PLANNING COMMISSION MEETING, TOWN OF PORTOLA VALLEY, SEPTEMBER 7, 2011, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair McKitterick called the Planning Commission regular meeting to order at 7:30 p.m. Mr. Vlasic called the roll:

Present: Commissioners Denise Gilbert (arrived 7:40 p.m.) and Alexandra Von Feldt; Vice Chair Leah Zaffaroni and Chair Nate McKitterick

Absent: Commissioner Arthur McIntosh

Staff Present: Tom Vlasic, Town Planner
CheyAnne Brown, Building & Planning Assistant
Councilmember Ann Wengert

ORAL COMMUNICATIONS

None.

REGULAR AGENDA

Chair McKitterick said that the Commission would address Item 2 first.

(2) Preliminary Review: Proposed Lot-Line Adjustment Application X6D-212, APN 80-040-060, Alpine Road at Rapley and Simonic Trails, Pratt

Noting the presence of Deborah and Crawford Pratt, who filed their lot-line adjustment application pursuant to provisions of the subdivision ordinance, Mr. Vlasic referred to his memorandum of September 1, 2011 for background information. He reported that project engineer Jeff Lea (Lea & Braze Engineering, Inc.) researched the biggest issue, which required confirmation that the property indeed does include two lots. Mr. Vlasic said that Mr. Lea provided necessary information on the property history to the satisfaction of Nolte & Associates, which serves as the Town's engineering review agent, and thus the western hillside parcels the applicants own and that have been in the family for years have thus been cleared as two legal parcels.

Mr. Vlasic explained that the lot-line adjustment would create more opportunity for building on a site that isn't constrained by geology, slope or access, primarily Parcel 1, which would encompass 14.14 acres. Parcel 2 could not be decreased below its current 2.62 acres (to avoid increasing the extent of nonconformity).

A panhandle area on Parcel 1 is relatively accessible, primarily from Simonic Trail, is relatively level and has stable geology, according to Mr. Vlasic. He pointed out that topographical and access information show Rapley Trail extending along the eastern side of the Pratt properties and continuing to the northwest. Rapley Trail also provides opportunities for access. Parcel 2 has some frontage on Simonic Trail, Mr. Vlasic said, but it's steep and has access problems.

The next step in the process, Mr. Vlasic concluded, will be to complete staff review, take the proposal to ASCC for any additional input and bring the matter back to the Planning Commission for a public hearing.

Chair McKitterick asked whether the San Mateo County would issue another APN (Assessor's Parcel Number). Mr. Vlasic said that should happen once the lot-line adjustment is approved; at that point, the assessor would recognize the property as two lots and probably correct its history, which currently shows a single parcel. Lot-line adjustments can't be processed when a single parcel is involved, he added. In response to a further question from Chair McKitterick, Mr. Vlasic said that the issues covered in Nolte's communication have been addressed already.

Vice Chair Zaffaroni noted that a letter from Nolte's Jerome Jones, dated July 25, 2011, indicated a need to confirm with the county that there is no record of a "mandated merger" of the lots in question. Mr. Vlasic indicated

that has been confirmed, although he explained that when the merger legislation went into effect, the Town – rather than the county – had control of the properties and did not take action to merge them.

Commissioner Gilbert, joining the meeting, asked about the reason for the lot-line adjustment application at this time. Mr. Vlasic replied that he believes it's to create more opportunities for the Pratts to consider in the use of the larger parcel. He said that geology and driveway access both will come into play in any development proposals.

Mr. Pratt pointed out that an existing driveway already goes into the smaller lot, where his grandfather would have built had he decided to follow up on his idea.

(1) Request for Time Extension, Co-location Planning: CUP X7D-132 (Verizon) and CUP X7D-138 (AT&T), Existing Antenna Facilities at the Priory

Vice Chair Zaffaroni recused herself. Although her property acres away from the leased area being discussed, she said, she does own property within 300 feet of Priory-owned property.

Noting the presence of carrier representatives Mike Mangiantini (AT&T) and Jay Gruendle (Verizon) at the meeting, Mr. Vlasic said that both carriers have been working to develop the co-location plan, and have kept the Town informed. They have some issues relative to the lease arrangements and agreements to work out with The Priory, and still must take the monopine plan design to the ASCC for review. They estimate needing another six months. Chair McKitterick said that since the carriers have been moving forward in good faith, the request for extension seems reasonable. Mr. Vlasic agreed.

Commissioner Gilbert said that similar provisions appear in both Verizon and AT&T CUPs in terms of interim work. The Verizon CUP, for instance, says, "The installation of three new antennas would include removal of one of the two existing poles and the existing white whip extensions. . ." Mr. Vlasic said that Verizon is in the process of removing those items, and AT&T has completed its interim work.

Ms. Zaffaroni, Georgia Lane, asked what would happen if the extension time expires and work still remains uncompleted and required reviews unfinished. Mr. Vlasic explained that if the interim work produces a visually less intrusive solution that satisfies the ASCC and the carriers, it might come back to the Planning Commission with perhaps additional landscaping as a design component. Mr. Vlasic said he expects progress well within the six months, but at the outside, another delay could trigger calling up that provision for review in the use permit.

Ms. Zaffaroni referred to a letter from Laura Boat, Verizon Consultant, suggesting that Verizon's slower-than-anticipated progress resulted from reallocation of resources, and noted that a number of the carriers' project managers have changed. In that context, she asked whether there's really been an effort to bring this to conclusion. Mr. Vlasic said that yes, with the building permit submittals, there's already a monopine design, and the carriers are working on lease arrangements with The Priority. They are still trying to determine which entity would be the owner of the monopine. At this point, Towerco has satisfied its permit responsibilities and seems to be out of the picture. Ms. Zaffaroni suggested that notwithstanding other negotiations involved, which aren't the Town's business, the responsible parties must comply with time requirements because other considerations, such as the neighbors' concerns, must be taken into account. Chair McKitterick said that he'd like to make it clear to the applicant that the Town is serious about work being completed within the extended period.

Commissioner Von Feldt said that once Verizon's interim solution is complete, it may make sense to arrange a site visit. Mr. Vlasic said that when Town planners meet soon with Verizon and AT&T to map out next steps, that will be a question he raises. Mr. Vlasic also suggested that staff provide the Planning Commission with a status report with input from AT&T and Verizon within three months.

Mr. Gruendle asked whether the six-month extension would lead to submitting the monopine design for approval or to issuing the building permit. Mr. Vlasic said the extension would go to the building permit stage. Mr. Gruendle said the building permit for the interim solution is ready to pull, bid walks with contractors are underway, and once the project is awarded, work on the interim solution will begin. That aspect is moving full steam ahead, he said, and a proposed lease amendment has been submitted to The Priory for review. In addition, the landscape and maintenance agreements that are required as part of the CUP are in final form, and Verizon will execute them upon confirmation that the timeframe has been extended.

Commissioner Von Feldt said that in terms of landscaping, it would be better to plant soon – within the fall and winter months – rather than wait for spring, to give plantings an additional growing season.

Commissioner Von Feldt moved to grant Verizon CUP X7D-132 and AT&T CUP X7D-138 an additional six months, to April 16, 2012, to complete the co-location planning effort, based on the Planning Department's staff report of August 31, 2011 and provisions of Condition 2 in the carriers' amended use permits, with a three-month status report provided by Town staff. Seconded by Commissioner Gilbert, the motion carried 3-0.

(3) Public Hearing: Addition of proposed Chapter 18.41, Wireless Communication Facilities, to the Zoning Ordinance

Mr. Vlasic referred to the September 1, 2011 staff report, noting that the draft ordinance includes revisions made based on the Planning Commission/ASCC study session on June 15, 2011. After discussions with the Town Attorney, he said, the one issue they did not address completely involved the variety of terms used in reference to the responsible party – e.g., permittee, service provider, carrier, facility owner, property owner and applicant. He said that the various terms seem to work in the context of the ordinance and it would have taken too much time to deal with it as suggested. Further, he said that the proposal doesn't preclude consideration of wireless installations at particular locations (except residential properties), but does describe certain Town preferences.

The carriers received copies of the proposed ordinance with a request for input at tonight's hearing, Mr. Vlasic added. He also indicated that the Town already has made use of much of the information in the proposed ordinance to respond to applications from Verizon (for cabinet improvements at its facilities on Alpine Road), AT&T (for upgrades on several of its facilities, including one on Alpine Road that would also involve a variance), and T-Mobile (for improvements to existing facilities on Alpine Road and Portola Road). In all cases, the Town has requested further information. As regards T-Mobile, Mr. Vlasic added, the Town has yet to receive a building permit for its Peak Lane proposal, which is now within two months of when its use permit expires. In addition to obtaining the building permit by that time, T-Mobile must be in the process of acting on that permit.

In response to a question from Vice Chair Zaffaroni, Mr. Vlasic explained the AT&T variance, which is for the facility across from the Alpine Hills Tennis & Swimming Club, would involve placing cabinets at the base of a residential parcel. He indicated that the owners of that property have apparently agreed to it, inasmuch as they are part of the application with AT&T. He said that AT&T is looking at a similar cabinet need for its facility near the Valley Presbyterian Church on Portola Road, and may even consider underground vaults.

Before the Commission began reviewing the proposed ordinance, Mr. Vlasic asked that notes regarding typographical errors and such be given to Ms. Brown to pass to him after the meeting.

Section 18.41.020.M – Commissioner Gilbert acknowledged that there's little legal precedent to help define a "significant gap," but wanted to know if this provision could attempt to provide more guidance. Mr. Vlasic said that the factors considered in dealings with T-Mobile's Peak Lane application are included in the ordinance language that discusses the data needed to support a significant-gap argument. He referred to Section 18.41.070.E.7.

Section 18.41.070 – In cases where CUPs have been issued, Commissioner Von Feldt asked whether the permit holder is held to its provisions or whether conformity is considered only when the permit expires. Mr. Vlasic said that a permittee functioning within the provisions of the CUP may continue legal nonconforming uses under the provisions of that permit. Extensions, however, are not automatic, he added, and recent approvals enable the Planning Commission to change provisions once a CUP expires. He added that most of the CUPs that have been extended over the past two years already include most of the conditions in the proposed ordinance. Responding to Commissioner Gilbert, Mr. Vlasic said that the AT&T request for cabinet expansions would be an example of a major amendment to its use permit.

Section 18.41.070.E. – In response to a question from Commissioner Von Feldt, Chair McKitterick said that some facilities are tall enough to require Federal Aviation Administration (FAA) approval.

Section 18.41.080.A.2. – Vice Chair Zaffaroni noted that compliance with applicable FCC rules is required for new or modified wireless communication facilities. She questioned whether those rules should likewise apply to existing facilities. All existing use permits include that requirement already. Mr. Vlasic said.

Section 18.41.080.B. – In response to Commissioner Von Feldt, Mr. Vlasic confirmed that the utility undergrounding district is located along the Alpine Road scenic corridor.

Section 18.41.080.B.1. – Vice Chair Zaffaroni, observing that additional height (beyond 50 feet) would facilitate additional service and co-location options almost by definition, suggested adding something to require mitigation measures that would reduce adverse aesthetic impacts on the surrounding area to acceptable levels. Chair McKitterick and Commissioner Von Feldt agreed.

Section 18.41.080.B.3. – Vice Chair Zaffaroni asked for clarification on the definition of "vacant" in the sentence that reads, "Residentially zoned properties beyond those currently used for utilities . . . may be considered only if they are vacant." Mr. Vlasic said if there's no residential use on a property zoned for residential use, it's considered vacant, i.e., a property that could be developed for residential use but has no structure on it suitable for residential occupancy.

Section 18.41.080.B.6. – Noting that the first sentence says that wireless facilities "shall be designed to blend into the environment of the site to the maximum extent feasible," Vice Chair Zaffaroni suggested changing the word "site" to "area surrounding the site." Chair McKitterick and Commissioner Von Feldt indicated agreement.

Section 18.41.080.B.8. – Instead of requiring new facilities to be designed and built to accommodate co-location "by all the providers" that might reasonably be expected to desire use of the same site, Vice Chair Zaffaroni suggested removing "all the" from the phrase. Again, Chair McKitterick and Commissioner Von Feldt agreed.

Section 18.41.080.B.10. – Vice Chair Zaffaroni pointed out that this provision calls for posting warning signs about radio-frequency (RF) emissions at camouflaged facilities. She suggested that all facilities have such warnings. Chair McKitterick, who said that he believes FCC's provisions require warnings in all cases, proposed a change to say "all facilities shall comply with FCC regulations regarding warning signs," etc. Mr. Vlasic said there's not a problem removing "camouflaged" or adding "Including but not limited to faux trees." Vice Chair Zaffaroni added that the last sentence should read, "Such signs shall be clearly defined . . ." rather than "If such signs are required, they shall be clearly defined . . . ."

Section 18.41.080.B.11.d. – Noting that the last sentence references "the applicant," Vice Chair Zaffaroni said that requirements for landscape maintenance might apply to the property owner or a successor in interest or assignee rather than the applicant. Mr. Vlasic said that it should say "the permittee and the property owner."

Section 18.41.080.C.9. – Vice Chair Zaffaroni said that she wants to ensure that the Planning Commission understands and agrees about what should be required in cases where permittees or future owners want CUP extensions. The language in the proposed ordinance seems more limited than what Mr. Vlasic explained earlier, she said. The draft says that the Planning Commission "shall consider changes in technology; she stated that consideration must be given to changes in camouflage and landscaping approaches as well. Commissioner Von Feldt agreed, suggesting that existing permit holders ought to look at potential alternative locations, etc., when a CUP comes up for renewal. Mr. Vlasic said that the proposed language includes the statement that the Commission "reserves the right to require replacement of facilities, if less-intrusive service alternatives are available, as a condition of extending . . . " and to require "other permit extension conditions it finds necessary to ensure consistency with the intent and objectives of this chapter." Chair McKitterick suggested that "may require" would be better than "reserves the right to require" in those instances. Vice Chair Zaffaroni suggested changing the word "intent" to "provisions," too.

Commissioner Gilbert asked whether there's a timeframe within which the Town must make decisions on extension requests, as is the case with new applications. Mr. Vlasic said there are such provisions covering co-location and new facilities. He cited 18.41.060.C: "Unless modified by other provisions . . . action on a use permit for a new wireless communication facility or amendment to a permit for an existing facility shall be within 150 days of the application being found complete. For amendment to a permit for co-location of a new antenna . . . the time period for action shall be 90 days."

Section 18.41.080.C.11. – Vice Chair Zaffaroni noted that the term "future owners" would exclude lessees. In the case of Peak Lane, Mr. Vlasic said that Cal Water owns the property, and The Priory owns its property. Chair McKitterick said that this provision would affect the owner, not a lessee – unless, as Mr. Vlasic added, the

owner/lessor stipulated otherwise in the lease, but that would be unusual. In terms of facilities on utility poles, Mr. Vlasic said that the Town would require a surety to allow for removal of a facility in the public right-of-way.

Section 18.41.080.C.15. – Vice Chair Zaffaroni noted again the use of the term "owner," reiterating her previous suggestion to use "assignee and successor in interest" to anticipate future changes. Mr. Vlasic said that the Town Attorney was satisfied with "owner."

Section 18.41.080.C.13. Pointing out that he raised the question during the June 15, 2011 session with the ASCC, Chair McKitterick asked whether any scientific or experiential reasons support the need to require annual RF studies – or even annual proof of compliance with Town noise standards. Mr. Vlasic said that the fundamental rationale for these requirements is that Wireless Task Force members felt that regular review would provide a means of knowing about any problems and help ensure a certain comfort level for the community. Chair McKitterick reiterated his concern that without evidence, such requirements are not reasonable, and he would have the same concern if the Planning Commission reviewed CUPs every two years.

Mr. Vlasic said that there are public concerns about whether the FCC standards are adequate and may change. The case of the T-Mobile Peak Lane application put the Town was in a difficult decision-making position, and with options so limited (by federal regulations, for instance), there was a desire to ensure that whatever facility goes in is as safe and unobtrusive as possible.

Section 18.41.110.C. – Vice Chair Zaffaroni wanted to make sure this provision reflects the outcome of earlier discussions about extending CUP terms. Chair McKitterick and Commissioner Von Feldt concurred.

With no more preliminary comments from the Commission, Chair McKitterick opened the public hearing. Mr. Vlasic noted that the public hearing would be continued to the September 21, 2011 meeting, and any written input prior to that time also would be helpful.

Mr. Gruendle raised questions about several sections of the proposed ordinance:

- In regard to Section 18.41.070.C, he said that Verizon operates under the Federal Telecommunications Act of 1996, which includes "shot clock" provisions. These provisions give jurisdictions timeframes within which to consider proposals – which he said the proposal appropriately reflects in its references to 90- and 150-day periods – but the carrier goes from the premise that the clock starts when the application is submitted, not when it is deemed complete. Mr. Vlasic said that he would double-check with the Town Attorney, but based on the T-Mobile experience, the clock begins running when the application is complete.

  Mr. Gruendle said the Federal Telecommunications Act gives the jurisdiction 30 days to respond to the initial application with a letter indicating completeness or lack thereof. In the case where the jurisdiction simply asks for additional information without the communication indicating an application is incomplete, he said, the clock doesn't stop. But if the carrier receives communication within 30 days of submitting its application that the application is incomplete, the clock stops as long as the application is in the carrier's hands, and resumes when the carrier files an updated application. In response to a comment from Commissioner Gilbert, he said that he can't imagine an application going back and forth for five months (approximately the 150 days).

  Vice Chair Zaffaroni referenced the FCC's Declaratory Ruling, saying that the clock doesn't begin running until the application is complete. Mr. Gruendle said that for whatever reason, carriers other than Verizon don't seem to care as much about the shot clock, and attorneys have advised that it comes down to the application start date rather than the complete date.

  Chair McKitterick said that the Town Attorney will be asked to clarify that the ordinance language is consistent with her understanding.

  Mr. Gruendle said this is the first ordinance he's seen that even addresses a timeframe for decision-making, and it's refreshing to see that Portola Valley is addressing it.

- In reference to the phrase "may not exceed a height of 50 feet" in Section 18.41.080.B.1., Mr. Gruendle said that applications will come along very seldom for facilities less than 50 feet tall, especially if the Town wants to provide for co-location opportunities. Chair McKitterick said that he believes this language is intended to encourage carriers to build facilities that have co-location potential. Mr. Vlasic said that the basic ordinance provision limits antennas to 50 feet, which can be exceeded with a use permit; accordingly, this language is consistent with the fundamental provisions of the zoning ordinance. At the same time, it reflects the fact that some of the sites give carriers high elevations to begin with.

- In terms of extending permit life (Section 18.41.080.C.9), Mr. Gruendle asked whether the Town wants the applicant to present alternative locations or reasons for not doing so. Chair McKitterick said it's something that the Planning Commission could require but may not choose to do so. From the industry standpoint, Mr. Gruendle said that the carriers have long-term leases with the landlords on sites that are part of a larger network built to provide continuous coverage. With a 25-year lease, he said it would cumbersome to have to come up with alternate locations when a 10-year permit reaches the end of its life. Mr. Vlasic said that from the perspective of the Task Force (and its representation of the community), other technologies may evolve within a 10-year period that make solutions other than tall towers practical. The proposed ordinance would give the Town the latitude to require carriers to consider such options if they exist.

  Mr. Gruendle pointed out that Verizon operates on three different frequencies, so its footprint exceeds that of other carriers. Thus, cubes on power poles with phone lines attached that may work for Metro PCS might not work for a larger-spectrum carrier such as Verizon. Again, Chair McKitterick said that the Planning Commission would have the right to ask for review but circumstances would dictate whether it exercises that right.

- As for the noise and RF requirements in the proposed ordinance, Mr. Gruendle said that he understands the public sentiment on that issue, considering that jurisdictions' hands are tied, at least in regard to RF emission levels. He said that when Verizon proposes either a new site or a co-location, it generally populates its RF studies with simulations at the worst-case-scenario level – where the antennas would have the highest possible RF output. It is generally less than 1% of FCC's exposure limits. He said that if those levels approached the threshold of the FCC limits, annual monitoring might be appropriate. However, actual emissions are so far below the standard, he said, that it would create an administrative nightmare if requirements for annual studies of every site became the norm.

  In his experience, Mr. Gruendle said, no site has exceeded the federal standard; the closest he knows about was a site that a colleague told him reached 9% of the allowable limit – still a long way away from the maximum safe exposure level established by the FCC. The 20 sites he's worked on over the past two years have been in the area of 0.2% and 0.3%.

  Chair McKitterick asked what other jurisdictions require in terms of RF emissions. Mr. Gruendle said most of them want an RF study at the beginning, although not all of them even bother to ask for that. He said that he's experienced re-testing only in cases where a site has been appealed or met strong neighborhood opposition.

With no other public comments forthcoming, Chair McKitterick closed the public hearing until its continuation on September 21, 2011.

Vice Chair Zaffaroni called attention to language in the FCC Declaratory Ruling. She said it discusses situations in which a substantial increase to the size of a tower deems it no longer a co-location, so the 90-day period does not apply. She said that the 10% tower height increase cited is not much. Also, if the necessary equipment required more than four equipment cabinets or a new equipment shelter, and if the antenna protruded from the tower more than 20 feet or the width of the tower. Accordingly, she said, what the Town might consider a co-location wouldn't necessarily coincide with the Declaratory Ruling criteria. Vice Chair Zaffaroni said that she would provide Mr. Vlasic with a copy of the Declaratory Ruling.

Chair McKitterick said that in terms of Section 18.41.080.C.13, any noise issues come to the Town's attention, the Town will have the right to request testing at any time. The current ordinance draft proposes, "Within 45 days of the installation of the wireless facilities and thereafter on an annual basis, the permittee shall furnish data to the satisfaction of the Town Planner verifying compliance with Town noise ordinance standards and all FCC requirements including radio frequency emission standards." Chair McKitterick said the permittee shouldn't be

required to submit anything to do with noise ordinance compliance unless there's reason to think the facility is not in compliance. In response, Vice Chair Zaffaroni and Mr. Vlasic both indicated that noise studies are required under a number of other circumstances, outside the wireless communications arena. In the case of the cabinetry for wireless facilities, Mr. Vlasic said that permit applications come with noise data, and the study will ensure ongoing conformity with the noise standards established at that time. Commissioner Von Feldt recalled a case where noise levels no longer complied with use permit standards, but Mr. Vlasic said there was a problem like that with condenser malfunctions at The Sequoias, but the studies and tests that followed related specifically to that equipment. Chair McKitterick said that noise becomes a problem at any of wireless facilities in Portola Valley, staff will hear about it. Mr. Vlasic said that he's less concerned about the noise issue than the RF emissions, because both the noise ordinance and the carriers' CUPs give the Town the authority it needs in regard to noise.

Commissioner Von Feldt said that an annual requirement may be extreme. Vice Chair Zaffaroni, who pointed out that the carriers' periodic use of generators is probably the greatest source of noise, said that the two-year standard for review makes sense. Chair McKitterick said that unless there's a reason to believe there's a problem, even a two-year testing/study requirement would be onerous for the carriers – an extraordinary requirement that isn't imposed on others.

Chair McKitterick said that he doesn't have a problem tabling the issues of the noise and RF emission reviews until the September 21, 2011 portion of the hearing.

Mr. Vlasic said he's heard nothing about problems with compliance with the FCC standards; the problems lie in the fact that many people don't believe in the FCC numbers. Mr. Vlasic said that the Planning Commission might want to think about studies every four years rather than every two years, which at least would coincide with an established periodic review.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

Mr. Vlasic suggested that the Planning Commission put a discussion of the General Plan interpretation of the Meadow Preserve on the agenda for its next meeting to bring up any questions or concerns that should go to the Town Council for response. Chair McKitterick said that this will go on the September 21, 2011 agenda.

The joint meeting of the Planning Commission and Town Council is scheduled for October 5, 2011.

APPROVAL OF MINUTES

Commissioner Gilbert moved to approve the August 17, 2011 minutes of the Planning Commission meeting, as amended. Seconded by Commissioner Von Feldt, the motion passed 4-0.

ADJOURNMENT: 9:30 p.m.

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Nate McKitterick, Chair

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Leslie Lambert, Planning Manager