives. Mr. Fanton also pointed out RCC's focus on high-powered, intensive, industrial telecommunications as opposed to residential service, and the fact that Mr. Preiser has only 18 months' experience. He said that he could not be assured, either, that the proposed tower would not leave a shadow and a coverage gap on Granada Court or another valley. In summary, he said, we have a proven aesthetic issue, a history of poor stewardship and the possibility of alternatives that have not been explored.

Jeanne Kunz, 235 Golden Oak Drive, said that she has been looking at codes and standards in other communities, including Carmel-by-the-Sea, Aptos and Woodside. Although she said she respects what the Federal government wants to do, a small community is not like such places such as San Francisco and New York City. Because she believes there is strength in working together and sharing resources, she said she hopes that Portola Valley can reach out to other like communities—Ben Lomond, Saratoga, etc.—that must be facing similar issues.

Elena Bergeson, daughter of John and Diane Vedder, said that in doing some research she found interesting suggestions by municipal management consultant David Angerer for protecting the public interest in siting cell phone towers. He said that modern cities should have strategies in place before considering requests to erect a tower. Municipal ordinance can include requiring an Environmental Impact Report and protecting community aesthetics. A town is supposed to protect the health, safety and welfare of its citizens. Does Portola Valley have a strategy? Is there a reasonable review process in place or does the Town make decisions as it goes? Does the Town have a copy of the American National Standards Institute and the Telecommunications Industry

Association standards? Is the Town aware of engineering formulas for sites located close to major earthquake fault lines? What are acceptable noise levels in the Town's land use policy? If the Town does not have a comprehensive ordinance and bond requirements to cover costs of problems, why is it considering going forward with this site? Ms. Bergeson also asked why the Town has not considered the feasibility of a tower on Town land. A 200-foot tower near the Little Schoolhouse would provide income to the Town and accommodate several carriers. She said that none of her parents' concerns have been answered by the Town Council.

Following up on Ms. Bergeson's comments, Cole Erskine, 240 Cervantes Road, said that other towns have had strategies and ordinances prohibiting cell towers within 500 feet of residences and 2,000 feet of schools. He said that the zoning board in Northborough, Massachusetts, resisted giving variances to T-Mobile, which recently withdrew its application to install a cell tower rather than fight the town in Federal court. He said that Portola Valley needs to update setbacks to specifically prohibit cell towers from within at least hundreds of feet of property lines, the topography of the area notwithstanding.

Diane Vedder, 287 Golden Oak Drive, spoke about unanswered questions. 1) Why does the Town use side street setbacks on Peak Lane for Cal Water? 2) She requested a full EIR be made by the Town, Cal Water and T-Mobile before the project could proceed. She was asked to do this by the two neighboring Audubon societies, and has been unable to give them an answer. There is a serious question concerning birds being confused in their flight patterns by emissions such as those planned by T-Mobile. 3) Her husband's request for actual street setbacks on Peak Lane has not been addressed. Where does the Town take care of dead brush? There is currently a dead limb on Peak Lane from a pine tree that has not been taken care of. How much of Peak Lane does the Town monitor? 4) Why does noise from existing water company equipment still disturb some neighbors at night? 5) How did Cal Water get permission to rent to any other company at all? Were other neighbors informed that Cal Water could use its land for anything other than water services? 6) She requested a six-month moratorium for the Town to study this whole question. 7) Would the cellular tower withstand an earthquake up to 8.8 magnitude?

Ms. Vedder said she attended the meeting with Barbara Boxer's representative at the Town Center. The Federal government is looking into problems created by the Telecommunications Act, in that many small towns are finding their goals and statutes compromised by installations similar to the one planned for Portola Valley. Changes in the law should come soon. Ms. Vedder wants any structure, if built, to be destroyed and removed within 60 days of such changes. Because of new technologies and increased public awareness, she wants no use permit given for more than five years. She is also asking that any structure erected be fireproofed to the highest degree; that the Bill Barth letter about eminent domain in the PV Forum be studied, and that independent engineers approve all plans for any structure on the water company property. She said that she does not consider the RCC Consultants' peer review independent because RCC has never sided with a town in any effort to uphold town goals.

Ms. Vedder said that she wants all noise assessments performed before construction begins, and no generator noise, even during the day, on weekends. She visited the Priory site, and said there was a lot of noise. She also wants a clearly visible sign in the equipment area, such as that at Arastradero Estates, cautioning that RF emissions may exceed standards. She wants all equipment placed in areas well over 100 feet from any residence, preferably underground. As for landscaping, she wonders how large new plantings would have to be to hide an eight-foot fence around an enclosure 26 feet in diameter, and how there can be enough space for decent plantings and all the equipment in such a small area, approximately 43 feet from the edge of the big water tower ditch and the edge of the embankment. As regards landscaping, she also wants arborist reports from more than one company, landscaping plans presented to all interested parties; all landscaping to be monitored weekly, and the ability to call a gardener 24/7 to report any problem.

Karen Fanton, 265 Golden Oak Drive, wants to know what kinds of large, fast-growing trees would be used on the property, considering the arborist's report that many of the old trees there are likely to die soon. She also noted that Oakland uses DAS technology.

Sue Chaput, 358 Alamos Road, asked if there are any photos of monopines or computerized simulations to view. She also asked how drive testing is done. It is against the law to use a cell phone while driving. She said landlines are important because a 9-1-1 calls from cell phones are neither automatically located nor recorded. Mr. Vlasic had said it was highly unlikely a residential property owner would erect a cell tower; why then would any property owner erect a cell tower in a strictly residential area? She said she understands that the Town

cannot object to the cell tower on health grounds, but why can't residents? And say how they feel about the aesthetics?

Ms. Bacon pointed out that with all the legalistic and technical discussion, no one has addressed the question of what people want. Because she has seen no demonstration that people within the coverage area are requesting services, she asked about T-Mobile's economic incentive to put up a cellular tower that people neither want nor need. She would like to see T-Mobile respect residents' system of values. She said that the Town's 1997 policy statement regarding communication facilities, while it may be outdated, clearly states that a proposal should appeal to 75% of the population.

Holly Gurheusen, whose grand parents live on Golden Oak Lane, said that she would not want to buy a house across the street from a cellular tower. She is concerned that it will reduce the value of their property, which might some day help pay for her college education.

Judith Murphy, 8 Portola Green Circle, noted that she is not affected by the proposed cell tower, but urged denial of the T-Mobile application until the Town has a full policy established because of the domino effect it could have and the precedent it would establish. She said that that less intrusive alternatives clearly seem to be available that haven't been fully investigated, that there are clearly aesthetic issues and clearly questions about Cal Water's commitment to doing what it says it will do.

Chair Gilbert closed the public hearing. Commissioner Zaffaroni suggested that it might be appropriate to respond to some of the public's questions. Vice Chair McKitterick said that Federal law is very clear about what the Planning Commission can consider, and not all of the questions posed are relevant to the decision that the Planning Commission has to make.

In response to Chair Gilbert's summary of key questions raised during the public hearing, Mr. Guerrazzi began with the number of locations in the area that would have in-building coverage. He said that the numbers of buildings or residents is a less appropriate measure than the number of users who visit an area. The subject site will allow the T-Mobile network to provide in-building coverage to approximately 1,900 people. He said that he did not have data on the number of buildings or residents. Mr. Albritton said that the site would broadcast approximately six-tenths of a mile (.6) in all directions from the tower for in-vehicle coverage. In-building coverage would reach approximately one-tenth of a mile (.1). Vice Chair McKitterick questioned whether 1,900 people live within the area indicated on T-Mobile's map of proposed coverage. He said that the Commission wants evidence of how many buildings will be served. Mr. Albritton explained that radio frequency propagates from the tower. A computerized model takes the intensity of the wattage from the tower and predicts how it will be sent out using so-called "clutter tools" that determine whether the area is urban, rural or otherwise. They do not take into account shadows and locations of every home and every tree. Pressed further, Mr. Albritton estimated 200 homes in the coverage area. Mr. Vlasic suggested that judging from the property base map, the number would be closer to 100 and in the range of 80 to 100. He clarified however, that this was a rough estimate.

Mr. Albritton also said that in-building coverage is the measure that carriers are allowed to use in terms of the quality of signal that they can provide and how they would determine a gap. He said there are capacity gaps and coverage gaps. Capacity gaps can deal with population; coverage gaps deal with signal levels over a geographic area. T-Mobile is obligated to provide a signal in its licensed area, and there also is a need to provide capacity, meaning that more sites are needed to provide more calls in a dense area such as San Francisco.

Chair Gilbert moved on to the question about the proposed facility's structural integrity in the event of seismic activity. Mr. Guerrazzi said that the facility would meet all Portola Valley, San Mateo County and California codes and requirements. Mr. Vlasic pointed out that Condition h. requires that the facility be "designed to withstand the 'maximum credible earthquake' and maximum anticipated wind loads at the site."

As for materials, maintenance and fireproofing, Mr. Guerrazzi said materials obviously will meet fire codes. They will be fire-retardant or fireproof, depending on the final design. The slimline pole is much easier to fireproof than a monopine. He said there should be no issues with branches falling from the monopine, but a condition may specify that the facility be maintained in the manner in which it was installed.

Commissioner Zaffaroni asked if and how Federal preemption would affect the technical aspects of wireless services in terms of alternative technologies such as DAS or mesh networks. Mr. Albritton said that T-Mobile does use DAS technology to provide high capacity in relatively small areas. DAS units require fiber optic

connections linking the units to a remote location that holds the same radio equipment that would be installed on a cellular tower. In the Clarkston case, he said, the Federal appeals court ruled against the town, which had enacted a point system that established DAS as the preferred technology. Mr. Albritton said that DAS technology also raises concerns among neighbors and encounters resistance. In response to Commissioner Zaffaroni, he said that the opposition primarily involves concerns about effects on property values. DAS requires a facility on every utility pole; without a pole, there can be no service. A mesh network with capacity equivalent to the T-Mobile proposal would require up to 24 nodes feeding back by fiber optic cable to an equipment shelter housing a remote radio unit that converts the fiber signal to an RF signal at each antenna location. He also pointed out that with the single-pole solution 9-1-1 service can be routed to local dispatchers rather than through the California Highway Patrol.

Chair Gilbert noted that one of the conditions of the CUP is that people still be able to walk in the area near the cellular tower. If they do, she asked, will they be subject to higher RF emission levels? Mr. Guerrazzi cited two issues; in the first place, he said, it is private property so Cal Water could restrict access if it chooses to do so. Mr. Hammett, who identified himself as a registered special engineer, said there are no restrictions necessary in terms of compliance with FCC standards. All RF emission levels are at least 100 times below requirement, and nothing outside the fence needs any sort of restriction.

Moved onto the issue of a coverage gap, Vice Chair McKitterick said there seems to be a question about how a significant gap is measured and whether it accounts for anything beyond geography—such as structures that would have in-building reception, people residing in that area, and the presence of major thoroughfares that bring in a significant number of people. He said it is questionable whether enough buildings, people or vehicular traffic are not being served in the purported coverage gap to meet the standard of significance. He also is concerned that the T-Mobile proposal would even fill the coverage gap in terms of those measurements. Mr. Siegel explained that you don't reach the significant gap analysis until making the significant findings on the aesthetics; you can't jump to the second criteria without completing the first. If the Commission concludes that no significant gap exists, it must first make the finding. Chair Gilbert asked for clarification. Would the issue of coverage gap come into play only if the Commission denies the application on the basis of aesthetics? Mr. Siegel said that to the extent that any Commissioners' attorney can be certain about anything, he is certain that her understanding is correct. As to Vice Chair McKitterick's question about whether measurements based on buildings, people and traffic would be a valid approach, Mr. Siegel said that he is not certain, and would not direct that the result would be preordained in a court.

Vice Chair McKitterick said that he tends toward denying the application, influenced in part by tonight's discussion of the precedents. In addition, he does not believe that the substantial gap analysis would be intended to cover every square mile of rural area by cell service, particularly where there are relatively few buildings, small populations and no major thoroughfare. He would not expect a court to conclude that such an area represents a significant coverage gap.

Commissioner Zaffaroni said she appreciates that concern and recognizes that many people in the community share it. She also understands that the case law that defined a two-block area as a substantial gap was in San Francisco, but she doesn't know what else Portola Valley has to look to help guide a decision. Mr. Siegel said that if the actions of the Planning Commission direct the town to a posture that might result in litigation, discussion of the pros and cons would not be appropriate in a public session. He also said that each case cited is based on very fact-intensive analysis, and what might strengthen or weaken a litigant's position would be speculation. Eventually, he said that Congress may or may not trump any litigated cases by passing a new law that is either tighter or more liberal, which is the nature of how law evolves with fast-changing technology. As to where to find guidance in this shifting legal terrain, Mr. Siegel advised looking back to Ms. Sloan's June 11, 2010 memorandum discussing the most recent cases. No numbers exist as guides in the gap analysis the way they do with the RF emissions.

Commissioner Von Feldt said that she is in more doubt now as to whether there is a coverage gap than she had been. She cannot prove otherwise, but she said the fact that the information T-Mobile provided differs from what is in the field, the fact that what was not covered in one test was covered on another occasion and (added by Vice Chair McKitterick) the fact that T-Mobile did not provide us with test data, all make it difficult to put much faith in the coverage gap claim.

Commissioner Zaffaroni said that although she had thought case law defined coverage gap, she too now feels otherwise and believes there is little foundation on which to base a decision. Because of its Town values, Portola

Valley is willing to forego some conveniences and amenities available to residents of larger cities and thus would not consider absolutely seamless cell phone service coverage an issue. However, she is not sure that Federal law would share that view, because the case law seems to give little weight to local land use discretion. Mr. Siegel characterized her evaluation as accurate. In a densely populated metropolitan area, San Francisco, the court determined that a two-block area without coverage constituted a significant gap. The law has not been tried in a small rural community, though, so there are no similar cases to go by.

Based on review of the materials and analyses, Commissioner McIntosh said that he had considered there to be a coverage gap and that the Town had no choice, but now that question is not answered. Chair Gilbert also came to the meeting thinking there was a coverage gap but was now confused on how to judge if a significant gap existed. She said it would be nice to have more guidance.

Moving onto aesthetics, Chair Gilbert asked for Commissioners thoughts about the issues.

Commissioner von Feldt said that based on all the meetings she has attended, the aesthetics evidence is substantial and significant enough to deny the application. The audience, the letters and the neighborhood petition all say the proposal is aesthetically unacceptable. The ASCC has said there is no acceptable aesthetic alternative. The trees there will not survive much longer and it will be very difficult, if not impossible, to grow new trees or plantings on the rocky knoll to screen a cellular tower effectively. Peak Lane is not a cul-de-sac, but a small, highly traveled connector road between Golden Oak Drive and Cervantes Road. Vice Chair McKitterick concurred with Commissioner von Feldt's comments.

Commissioner Zaffaroni said that aesthetic question hinges in part on an outcome that is difficult to predict, including the appearance of a custom-fabricated tree and extensive re-landscaping. She credited both T-Mobile and the Town for genuine attempts to mitigate the adverse aesthetic impacts.

Commissioner McIntosh said that over his 12 years on the Planning Commission, he has always found Mr. Vlasic's analyses and reports thorough, thoughtful and empathetic. He agrees that there are ugly utility poles all over the Town, and probably 40 poles on Peak Lane that look horrible, with wires all over the place. He said that the faux trees he has seen appear acceptable, and the old trees on the Cal Water property won't all die at once. He sees an opportunity to actually improve this site, leveraging Cal Water and T-Mobile to make it better. Commissioner McIntosh said that his observations, both from walking the site and from photographs, lead him to agree with Mr. Vlasic that the proposed tower would not be very visible. He said that in his opinion, it would be a utility providing a service—such as power, telephone and water. In fact, he said that a high-elevation site owned by the water company is a perfect place for a cell tower.

Chair Gilbert said that she has a problem in terms of the proposal's aesthetics. She applauds the applicant for efforts in terms of tree variations, extensive landscaping and so on, but because the old trees on the site are likely die before the 10-year permit expires, the cell tower will stand alone for some time. The fact that residences are right up against the site makes the aesthetic criteria higher than it would be otherwise, she added, pointing out that most cell towers go up in commercial areas with residences around not as close.

Commissioner Zaffaroni said that she wants to know whether the proposed mitigation would produce acceptable aesthetics in the future, and has not been able to make that determination. Mr. Vlasic explained that staff's efforts relative to aesthetic conditions were predicated on having very little latitude in terms of the coverage gap. It was in trying to work within what they believed regulatory limitations to be that staff came up with so many elements to landscaping control. Mr. Siegel added that he, too, is going on the assumption of a very narrowly defined gap, and cited again the Town Attorney's memorandum of June 11, 2010.

Vice Chair McKitterick pointed out that the Planning Commission previously may have been under the impression that geography was the sole determinant, but that may not be the case. Mr. Albritton suggested that the discussion seemed to be leading down a wrong path. He said a significant gap is determined by substantial evidence, which in the San Francisco case was based on scan maps and coverage maps rather than phone calls—and thus was defined by geography. Population may be a factor but the question is whether there is substantial evidence to identify a significant gap. T-Mobile's submissions and RCC Consulting's findings both support that substantial evidence. People may be confusing that evidence with the number of people who will be covered. Erecting a tower 100 or 120 feet tall would provide service to many in-building households, but that has nothing to do with whether there is a gap in coverage.

Chair Gilbert posed another question for discussion: Given the alternatives and the particular site—despite concerns about aesthetics—does the proposal represent the least intrusive or aesthetically problematic alternative? Mr. Siegel said that it appears that the landlord's willingness to have cellular equipment on a property is a standard. Under the circumstances, Commissioners agreed that the proposal is the least intrusive alternative.

Coming back to the coverage gap issue, Chair Gilbert requested further Commissioner input. Vice Chair McKitterick said that he concurs with Commissioner Zaffaroni that it would be helpful to have a closed session in which privileged information could be discussed and Commissioners could more effectively weigh the issues. Lacking that, he said that he has doubts about whether 1) there is a significant gap and 2) the proposed solution would fill a significant gap. Mr. Siegel observed that while there is a strong desire to reach a conclusion at this meeting, some time does remain before the decision must be made, so a publicly noticed closed session could be scheduled. He reiterated that there is no way to convey legal information without the Planning Commission holding a closed session. Vice Chair McKitterick said that if the Planning Commission denies the application, the Town Council could hold a closed session with counsel and make a decision on appeal, assuming that T-Mobile would appeal a denial. Mr. Siegel said that would also be a legally permissible option.

Chair Gilbert said that if nothing else, the Planning Commission should comment on its findings for the record. Mr. Vlastic indicated that if the Commissioners conclude that no significant gap has been established, under policies and the use permit, it may deny supporting the application without further commenting on its findings. Mr. Siegel said that if a denial were to be appealed, which is not unusual with land use decisions, the Town Council is more accustomed than the Planning Commission to having closed sessions to discuss such issues.

Commissioner Zaffaroni noted that this has been an unusual process, with a lot of new information coming in up until the last moment. Getting back to the Town values that she brought up earlier, she said that raises a policy issue on which a decision would rest with the Town Council anyway. It also would be up to the Town Council to make any decision in terms of legal matters. For those reasons, she said she is not sure that even a closed session for the Planning Commission would be helpful.

Vice Chair McKitterick said that whether the Planning Commission grants or denies approval of the application, his inclination is to do the best with what they have.

Chair Gilbert asked whether any Commissioners are concerned that there is a coverage gap on the basis of RCC Consultants' findings. Vice Chair McKitterick said that it is not the consultant's decision to make. What was needed from the consultant was information about where there was going to be service, where there wasn't, whether it was safe and met standards—not for the consultant to make the decision for the Planning Commission.

Commissioner Zaffaroni noted the difference between verifying a coverage gap and determining whether the gap is significant. Verification of a coverage gap has been made, she said; its significance is more a matter of discretion. Commissioner Zaffaroni believes there is a gap in coverage, but because there seems to be no absolute legal answer, she prefers to say the gap is not significant if that is a discretionary decision. She would rather have a significant gap defined more broadly based on Town values and characteristics. If it is within her discretion to say so, the coverage gap is not significant. Chair Gilbert said that she agrees there is a gap but does not know on what basis to make a decision about its significance.

Vice Chair McKitterick noted that of eight findings that the Planning Commission must be able to make in order to grant a CUP under Zoning Ordinance Section 18.72.130, three (#2, #4 and #6) involve aesthetics issues. In regards to item #1, Commissioner McIntosh said it would be one thing if the tower were being located on Alpine Road or Portola Road, but the subject site is in the midst of a thoroughly rural residential district would not be "properly located in relation to the community as a whole..."

In terms of item #7, Vice Chair McKitterick quoted, "... based on the evidence before it, that the proposed use will meet a need in the town..." and said that evidence has not been demonstrated. Chair Gilbert pointed out that this is not specific to T-Mobile, but with respect to any cellular provider.

Commissioner Von Feldt said that she narrowed the list of most important findings that she absolutely could not make down to #2 and #4 and possibly #6. Commissioner Zaffaroni agreed about #2 and #4. Vice Chair McKitterick asked if it was necessary for the Planning Commission to affirm or deny all of the relevant findings, or if it could address just #2 and #4. Mr. Siegel said that assuming the motion is to deny the CUP application, the

Planning Commission would set forth its reasons, based on aesthetic grounds, explaining that it cannot make the required findings under the Zoning Code. He said that the motion must be specific on reasons for stating that there is a significant aesthetic impact.

Vice Chair McKitterick moved that the application for a Conditional Use Permit (CUP) X7D-170, Wireless Communication Antenna Facility, Intersection of Golden Oak Drive and Peak Lane, T-Mobile West Corporation, be denied for the following aesthetic reasons: 1) the ASCC unanimously found the proposal aesthetically unacceptable; 2) the arborist's report said that the trees will die in a very short timeframe; 3) neighbors have objected on aesthetic grounds and none have spoken up in support of the site location; 4) the thin, rocky soil is unlikely to support alternative screening; 5) the area where the pole is proposed consists of single-family homes in a rural area. Based on those aesthetic reasons, we find that application does not comport with the Town Zoning Ordinance for a Conditional Use Permit. In addition, we find that there is substantial evidence in the written record that the proposed antenna would impose an undue visual impact, contrary to the public interest and spirit of the Zoning Ordinance, which is to preserve the natural beauty of Portola Valley, especially in this type of location. Additionally, we find that 1) no significant gap has been demonstrated to the Commission and 2) the proposal would not fill a significant gap. Commissioner Von Feldt seconded and the motion carried 4-1 (McIntosh).

(2) Public Hearing: Proposed Amendments to Conditional Use Permit (CUP) X7D-87, 19501 Skyline Boulevard, Thomas Fogarty Winery

Mr. Vlastic said that when this item was scheduled for consideration in May, one concern involved accessory uses, which he addressed in his June 30, 2010 memorandum to the Planning Commission, a supplement to the May 14, 2010 staff report. He has visited the site again and met with winery representatives to go over their concerns. The analysis and recommendations in the June 30 supplement are based on staff evaluations, meetings with the Town Attorney and other inputs, including the site visits, information about accessory uses and how they are necessary to the primary use. The supplement modifies the original recommendations in terms of maximum attendance and ongoing monitoring of accessory uses and tries to accommodate the various needs expressed. The primary focus is on changes from current limitations primarily on time limits, music and tasting room hours. That accessory uses are appropriate has been established for the record. Mr. Vlastic indicated receipt of comments from neighbors, a letter from winery attorney Douglas Aikins, and a follow-up letter from Tommy Fogarty.

Mr. Vlastic noted for the record that one item included in the table (Exhibit A, Comparison of Existing and Requested Conditions) was inadvertently omitted from the list of recommended conditions. It concerns there being only one wedding per day and no other events that day.

Speaking on behalf of the applicant, Mr. Fogarty indicated that the information has been exchanged and the process has been going on for 16 months. He said he concurs with staff recommendations and seeks approval of the CUP.

Commissioner Zaffaroni said that she had not previously noticed that accessory uses brought in more income than the winery use. Mr. Fogarty said that as far as wine sales go, only about 25% were direct on-premise sales but they account for more than 50% of net income/revenue because the cost of doing business with on-premise sales is so much lower than through other channels. Mr. Aikins said that the concept of using relative economic activity generated by accessory versus primary uses is one measurement, but the real question is whether the accessory uses could survive on their own, independent of the winery, or whether they are interdependent with the winery. The accessory uses are developed out of the winery's marketing practices.

Commissioner Zaffaroni said that when the issue first arose in 1994, it was indicated that income derived should be the touchstone determining accessory/subordinate/incidental versus primary uses. She said she never considered it appropriate criteria, but if it is not income, what are the proper criteria? In response to Mr. Vlastic pointing out that the range, number and the frequency of uses is established with the use permit, she agreed, but added that one of the criteria in looking at a CUP is the impact on the community. With Findings #2 and #4 basically focusing on the impacts on the surrounding community and properties, at what point do impacts of accessory uses outweigh those of the primary use or become more predominant?

In response to Commissioner McIntosh's observation that the number of events does not increase the impact, Chair Gilbert mentioned noise and traffic impacts continuing until later in the day.

Mr. Fogarty asked to comment. He said that many of the Commissioners have been to the winery and have had a lot of time to avail themselves of the invitation to visit. At every turn, he said, the neighbors have failed to demonstrate that the winery impacts them. He asked if any Commissioners would disagree. Vice Chair McKitterick said that he would word it differently, but would say that as a Commissioner he does not feel the impact on the neighbor is significant enough to justify denying the permit on that basis.

Commissioner Zaffaroni pointed out that there is a difference between whether there are negative impacts and whether an accessory use is becoming more a primary use. Vice Chair McKitterick said he did not expect Mr. Fogarty would get much debate from the Commission about any significant impact on the neighbors, but what Commissioner Zaffaroni is saying is that, setting that aside, does the use of the property under the proposed permit change into a primary use? Based on increasing impacts, Commissioner Zaffaroni explained, an event that goes to 11:30 p.m. rather than 8 p.m. could create an increase in impacts. She said it is not the single neighbor in question, either. The winery is in a quiet, rural setting surrounded by open space. She said she just wants to ensure that the Planning Commission can apply the criteria consistently to similarly situated properties in the future.

Vice Chair McKitterick asked if Mr. Vlastic agrees with Mr. Aikins' way of looking at accessory uses, as uses that would not exist if it were not for the principal use and are intertwined with the principal use. Mr. Vlastic said that the Zoning Code defines an accessory use as one that is necessary or incidental to the operation of the primary use, and the context that Mr. Aikins presented is consistent with that. The range of uses fit within that context.

Mr. Aikins indicated that the applicant's effort is to show the Commission facts and factual conclusions to rely on in finding that uses at the winery meet the ordinance definition of accessory use. For the record, he asked to recite a list of factual statements, conclusions and opinions distilled from the staff report, the winery's own statistics and its submittal. The winery is requesting one extra hour per day on wine-tasting and one extra day. It is requesting a 20% increase in total attendance annually. He pointed out the intrinsic relationships between the winery's primary and accessory uses. The events held at the winery were generated by the wine culture and lifestyle. Many families associate important family social events and companies associate impressive business events with the luxury, style and traditional appeal of a winery—which has become integral to wine sales. The winery's marketing program is devoted 75% to wine sales and 25% to events.

Commissioner Von Feldt asked for the rationale behind having some events end at 9 p.m., some at 10 p.m., etc. Why not simply an early ending and a late ending? Chair Gilbert said that the difference is primarily to allow weddings to go later. Mr. Vlastic said the applicant would have preferred keeping it simple with all events allowed to go to 11 p.m. with caterers off the premises by 11:30 p.m. Although a more complex approach, he said that staff recommended keeping the breakdown staggered to minimize potential issues and still give the winery what it needed to market events. Given conditions at the site and in the area, and the distances involved, even on late nights staff felt that impacts as a result of the hours changing will be minimal. He acknowledged that the Jacksons disagree.

In response to Chair Gilbert, Mr. Vlastic said the hours were extended from his prior memorandum because staff went again to check conditions at the later times and came up with a new recommendation that could be supported.

Concerned about potential impacts of accessory uses with larger attendance and later hours, Commissioner Zaffaroni asked for the Town Attorney's input on drawing a distinction between accessory and primary uses. Mr. Siegel said that as pointed out in the staff report (page 3), the Town Attorney's office views this in terms of whether the change in hours is appropriate. He said changes in the hours do not change the use. The questions are: Do these changes fit in? Are they appropriate changes? They are not of the magnitude that the changes affect the dynamic that may face the Commission on other occasions, he said. A longstanding decision determined these as accessory uses. The changes do not turn them from accessory to equivalent or primary

uses. Mr. Aikins also referred to the staff report (page 2) in terms of ordinance language. Do the revisions in the use permit "effect a conversion of a principal use to one not permitted in the district"? He described that as a good bottom-line, bright-line way of deciding, and in this case, more hours and larger attendance do not effect such a conversion.

Chair Gilbert opened the public hearing.

Gene Chaput, 358 Alamos Road, said that he has lived in Portola Valley for 40 years, and the winery is a wonderful facility, a treasure that enhances the community. When his family hosts guests from out of the area, it's one of the first places they go. He said he chose to live in Portola Valley based on impressions formed when he was a child and his grandparents took him on outings from San Francisco to Portola Valley in the 1940s. The Fogarty Winery gives those same impressions "in spades," he said, and anything the Town can do to encourage the winery can only benefit residents. He said that his wife is involved in Allied Arts Guild, which serves the Lucile Packard Children's Hospital. When additional events were scheduled to raise funds for seismic and structural upgrades, neighbors complained, selfishly never thinking of the children and families who stood to benefit.

Bruce Jackson, 19765 Skyline Boulevard, said that in 1994, the Town codified what was taking place with events at the winery and other things that had not been a part of the normal approval process. Someone who spends short vignettes of time there may not appreciate how much sounds travel from the winery to the Jacksons' property. Most of these sounds would not cause the needle on the sound monitor to move violently, Mr. Jackson said, but the effects are cumulative. He said to imagine your neighbor having a large party with lots of people, vehicles and activities. You're glad when the party's over so you can get on with your life, and you hope it will be a long time before the next party. Then imagine your neighbor having 300 parties a year. Last Saturday, he said he heard the bus backup bell at 7:40 p.m. and again at 8:20 p.m., indicating that the winery does not have a handle on the traffic situation. Bus passengers are still on-site at least 20 minutes past the ending hour. Going back as far as 1993, he said that he does not think Town representatives ever saw events as anything other than a way to promote wine, certainly not a way to support the production operation. He said that in terms of communication, relations between the Jacksons and the winery are bad. He described the Fogarty organization's operative phrase as "concerns addressed as necessary and appropriate." For example, the blinds on the Hill House's south-facing windows, mandated in Condition 4 in 1994, were still in dispute at a site visit in March 2010. Mr. Jackson said that his family is made to seem like insatiable critics, when they have used only a few points to evaluate the old issues. He urged the Planning Commission to uphold the status quo for event hours set forth in Condition k.1-14, including prohibition of diesel-powered shuttle buses.

Ms. Chaput commented on the Allied Arts point her husband raised. She said that the organization often has to turn down events due to the strict conditions imposed on hours and described it as "a gymnastics nightmare." She said she is begging the Jacksons to forgive the extra hours. When she was with her husband at the Fogarty Winery on Mother's Day; he looked out and said, "You could be anywhere in the world and not quite find a place as lovely as this." It's a wonderful treasure for Portola Valley. She said she hoped the Planning Commission would extend its hours.

Hildegard Jackson, 19765 Skyline Boulevard, said her family may be the winery's only immediate neighbor. She said she is disappointed and angry. It started as a very innocent winery in a rural area, and she was there before that. She said that it hurts her to hear people say that the events at the winery do not impact her family; "we are not making this up." When cars are taking off, you can be in the kitchen and hear the cars. If that happens at 11 p.m. after you're in bed, it has a big impact. The lights are also a problem. She said this is "our privacy." She asked, "Consider us or implement to protect us as much as possible."

Chair Gilbert closed the public hearing. With no additional comments from the applicant, she opened the discussion to Commissioners.

Vice Chair McKitterick said that he'd spoken with the applicant's counsel and also to Mr. Vlasic about what wineries in other communities are doing. As he understands it, events are viewed as an integral part of a major winery, and those communities—at least those on State highways—have traffic issues. He said that he is inclined

to approve the CUP.

In response to Commissioner Zaffaroni's further questions about the primary versus accessory uses, Mr. Siegel said that this application comes nowhere near the tipping point where the Town Attorney would conduct an analysis to determine whether an accessory use had become primary. She requested additional elaboration about when and how the intensity of use, lateness of operation and numbers of attendees would affect the accessory nature of these events. Mr. Siegel said that the Town Attorney's office is of the opinion that the events have very limited impact on the equation of what is accessory and what is primary. The scope of the winemaking business, growing the grapes and bottling the wine are not impacted much as the primary use by whether the hours are extended or not. He said that it is not a "zero-sum game." Hours are not taken away from winery usage by increasing events usage. He also said that the Town Planner does not believe that changing the hours changes the calculus on what is accessory versus what is primary. Commissioner Zaffaroni said that the Commission should look strictly at the criteria of the Zoning Ordinance and make a decision whether these changes are acceptable or permissible on that basis. She said she wanted to move aside the whole issue of accessory uses; she had thought because the accessory issue goes way back, she was under the impression that the Planning Commission was obliged to investigate it.

Commissioners McIntosh and Von Feldt said that they concur with staff's changes and recommendations. Chair Gilbert said that the hours for the 90 weddings are a concern. To date, evening weddings have gone until 8 p.m. Under the recommended changes, some would be extended to 9 p.m., some to 10 p.m. and some to 11 p.m. She expects weddings to be scheduled every Friday and Saturday evening during peak months, which seems to be a big change in impact. She suggested that perhaps the latest time (11 p.m.) be removed. Commissioner Zaffaroni said that it also bothers her that everything is moving to 11 p.m. Vice Chair McKitterick noted that the change is incremental, though, and staff and the Town Attorney are comfortable with it. Chair Gilbert came back to the finding concerning impact on neighbors.

Ms. Warner said the current CUP allows corporate events, which are often louder than weddings, to go until 11 p.m. Mr. Fogarty said that Mr. Vlastic was at the winery for what was probably the facility's loudest event.

Chair Gilbert suggested keeping the wedding hours as proposed but not increasing the number of events ending at 11 p.m. from 15 to 25. Vice Chair McKitterick, having visited the site, questioned whether there is any impact, Mr. Fogarty said it is amazing to him that it is still being discussed. In response to comments from Ms. Jackson, Mr. Vlastic said that he spent more than an hour at the Jacksons' driveway. He said that he feels that there is just a difference of opinion.

Commissioner Zaffaroni said that the largest events are the weddings, with 27 of them moving toward 11 p.m. and 11:30 p.m. Mr. Vlastic said that the function he attended was a charity event, the largest gathering of the year at the winery. Ms. Warner indicated that there have only been one to three weddings with 216 guests per year over the years. The average wedding attendance has been 75 to 100. Mr. Vlastic added that there is no way that over a year's time the winery could have 300 events if the maximum of 216 people attended each of 90 weddings. Average attendance would be between 60 and 75 people.

Chair Gilbert said the CUP language in item a.4) should be revised to prohibit any additional facilities being added to service the entity. Also, item k.4.e) should be revised to incorporate the more extensive and illustrative list of examples of lawn music groups that Mr. Aikins included in his July 6, 2010 letter. In other words, rather than merely "string trio or quartet," the passage also should say, "guitar singer, jazz trios, a cappella choirs, flute/harp combinations."

Mr. Aikins noted that it is not certain whether the one wedding per day limitation is included in the document.

Commissioner Von Feldt moved to approve the Amendments to Conditional Use Permit (CUP) X7D-87, 19501 Skyline Boulevard, Thomas Fogarty Winery, with additions to:

- o a.4) to prohibit any separate buildings being added to support the second entity
- o k.1 to specify only one wedding/reception per day and no other event that day

- o k.4.e) to name additional types of small music groups appropriate to the lawn area, such as guitar singer, jazz trio, a cappella group, and flute/harp combination in addition to string trio or quartet
- Commissioner McIntosh seconded and the motion carried 5-0.

Commissioner Von Feldt moved to find the application categorically exempt pursuant to Section 15303(a) of the CEQA guidelines. Commissioner Zaffaroni seconded, and the motion carried 5-0.

(3) Public Hearing: Review of the Town's Geologic and Ground Movement Potential Maps, Related to Zoning Provisions, Land Use Policies and Fault Setbacks [*continued to the July 21, 2010 meeting*]

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

None

APPROVAL OF MINUTES

Commissioner Zaffaroni moved to approve the June 2, 2010 minutes as submitted; Vice Chair McKitterick seconded and the motion carried (5-0).

ADJOURNMENT: 12:47 a.m.

Denise Gilbert, Chair

Leslie Lambert
Planning Manager