

**CITY OF ANTIOCH  
PLANNING COMMISSION MINUTES**

**Regular Meeting  
6:30 p.m.**

**April 2, 2014  
City Council Chambers**

**CALL TO ORDER**

Chair Hinojosa called the meeting to order at 6:30 p.m. on Wednesday, April 2, 2014, in the City Council Chambers. She stated that all items that can be appealed under 9-5.2509 of the Antioch Municipal Code must be appealed within five (5) working days of the decision. The final appeal date of decisions made at this meeting is 5:00 p.m. on Thursday, April 10, 2014.

**ROLL CALL**

Present: Commissioners Pinto, Baatrup and Westerman  
Chair Hinojosa and Vice Chair Motts  
Absent: Commissioner Miller  
Staff: Senior Planner, Mindy Gentry  
City Attorney, Lynn Tracy Nerland  
Legal Consultant, Trip May  
Minutes Clerk, Cheryl Hammers

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

Kevin Dunham spoke regarding a decision made last year approving a dog day care on Devpar Court. He said that he has been in business since 1982 and their front doors and his front door face each other, and that dogs bark non-stop most of the day and increases from 11:30 to 1:00 when they lock the doors for lunch and leave. He said that he helped unload the kennels they use and that the back half is full of cages. He has a tenant in the building who is looking for a new spot after being there for 20 years. He said that he has spoken to Code Enforcement who indicated that they are focused on residential uses.

City Attorney Nerland clarified that Mr. Dunham was both an owner of property there as well as a tenant.

Senior Planner Gentry asked Mr. Dunham to leave his contact information for staff to contact him.

**CONSENT CALENDAR**

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|--------------------------------|-----------------------------|
| <b>1. Approval of Minutes:</b> | <b>A. February 19, 2014</b> |
|                                | <b>B. March 5, 2014</b>     |

***On motion by Commissioner Westerman, and seconded by Commissioner Motts, the Planning Commission approved the Minutes of February 19 and March 5, 2014.***

**AYES:** *Hinojosa, Motts, Pinto, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

**END OF CONSENT CALENDAR**

**NEW PUBLIC HEARINGS**

- 2. UP-13-11, AR-13-14 – 700 West Eighteenth Street Cell Site** – Streamline Engineering, on behalf of Sprint, requests the approval of a use permit and design review for new and existing telecommunications equipment. The project includes the replacement of three existing antennas with new antennas, the addition of radio remote units on an existing light pole, and an associated equipment shelter. The project site is at Antioch High School, located at 700 West Eighteenth Street (**APN 067-160-005**).

SP Gentry introduced Tripp May, legal consultant, who gave an overview regarding cell sites.

CA Nerland said that since there hasn't been an application for a free standing cell site before this Planning Commission, she wanted to provide an overview given this is a regulated area of the law and that for general questions, Mr. May has the expertise to answer.

SP Gentry provided a summary of the staff report dated March 27, 2014.

Commissioner Pinto asked staff how many such antennas were currently in the City to which SP Gentry said there although she cannot tell the exact number, there are a lot of them, some of which are on City owned properties or mounted on existing PG&E towers.

In response to Commissioner Westerman and Chair Hinojosa's questions, SP Gentry said that this particular tower is on Antioch School District property who is the underlying leaseholder and that she thinks the reason approval was not obtained previously from the City was that it went before the School District who they believed to have authority.

Chair Hinojosa asked staff if the City ever goes back and reviews land use permits or if there were expiration dates to which SP Gentry said that staff is stretched thin, that the City hasn't put on time restrictions, that for City owned property the City can go back and visit the site and that the Planning Commission can add timeline provisions if they would like.

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**OPENED PUBLIC HEARING**

Applicant, David Alameda representing Sprint, said that they are looking to modify the existing cell site, to remove and replace three existing antennas, remove three existing cabinets and with two new cabinets. He said that they have read all conditions, that they accept them, and that he is ready for questions.

Vice Chair Motts asked the applicant about there being no significant gap now, would this improve coverage for this area and do they expect outside of the area there to be some spotty improvement. Applicant said that this is a 4G upgrade, that there is coverage there but that this brings the data speeds up and what is shown is what they expect them to cover.

**CLOSED PUBLIC HEARING**

Commissioner Westerman said that this appears to be a straight forward proposal, that he has no problems with it and that he recommends approval.

**RESOLUTION NO. 2014-11**

***On motion by Commissioner Westerman and seconded by Vice Chair Motts, the Planning Commission approves the use permit and design review (UP-13-11, AR-13-14) to construct a telecommunications site subject to all conditions.***

**AYES:** *Hinojosa, Motts, Pinto, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

- 3. UP-13-09, AR-13-10 – Sunset Monopole –** Modus Inc., on behalf of AT&T, requests the approval of a use permit and design review to construct a telecommunications facility consisting of 12 antennas on a monopole with an associated equipment shelter. The project site is located at 801 Sunset Drive **(APN 068-100-027)**.

SP Gentry provided a summary of the staff report dated March 27, 2014.

Commissioner Pinto expressed concern over maintenance of the monopole's artificial covering in that it may deteriorate over time and that having a tree in the middle of nowhere may have a negative impact. Commissioner Pinto asked about staff's concern with a metallic pole which the population is used to seeing, and asked about the possibility of reversing the decision against having a pole. He asked staff how many trees are currently existing around or close to the site.

SP Gentry said that applicant would be required to maintain the site as well as the tree, that there are conditions regarding graffiti but if the Commission has concerns they can add another condition saying it should be kept in a certain appearance, that she is not

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aware of any trees on site but there may be some planted by the freeway and that staff wanted to decrease visual clutter and have it blend into the landscape in that the tree hides the pole.

In response to Chair Hinojosa asking for clarification, Mr. May responded that the applicant hasn't demonstrated a significant gap and that although it is the discretion of the Commission to vote against entirely or seek alternatives, there are time concerns that should be considered.

SP Gentry interjected that they are running up close to the Federal shot clock.

Mr. May added that adding conditions would not stop the shot clock.

Chair Hinojosa asked staff about page E8 of the packet recommending changes which are not contained in the conditions of approval. SP Gentry said that under condition G1 there are design elements included but that the Commission can include those conditions.

Vice Chair Motts asked about the standard height for monopines to which Mr. May said that it is location specific and depends upon surrounding topography.

CA Nerland Lynn clarified the understanding that the conditions to be added as conditions G.1.k and I are:

G.1.k. The applicant shall construct and at all times thereafter maintain the Monopine tree so that all antennas, mounting brackets, electronic equipment located adjacent to the antennas, and cables are fully contained within the faux branch canopy.

G.1.l. All panel antennas shall at all times be covered by pine needle socks+encasing the panel antennas.

Commissioner Pinto asked staff why this site was picked and if applicant had considered mounting on a building to which SP Gentry stated that although the applicant can better answer, height was needed with a pole and that roof mounted equipment was not sufficient for the desired coverage.

Commissioner Baatrup asked about the process of the shot clock and the consequences of the Commission deciding not to approve or being unable to reach an agreement to approve tonight.

Mr. May said that after a denial or continuance, the applicant can appeal to City Council, that if the shot clock runs out before, the applicant has a right to sue in court unless the applicant and the City come to a mutual decision to extend the time and that the applicant can seek other remedies against the City. He said that if denial is upheld by the City Council, the applicant has other remedies in court.

Commissioner Baatrup asked about there being a question about substantial gap in service to trigger law where they propose to locate and asked Mr. May in his expertise if

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that is something that will be easily supported or a challenge to be supported when it is challenged.

Mr. May said that based on fact submitted by the applicant, they recommended that the City find that they did not demonstrate a significant gap based on maps provided. That without other facts submitted by the applicant, they recommend that there is no demonstrated significant gap in this application.

Commissioner Baatrup asked staff's position recommending this being approved and other benefits to the City to which SP Gentry said that from staff's perspective, this is more of a legal issue than an aesthetic issue.

In response to Commissioner Pinto's concern with radiation and asking if the City can charge some ongoing fee to have antennas within the City, Mr. May said that the Federal Government has put down a very strict stance regarding radiation, that there are standards for safety, that in this case it is categorically excluded from analysis because the antennas are so high, that the Commission cannot make a decision based on radiation emissions, and that while the City can act as landlord when it owns land under a site as rent but on private property, the City can only recoup its cost for processing the permit application.

### **OPENED PUBLIC HEARING**

Applicant, Jimmy Stillman, Modus Inc., thanked staff and Mr. May. He said that the site is a new monopole to obtain enhanced coverage for AT&T users. That the new site will bring new technology to each site, and that there is an increase in coverage but no gap. There is a need for these types of facilities. He said that they looked for alternative sites and considered roof mounted first but that they needed height around 60' so the monopole was based on that. They submitted for a monopole but that staff wanted more stealth design, that there are no trees on this parcel but there are trees along properties adjacent and that they are 100% ok with adding those conditions. He said that the antennas are within the canopy and socks will further hide and that although trees don't necessarily fade out over time, that they will maintain the tree moving forward.

Chair Hinojosa asked the applicant how they chose the height of the pole given this is a really tall pole and if they would be amenable to a reduction in height. Applicant replied that the engineers take information regarding what height will give the greatest coverage and that 60' is target for most cell sites but if it is located on a hill it would require less height. He said that he would need the engineer to sign off on anything less, that being to the top of the tree that the antennas are lower than that and that he would like to move forward with 60'

### **CLOSED PUBLIC HEARING**

Vice Chair Motts said that he doesn't have a problem with the height, that it is away from other structures, that the height is probably similar to that of a fully mature redwood tree and that with specific conditions from staff he doesn't have a problem with it.

Chair Hinojosa expressed concern with the height, said she feels like it creates an aesthetic issue being very visible from the highway, that she has never cared for these types of monopines, but would prefer a monopine over the other option with the added conditions.

Commissioner Baatrup stated that he was concerned with the height, that he is not sure that he likes the style of fake trees as ways to hide these things and that he is concerned that this might create a precedent when there is no demonstrated gap that this might open the door for other providers to improve the capacity of their systems by proposing something similar. He said that he does like the idea of keeping up with industry needs for residents of the City but that he has issues that this creates a bad precedence for these types of projects where there is no demonstrated need.

Mr. May stated that the Commission should be aware there is a gray area in the law regarding a significant gap and that he doesn't want the Commission to be under the impression that there is no significant gap possible in this situation. He said that they look at claimed need in the application and that in this case would still say no demonstrated gap but that doesn't mean that they can't show one later and then the City would have to allow them to close that gap. He said that the shot clock does not stop unless the applicant and the City enter into an agreement to extend but that in this case the applicant has agreed to all conditions that have been recommended by staff to bring to the least intrusive means to be aesthetically consistent with its values

CA Nerland stated that Federal Law hurts the cities and takes away a portion of the city's discretion and that there is a different set of rules that we have to play by for this specific industry.

Chair Hinojosa said that she has an issue with the height of the proposed tower at this location, that she is hearing that there is not a lot of flexibility to change that, that she is not sure what the next step will be and asked if any Commissioners support a decrease in the monopole.

Vice Chair Motts stated that they have done their due diligence to find other spots and that he is still ok with the proposal with conditions.

Commissioner Pinto said that he has concern that 60q is too high but that anything less than 60q hinders their ability so obviously suggesting a reduction in height is a moot point.

Commissioner Baatrup asked staff if this applicant determined that the height would be best at 100q where would we stand, how would a City in review of the application evaluate.

Mr. May said that applicant can't come in and get whatever design they want, that there is a give and take and that a subjective evaluation takes into account a lot of factors.

In response to Commissioner Pinto regarding a possible ordinance for height

restrictions, Mr. May said that there is a new statute, Section 6409a, that allows for small modifications to existing facilities, but that it is not clear on if there is a limit to the number of small modifications. He pointed out that it may not be the best time to consider having staff to draft a new ordinance. That it may prove correct that a pre-existing ordinance can be grandfathered in, but that legal nonconforming uses are specifically targeted by the wireless industry. He said that even if there is a height limit, towers may be excluded under Federal law. That when it is something subjective, lawyers have been arguing that those are pre-empted by this statute because the goal of 6409 is to allow unfettered expansion of existing sites; that the City can make an ordinance for brand new sites.

Chair Hinojosa said that there is limited ability to regulate the height, that she doesn't like towers of this height, that she doesn't like the location but that she feels like our hands are tied in that regard.

Vice Chair Motts asked staff if there are other towers of that size to which SP Gentry said that there are some on Walton Lane off Lone Tree Way, there is an oak tree located in the City, and that there are a lot of PG&E towers with this height.

Commissioner Baatrup stated that the one the Planning Commission just approved at Antioch High School is taller than this one. He said that he is not happy with this type of facility but would like to thank staff and Mr. May for their time.

### **RESOLUTION NO. 2014-12**

***On motion by Commissioner Motts and seconded by Commissioner Westerman, the Planning Commission approves the use permit and design review (UP-13-09, AR-13-10) to construct a telecommunications site subject to added conditions:***

**G.1.k. The applicant shall construct and at all times thereafter maintain the Monopine tree so that all antennas, mounting brackets, electronic equipment located adjacent to the antennas, and cables are fully contained within the faux branch canopy.**

**G.1.l. All panel antennas shall at all times be covered by "pine needle socks" encasing the panel antennas.**

**AYES:** *Hinojosa, Motts, Pinto, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

- 4. UP-13-10, AR-13-11 – Fairview Tree Monopole –** Modus Inc. on behalf of AT&T, requests the approval of a use permit and design review to construct a 60q tree monopole telecommunications facility with a total of nine antennas as well as an associated equipment shelter and an integrated generator. The project site is located at 3215 Fairview Drive (**APN 074-123-009**).

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SP Gentry provided a summary of the staff report dated March 27, 2014.

Commissioner Baatrup clarified with staff that this material is the same as the one previous.

**OPENED PUBLIC HEARING**

Applicant, Eric James, Modus, said that there is a need to provide service to residents in this area, that this is increasing service levels and provides enhanced service, and that there is an existing grove of trees making this monopole a sufficient design.

Chair Hinojosa asked for clarification on the height to which the applicant said that the antennas would be 60q that the tree would taper for 5qfor a more natural looking tree so that the total height would be 65q He said that to make it look natural and not end up with a large antenna at the top that 65qwould be needed.

**CLOSED PUBLIC HEARING**

Chair Hinojosa said that it was her hope given what Mr. James said that the previous approval was a full tree. She said that the previous concerns raised regarding omitted conditions that those conditions are included in this application. She said that she had an opportunity to drive out to the site and that she would like to see a pre-construction survey for nesting birds as it is against Federal and State law to interfere with breeding season.

Mr. May said that it is a violation for construction activities to interfere with nesting birds, but emphasized that it is construction opportunities not antennas. That these projects are exempt from CEQA and that the Commission cannot consider whether emission from antennas would have any affect but that the construction is within Commissions power to control.

Commissioner Westerman said that this whole subject is very complex and that he thinks that most of the comments that were put forth in the previous project are applicable to this one. That it appears the applicant did review other sites, that he thinks this location in terms of the tree is better than the other one as there are other trees in the general location, and that although he doesnq like the height, he understands the need for it. He said that he is prepared to support this project.

Chair Hinojosa said that while nothing for this project is required under CEQA, condition adding is within their purview for a preconstruction survey for nesting birds.

SP Gentry clarified with Chair Hinojosa a time limit of thirty days to complete the survey.

CA Nerland clarified the condition of approval %the applicant shall conduct a preconstruction survey for nesting birds within thirty (30) days of the commencement of construction to insure construction activities do not disturb nesting birds.+



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**RESOLUTION NO. 2014-13**

***On motion by Commissioner Motts and seconded by Commissioner Pinto, the Planning Commission approves the use permit and design review (UP-13-10, AR-13-11) to construct a telecommunications site subject to all conditions and with the addition of B.4. as follows:***

**B.4. The applicant shall conduct a preconstruction survey for nesting birds within thirty (30) days of the commencement of construction to insure construction activities do not disturb nesting birds.**

**AYES:** *Hinojosa, Motts, Pinto, Baatrup and Westerman*  
**NOES:** *None*  
**ABSTAIN:** *None*  
**ABSENT:** *Miller*

**ORAL COMMUNICATIONS**

SP Gentry said that City Council approved the Williamson Ranch request and that the Auto Zone project resulted in an approval by City Council as well as the Impact Fee Study and the RDA. She said that the vacancy on the Planning Commission was announced to fill the last seat and applications are being accepted. She said the next meeting will be April 16<sup>th</sup>.

**WRITTEN COMMUNICATIONS**

None.

**COMMITTEE REPORTS**

None.

**ADJOURNMENT**

Chair Hinojosa adjourned the Planning Commission at 8:30 p.m.

Respectfully Submitted,  
Cheryl Hammers