

OAKLAND CITY COUNCIL

RESOLUTION NO. 85966 C.M.S.

**RESOLUTION DENYING APPEAL #PLN15071-A01 AND UPHOLDING THE DECISION OF THE CITY PLANNING COMMISSION TO APPROVE REGULAR DESIGN REVIEW TO INSTALL A TELECOMMUNICATIONS FACILITY ONTO A REPLACEMENT UTILITY POLE LOCATED IN THE PUBLIC RIGHT-OF-WAY FRONTING THE LOT LINE AT 6046 COLTON BOULEVARD**

**WHEREAS**, on March 17, 2015, the applicant, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility ("Applicant"), submitted an application for Regular Design Review, with additional findings, to replace an existing 24'-9" Joint Pole Authority ("JPA") utility pole with a new JPA utility pole owned by PG&E and attach two panel antennae (each two feet long, 10 inches wide) to the top, extending to a height of 50'-5" above ground, located in the City public right-of-way adjacent to 6046 Colton Boulevard, and to mount a singular equipment box to the side of the pole 10'-10" above ground, as case # PLN15071 ("Project" or "Application"); and

**WHEREAS**, based on a site visit and review of internet aerial images of the site, staff did not discern a design issue or a view issue, given the elevation of homes uphill from the utility pole and the presence of a ridge to the southwest of the site; and

**WHEREAS**, the Application was agendized for the Planning Commission hearing of June 17, 2015, and public notices were duly distributed; and

**WHEREAS**, the June 17, 2015 Planning Commission was adjourned to the July 1, 2015 Planning Commission due to lack of meeting space, and notices of the adjournment were duly distributed and posted; and

**WHEREAS**, the Application was agendized for the Planning Commission hearing of July 1, 2015, and public notices were duly distributed; and

**WHEREAS**, in an effort to save printing costs, the Planning Commission staff report for the Application was not re-copied and includes the original hearing date of June 17, 2015; and

**WHEREAS**, on July 1, 2015, the Planning Commission independently reviewed, considered, and determined that the Project is exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines sections 15301 (existing facilities), 15303 (small facilities or structures; installation of small new equipment and facilities in small structures), and 15183 (projects consistent with a community plan, general plan or zoning); and

**WHEREAS**, on July 1, 2015, the Planning Commission approved the Regular Design Review application, subject to the Regular Design Review findings, additional findings, and conditions of approval; and

**WHEREAS**, on July 13, 2015, the appellants, Ms. Lynne Stocker and Mr. Jess Yanez, homeowners of 6046 Colton Boulevard, and Mr. Jerome Aubin, homeowner of 6050 Colton Boulevard (together, "Appellants") filed a timely Appeal (#PLN15071-A01) of the Planning Commission's decision to approve the Project; and

**WHEREAS**, after giving due notice to the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties, the Appeal came before the City Council in a duly noticed public hearing on January 19, 2016; and

**WHEREAS**, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on January 19, 2016; now, therefore, be it

**RESOLVED:** The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is exempt from CEQA pursuant to CEQA Guidelines sections 15301 (existing facilities), 15303 (small facilities or structures, installation of small new equipment and facilities in small structures), and 15183 (projects consistent with a community plan, general plan or zoning), and the Environmental Review Officer is directed to cause to be filed a Notice of Determination/Exemption with the appropriate agencies; and be it

**FURTHER RESOLVED:** That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, hereby finds and determines that the Appellants have **not** shown, by reliance on appropriate/proper evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Planning Commission, or that the Planning Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the January 19, 2016, City Council Agenda Report and the June 17, 2015 Planning Commission staff report, both of which are hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Planning Code, and other planning regulations as set forth below; and be it

**FURTHER RESOLVED:** That the Appeal is hereby denied, and the Planning Commission's decision to approve the replacement of a 24'-9" JPA utility pole with a new JPA utility pole owned by PG&E with two panel antennae (each two feet long, 10 inches wide) attached to the top, extending to a height of 50'-5" above ground, and a singular equipment box mounted 10'-10" above ground, located in the City public right-of-way adjacent to 6046 Colton Boulevard, is upheld, subject to the findings for approval, additional findings, and conditions of approval adopted by the Planning

Commission, each of which is hereby separately and independently adopted by this Council in full; and be it

**FURTHER RESOLVED:** That, in support of the City Council's decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its own independent findings and determinations: (i) the January 19, 2016 City Council Agenda Report, including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the June 17, 2015 Planning Commission staff report approving the Project, including without limitation the discussion, findings, additional findings, conclusions, and conditions of approval (each of which is hereby separately and independently adopted by this Council in full); and be it

**FURTHER RESOLVED:** That the record before this Council relating to this Project and Appeal includes, without limitation, the following:

1. the Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;
5. all oral and written evidence received by the Planning Commission and City Council before and during the public hearings on the Application and Appeal; and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal; and
6. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable State and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

**FURTHER RESOLVED:** That per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in Condition of Approval #2 is automatically extended for the duration of the litigation; and be it

**FURTHER RESOLVED:** That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 19 2016

**PASSED BY THE FOLLOWING VOTE:**

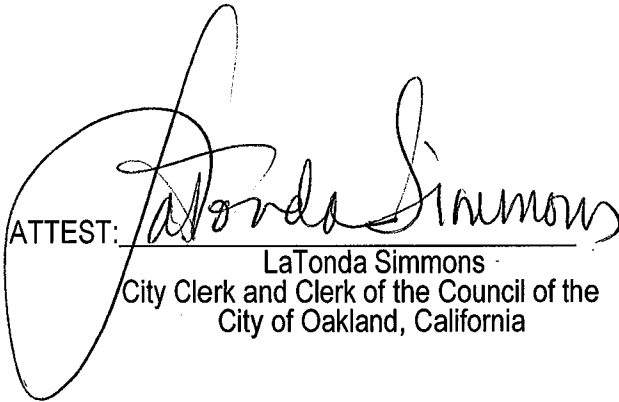
AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~ AND PRESIDENT GIBSON MCELHANEY – 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST:   
LaTonda Simmons  
City Clerk and Clerk of the Council of the  
City of Oakland, California

**LEGAL NOTICE:**

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.136.090, THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.