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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 83607 C.M.S.

A RESOLUTION DENYING APPEAL # A 11-114 AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION TO DENY CASE # DR 10-331 TO ATTACH AN ANTENNA AND EXTENSION TO THE TOP OF A WOODEN UTILITY POLE ADJACENT TO 6045 SHIRLEY DRIVE GIVEN THE PROJECT WOULD NEGATIVELY IMPACT SIGNIFICANT VIEWS FROM PRIMARY LIVING AREAS AT 6933 WILTON DRIVE.

WHEREAS, on December 14, 2010, the applicant Mr. Rick Hirsch/Extenet, submitted an application for a Regular Design Review with additional findings to attach a 8'-4" antenna/extension to a 38'-6" wooden utility pole adjacent to 6045 Shirley Drive as case # DR10331 (Project); and

WHEREAS, the application was agendized for the Planning Commission hearing of June 1, 2011 and public notices were distributed; and

WHEREAS, the owner/occupant at 6933 Wilton Drive received public notice and contacted Planning and Zoning Division staff to express concern for potential view obstruction; and

WHEREAS, staff visited the residence and confirmed the home possesses "significant views" consisting of the San Francisco Bay, downtowns (Oakland and San Francisco), and bridges (Bay, Golden Gate, Richmond-San Rafael) from "primary living spaces" consisting of living room and view oriented deck that would be partially obstructed by the Project; and

WHEREAS, staff therefore concluded the proposal did not meet required Design Review findings under the Planning Code and did not adhere to Design Review Guidelines; and

WHEREAS, staff informed the applicant their Project would be recommended for denial for this reason and could be withdrawn and confirmed the applicant would sustain the request; and

WHEREAS, on June 1, 2011, the Planning Commission independently reviewed, considered and determined that the Project is statutorily exempt from the environmental review

requirements of the California Environmental Quality Act (“CEQA”) pursuant to section 15270 of the State CEQA Guidelines because the project was disapproved; and

WHEREAS, on June 1, 2011, the Planning Commission denied the application for case # DR10331; and

WHEREAS, on June 13, 2011 Ms. Patti Ringo/Extenet timely filed an appeal of the Planning Commission’s decision to deny the Project; and

WHEREAS, after giving due notice to the Appellants, the Applicant, all interested parties, and the public, the Appeal came before the City Council in a duly noticed public hearing on November 1, 2011; and

WHEREAS, the Appellants and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on November 1, 2011; now, therefore, be it

RESOLVED: The City Council independently finds and determines that this Resolution complies with CEQA, as the Project is statutorily exempt from CEQA pursuant to CEQA Guideline Section 15270 “Projects Which Are Disapproved” of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of 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, finds that the Appellant has not shown, by reliance on evidence in the record, that the Planning Commission’s decision was made in error, that there was an abuse of discretion by the Commission, or that the Commission’s decision was not supported by substantial evidence in the record. This decision is based on the November 1, 2011, City Council Agenda Report and the June 1, 2011, Planning Commission Report, 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. Accordingly, the Appeal is denied, the Planning Commission’s decision to deny an 8’-4” antenna/extension to a 38’-6” wooden utility pole adjacent to 6045 Shirley Drive, is upheld, subject to the findings for denial adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full, as may be amended here; and be it

FURTHER RESOLVED: That, in support of the City Council’s decision to deny the Project, the City Council affirms and adopts as its findings and determinations (i) the November 1, 2011, City Council Agenda Report, attached to the report as Attachment “A” (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 1, 2011 City Planning Commission Staff Report denying the project [including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this

Council in full), attached to the report as Attachment “B,” except where otherwise expressly stated in this Resolution; and be it

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

1. the Project application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and their representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City.
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application and appeal;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) 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 respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; 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, NOV 1 2011, 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, ~~KAPLAN~~, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID - 7

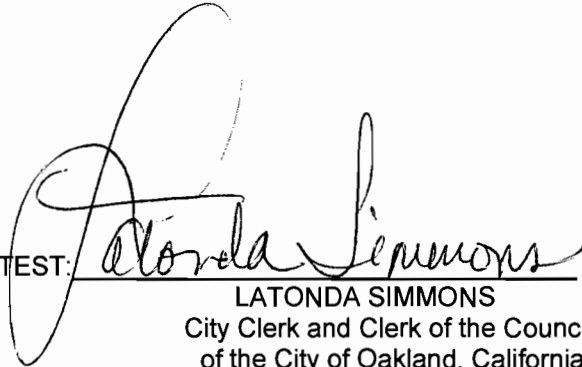
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Kaplan - 1

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.