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OAKLAND

Approved as to Form and legality  
*Wenna Chen*  
Office of the City Attorney

2015 MAR 15 AM 11:17  
**OAKLAND CITY COUNCIL**

**RESOLUTION NO. 85490 C.M.S.**

A RESOLUTION DENYING APPEAL #A13-233 AND UPHOLDING THE DECISION OF THE CITY PLANNING COMMISSION TO APPROVE REGULAR DESIGN REVIEW TO ATTACH A TELECOMMUNICATIONS FACILITY TO A NEW REPLACEMENT UTILITY POLE LOCATED IN THE PUBLIC RIGHT-OF-WAY AT THE INTERSECTION OF ELDERBERRY DRIVE AND GIRVIN DRIVE

**WHEREAS**, on February 6, 2013, Mr. Matthew Yergovich for AT&T (Applicant) submitted an application for Regular Design Review with additional findings to install a telecommunications facility (consisting of a 7'-0" extension with two panel antennae) to an existing 43'-4" wooden Joint Pole Authority (JPA) utility pole located in the public right-of-way at the intersection of Elderberry Drive and Girvin Drive, and to mount an associated equipment box, one battery backup box, and meter boxes within a 6' tall by 18" wide singular equipment box attached to the pole at 8' above ground; and

**WHEREAS**, on May 1, 2013, the Planning Commission considered the proposal at a duly noticed Planning Commission meeting and continued the item so revisions could be made by the Applicant; and

**WHEREAS**, the Applicant subsequently modified the proposal to install two panel antennae to a new 47'-6" replacement wooden JPA utility pole, and to mount an associated equipment box, one battery backup box, and meter boxes within a 6' tall by 18" wide singular equipment box attached to the pole between 8'-0" and 18'-10" in height (Case File # DR13-055) (Project); and

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

**WHEREAS**, the application was agendized for the Planning Commission hearing of July 31, 2013, and public notices were duly distributed; and

**WHEREAS**, on July 31, 2013, 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) and 15183 (projects consistent with a community plan, general plan or zoning); and

**WHEREAS**, on July 31, 2013, the Planning Commission approved the Regular Design Review application for case #DR13055, subject to findings, additional findings, and conditions of approval; and

**WHEREAS**, on August 12, 2013, the appellants Manuel Perez and Dr. Christy Hiebert (Appellants) filed a timely Appeal (#A13233) of the Planning Commission's decision to approve the Project; and

**WHEREAS**, on or about August 23, 2014, and with the City's permission, the Applicant installed a story pole on the subject utility pole to demonstrate the proposed height of the Project;

**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 March 31, 2015; 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 March 31, 2015; 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), 15302 (replacement or reconstruction of existing facilities), 15303 (new construction of small structures), 15183 (projects consistent with a community plan, general plan or zoning), and 15061(b)(3) (general rule), 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 March 31, 2015 City Council Agenda Report, the July 31, 2013 Planning Commission staff report, and the May 1, 2013 Planning Commission staff report, all 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 installation of two panel antennae to a new 47'-6" replacement wooden JPA utility pole located in the City public right-of-way at the intersection of Elderberry Drive and Girvin Drive, and to mount equipment to the side of the pole between 8'-0" and 18'-10" in height, 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 March 31, 2015 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), (ii) the July 31, 2013 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 the May 1, 2013 Planning Commission staff report; and be it

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

1. the Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his 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 properly received by the Planning Commission and City Council 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;
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, Bureau of Planning, 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:** 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:** 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, MAR 31 2015

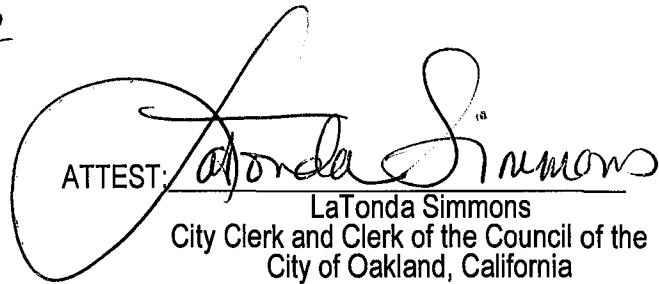
**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, ~~COLE~~, ~~KEPNER~~, REID and PRESIDENT GIBSON MCELHANEY - 6

NOES - 0

ABSENT - Kalb; Kaplan - 2

ABSTENTION - 0

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.