

MINUTES
SPECIAL PLANNING COMMISSION MEETING
CITY COUNCIL CHAMBERS
1 CIVIC CENTER DRIVE
SAN MARCOS, CALIFORNIA
WEDNESDAY, DECEMBER 18, 2013 - 6:30 PM

CALL TO ORDER

At 6:34 p.m. Chairman Nelson called the meeting to order.

PLEDGE OF ALLEGIANCE

Commissioner Kildoo led the Pledge of Allegiance to the Flag.

ROLL CALL

The Secretary called the roll:

PRESENT: COMMISSIONERS: KILDOO (Alternate), MAAS, MINNERY, NELSON,
NORRIS, SCHAIBLE

ALTERNATE COMMISSIONERS IN AUDIENCE: None.

ABSENT: FLODINE, JONES

Also present were: Planning Division Director, Jerry Backoff; Principal Planner, Karen Brindley; Deputy City Attorney, Avneet Sidhu; Office Specialist III, Lisa Kiss; City Consultant, Jonathan Kramer

ORAL COMMUNICATIONS

Michael Hunsaker, resident, on behalf of PODL: Commented that he attended the recent workshop regarding the proposed San Marcos Highlands. One of the concerns mentioned is that it can be modified to be all apartments and much higher density, well beyond what it started out with years ago. The project EIR is 23 years old and some critical documentation hasn't been provided. Another problem is that Davia Village specifically allowed more density because it's what SANDAG required. SANDAG wants the area high density and that can only be obtained through high-rise apartments. It's not a minor thing; you cannot separate one decision from another and its implications.

CONSENT CALENDAR

1. APPROVAL OF MINUTES, 12/2/13

Action:

COMMISSIONER NORRIS MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER MINNERY AND CARRIED BY A UNANIMOUS VOTE.

AGENDA ITEM
1

PUBLIC HEARINGS

2. **Case No:** P13-0065: TA 13-001 (Text Amendment)

Application of: City of San Marcos

Request: Repeal and replacement of the Telecommunications Ordinance (Chapter 20.465 of the San Marcos Municipal Code) with an updated Chapter, and updates as may be needed to other sections of the Zoning Ordinance where sections of the affected Chapter are cited.

Location of Property: City-wide

Environmental Determination: Adopt Addendum to General Plan/Zoning Ordinance Update Final EIR (SCH 2011071028, adopted February 14, 2012) that has been determined to be the appropriate documentation under Section 15164 of the Guidelines of the California Environmental Quality Act (CEQA).

Backoff: Indicated that the input from last week's workshop was provided to Commissioner's along with staff's comments.

Staff Presentation (Karen Brindley):

Described request and location. PowerPoint presentation shown. Wireless Telecommunications Facilities (referred to as WTFs) are currently regulated by the City in Chapter 20.465 of SMMC. The Chapter and all others in the Zoning Ordinance were recently updated as a result of the General Plan update. Discussed existing City Zoning Regulations. WTFs are encouraged to be located on City-owned property, on commercial/industrial sites and to incorporate a camouflaged design. If allowed by right, they're processed administratively, otherwise a CUP is required. The basis for a revised ordinance is due to community concern with locating WTFs within residential areas. On 10/22/13, the City Council directed staff to address concern, update the Telecom Ordinance and obtain Planning Commission recommendation within 60 days. A public workshop was conducted on 12/11/13 to obtain feedback on the Draft. Comments were provided and were submitted to Commission. Discussed Federal Regulations. Federal law preserves a local jurisdiction's authority to regulate WTFs, but with restrictions: 1). Telecommunications Act of 1996 (TCA) Section 704. The City may not unreasonably discriminate against any provider, may not prevent completion of a carrier's network, must process in a reasonable timeframe, further clarified to specify "shot clock" timeframes, and cannot deny based on perceived health risks associated with RF Emissions. Denials must be in writing and show substantial evidence. 2). Middle Class Tax Relief & Job Creation Act of 2013. Shall approve any eligible facilities request for modification of an existing WTF or base station that doesn't change the physical dimensions. Discussed revised ordinance, structure & applicability. It encourages carriers to locate outside of residential & other sensitive areas, use camouflaged designs, provides for managed development with the fewest number of WTFs to complete a network. Staff reviewed Ordinances in San Diego County, Carlsbad, Encinitas, Glendale, Federal regulations & City's General Plan. Discussed permit process. Administrative Permits are located within a preferred location and have a camouflaged design. CUP's require a Planning Commission public hearing and are located within a discouraged location. The applicant must provide technically sufficient and conclusive proof that the location is necessary to close a gap in network. Discussed preferred locations in order of preference and discouraged locations. Discussed the general regulations for all WTFs. Encourages the use of existing structures instead of new ones, place in least visible location to the public, collocation is encouraged whenever feasible. No more than one facility on any parcel, and a minimum separation of 1,000' between existing & proposed WTF. Must comply with City's Noise regulations for zone located in. Discussed setbacks. Applicant/Operator must show a

written agreement with the property owner to legally access the WTF and utilities to operate and maintain. Discussed submittal requirements. Written documentation good faith effort to locate in least intrusive location, visual impact analysis, FCC compliance report & Geographic Service Area map, identify height, potential noise & maintenance plan, conceptual landscape/irrigation plan and deposit fees for City consultant review of the application. Discussed design requirements & prohibited designs. Non-camouflaged are prohibited in every zone. Discussed Maintenance & Operation. Landscaping must be maintained and if needed, replaced with same species size/quantity/location. FCC compliance report required prior to unattended operation, technical report verifying WTF is in compliance w/FCC standards for RF emissions and submitted annually thereafter. Annual CUP compliance report with photos of WTF and landscaping. Discussed Abandonment & other requirements. City can require removal & restore to pre-installation. Discussed duration of permit, valid 10 years, sometimes less per state law. The Appeal & Enforcement process is consistent with Municipal Code. Public comments were summarized and distributed with the packet. Written responses to the comments received at workshop were distributed earlier today. Discussed comments and staff's responses. Staff recommends a public workshop for WTFs proposed in residential or agricultural zone. The City's 500' radius exceeds the state requirement by 200'. 1,200 feet is arbitrary and inconsistent with other applications. The City exercises land use authority. It's not permissible to delegate it to neighbors. Input received from the public encouraged WTFs to locate on and within City-owned facilities. There's a difference between open space and vacant land. Open space applies to entitled property, whereas vacant is undeveloped & un-entitled with potential to develop later. If there's a conflict, process as discouraged. Staff doesn't recommend modifying the height standards. Staff addressed "tree farms" by requiring a minimum of 1,000 feet between each WTF. It's problematic to utilize a distance setback from homes, as that has the appearance of an RF-related restriction, which is prohibited. The City's consultant reviews application submittals. Staff recommends approval to City Council to supersede and replace Chapter 20.465 in its entirety, as well as affected sections of the SMMC Title 20, and approve an Addendum to the General Plan Program EIR that was prepared and adopted for the update to Chapter 20.465.

Norris: Inquired about Preferred, #9, mixed-use. Residential is upstairs.

Brindley: There can be a variety of land use types with mixed-use. Traditionally you'll see commercial or retail offices on ground & 2nd floors, with residential on upper floors. Mixed-use would be a preferred location. City has some mixed-use, MU-3 & MU-4, which are designated commercial and preclude residential.

Backoff: There's in-fill development, mixed-use, concentrated along regional corridors. That's where this is the core of the preferred location.

Norris: Asked if a clause can be added, "unless residential"? #10 talks about community facilities in residential zones, but the first one discouraged is inside residential zones?

Brindley: It's preferred because many locations where the underlying zone is residential, but the actual development of the site may be a place of worship or a water tank facility, a non-residential type of use.

Norris: If residential, it should be a discouraged location.

Backoff: That's the recommendation.

Norris: One building inside a residential neighborhood is a preferred location.

Nelson: Can recommend change during motion.

Backoff: There are some facilities hidden in bell towers & steeples that are in residential. We're trying to encourage going away from residential.

Minnery: Commented that #7, discouraged, says all other areas not described above, which seems vague.

Brindley: It is vague.

Jonathan Kramer, City consultant: Indicated he asked that it be included as a catch all in case staff missed something. It also picks up in case there are future changes before this code is changed. It's a safety valve to protect the community against staff's omission of something as opposed to excluding something intentionally.

Nelson: Asked if they can dictate school zones?

Kramer: The City's allowed to regulate if what happens on school property is not connected with the operation of the school. The City is not allowed to regulate the construction of a school building or administration office type thing. The cell tower is not a school function. If the school district wants to enter into an agreement, they still have to come to the City under this ordinance to permit it.

Nelson: Previously the City didn't have that?

Kramer: Did not have it with previous code. There will be more Planning Commission control over that.

Backoff: Commented that he talked to the Facility Director at the school district and made them aware of it. They received a copy of the Draft.

Nelson: Asked if there's an inventory of all cell towers, how long there, etc?

Backoff: As a result of a Public Records Request, the City has a list.

Nelson: Asked who they report emissions to?

Kramer: The FCC rules on emissions are that they don't report them to the FCC. They're required to comply with the rules but there is no certification to the Commission. That's one of the reasons why the City has stepped in and added it. They're allowed to do so, to determine if the proposed site complies with FCC rules.

Nelson: Inquired if anything can be done for the ones that look bad?

Kramer: There's enforcement action for existing sites. The City is currently looking at the sites code compliance now. The proposed ordinance also requires disclosure of sites. The wireless industry has a history of putting them up without getting all permits. Provision includes self-disclosure. Who better to know where they are than the carrier. It's important to enhance effectiveness.

Backoff: Another improvement is the requirement of a compliance report to be submitted to the City from the cell provider. They must visit site and inspect. City has found changes in operators.

Kramer: One critical element is the annual photo requirement. Commented that he was at City of Calabasas Commission meeting where AT&T was applying for a retroactive permit because the City had caught them through photos. It's a key enforcement tool to make sure they aren't modified without City being made aware.

Nelson: Asked if they'll get a full inventory?

Kramer: It's designed to ensure that the permits granted are adhered to and the City will know what they're trying to modify. It will help City to have good control over the process during permitting and the life cycle of site.

Nelson: Inquired how many are in City?

Backoff: Indicated that would have to be located.

Someone in audience: 101.

OPEN PUBLIC HEARING

John Osborne, AT&T: Commented that AT&T did provide some comments, however, the draft Ordinance was posted just one day prior to the workshop. He understands the City Council direction to get a draft within 60 days so he understands the time pressures behind it. There's been a minor legal review and comments provided which Commission should have. There's a list of items that are of concern and may impermissibly impair the rights of the carriers as written. Would think the City would want to encourage co-location. It could potentially violate shot clock rules the way some things are worded. There's prohibition if there's new bands of cell service. That is impermissible under Telecom Act. The requirement to have least visible & disruptive to the appearance, if it doesn't permit carrier to fill coverage gap it would be impermissible violation of the rights the carriers have. Other items mentioned: Maximum number of sites per property, 1,000 foot separation, setback requirements. If there's onerous & irrelevant application requirements, description of consumer features that are contained on a site will trample upon the rights of carriers. Asked that the Commission and later the Council take a futuristic view as they envision development of wireless facilities. Where is the market going? AT&T chairman has said they're a wireless company now. Everything should be available to the consumer on the go, in a wireless format. There's more pressure to build out network. Consumers are disconnecting land lines and relying on wireless only. What about those residential customers? They want service in their homes and ability to call 911 regardless of carrier. If carriers need to put a facility in a residential zone to cover that community, why put restrictions in residential zones? You may want to allow it where it makes sense. Don't want to have a one-size-fits-all Ordinance because it leads to bad planning. Sometimes a better project would be a clustered one. Why make it 1,000 feet apart? It's a complex issue. It's not something that should be rushed through in 50 days, with 10 days or less of comment & review. Asked Commission to view the future and encourage good planning practices. AT&T's legal team would be happy to work with staff to come up with language they could be supportive of.

Nelson: Asked if AT&T has an inventory in the City?

Osborne: Yes, they know where they're located. Periodic maintenance is done approximately once per month.

Nelson: Asked why they're not co-habiting on one pole?

Osborne: It's usually height restriction limits. They're happy to co-locate and share cost. They're trying to cover gaps. City might want to encourage a second carrier by allowing increased height.

Norris: Commented that if everyone is going wireless it seems that technology should get better and you may not need as many sites?

Osborne: Opposite is true because there's a limited number of paths in and out of antennae. You max out. Technology is getting much better, but there's so much more demand, internet use, etc. Once you reach max, you need new cell site.

Kramer: Commented that they received the letter from AT&T's counsel and went through each point. A copy was provided to Commission. AT&T is concerned the Ordinance could have impacts that they believe would not comply with the law. The state of law is that Section 6409A is out there. The FCC as is indicated in the letter provided a guidance back in January about how to interpret. Omitted from the letter, is that the guidance is non-binding. FCC is currently in a rule making process to formalize rules. The comment period is open right now and we don't expect to hear formal rules until summer. There are some compelling constitutional problems with the whole language. AT&T's concerns are ripe but they're not borne out yet by statute or implementation. Courts will ask how you applied your Ordinance; did you create a prohibition or simply make their process more difficult but within legal bounds? City's position is that the concerns have been evaluated, but would not violate the law. Agree with Mr. Osborne that we'll see more sites, not fewer. Verizon and AT&T are beginning deployment of small cells that cover small areas, but they'll be a great need for many more of them.

Maas: Asked how much smaller?

Kramer: FCC asked how you define a small cell? It's 17 cubic feet, w/3 cubic feet antennae's. That's a 7-foot tall box. It excludes the mount, equipment, power supply, etc. These are proposals; we don't know what the Commission is going to do.

Nelson: Asked if he thought they'd ever look at the FCC rule that you can't ask questions regarding health?

Kramer: FCC is presently re-evaluating RF emission safety. Indicated that 13 years ago, at FCC's request, he was one of a team that wrote the National Guidance to Government's on RF safety. On Jan. 1st, they asked him to re-write it based upon new rules currently being adopted. He believes the outcome will stay similar, maybe a little tighter. FCC rules have a built-in safety margin of 50 times. Max permit for general population exposure, 24/7, is 2 percent of the point of where you can actually measure a cellular change, and the change is temperature. It appears they'll stick to current standard. Will know more in spring of next year and will report back to City.

Paul O'Boyle, Crown Castle NG West, Inc.: They are a small cell provider and have a right to be in public right-of-way. It's primarily what they do. Have two pole top mount antennae sites in the City public ROW on Bennett Avenue and Rock Springs Road. Just found out about this Ordinance. Asked Commission for a continuance. This land use issue is very nuanced. Give staff credit for effort, but there are a lot of things wrong with the Ordinance. The 1,000' co-location is big problem. Small cell technology is moving forward. Had not heard of a 17' cubic foot industry standard. Was just involved with an Ordinance update in Ventura County and they all agreed on 8.2 cubic feet. Several things are wrong: Location, designs, setbacks, permission from property owners. Utilities often get access through easements so property owner permission is not necessary. Maintenance hours are a problem. Camouflage definition is vague. The performance bond on a case by case basis? Normally they're based upon value of facilities being put in. Issues about adjacent properties. Not sure the City wants to get involved with protecting views. Annual RF emissions. Mentioned case in Calabasas where Judge struck down a requirement for annual RF compliance report. Asked why a CUP annual compliance report is needed? Are there other uses that require this? Ordinance is internally conflicted. It gives preference to existing land uses as opposed to zoning. That's poor planning and isn't supposed to be done this way. Asked for more time. 60 days is too short. They have facilities in the City and were never noticed of this. It's been a fire drill for him. City needs to make small cell exception. It is about size. The only thing the City can regulate is aesthetics. He recommended that everyone look at their locations. Who wouldn't want the small cells? It can and is being done.

Nelson: Curious why they have a problem reporting RF?

O'Boyle: Their carrier's emissions are less than 1/2 of 1 percent. The reports are \$2,000-\$3,000 each. There are many facilities and if done annually, it's cost prohibitive. Have been doing this for almost 20 years and have never seen one facility fail the test. Cities are requiring this to placate residents who are concerned about RF's, which we can't talk about.

Nelson: It's the cost of doing business.

O'Boyle: With business, it comes out of the end user. It makes it unnecessarily more expensive for a result you already know the outcome of.

Nelson: Middle Class Tax Relief Act. Don't think it's a big deal to report.

O'Boyle: Pointed out litigation in Calabasas, Judge shot down the annual RF report.

Norris: Wouldn't it tell you if they're putting in more than they should?

O'Boyle: Can look at the application. People put showers in their granny flat too. If they do it, throw the book at them. The last thing they'd do is violate the RF requirement. They'd lose their license.

Nelson: Feels it should be verified.

O'Boyle: Recommend doing them on a case-by-case basis. The Director could request it, but don't make it mandatory. Asked if anyone ever complained about their two sites?

Kramer: The Ordinance has exceptions and Mr. O'Boyle's sites would be categorically excluded. The City isn't requiring a \$2,000-3,000 test. The City doesn't tell them how to produce the report. Whether the City chooses to have outside help to review, that's the Director's choice. Calabasas passed a comprehensive Ordinance. Crown Castle sued and lost on every point except for the RF. It's was a trial court in LA, it's not binding anywhere else except that court. It has no effect here. Ventura has a small cell definition, glad to see it, but would fall by the wayside if FCC preempts the rule. It has no impact on San Marcos.

Elliott Herman, resident: In a church situation with houses nearby, it's all administrative. There's no CUP. That should be looked at and discouraged. The notices should go out beyond 500'. There should be signs posted early in process in visible areas. Alternative site analysis is not geared to defend us or to make resident's point clear. It will cost residents money to prove that other sites are better. It's too easy for carriers to say no to other sites. Review of other sites needs to be part of the regulations.

Norris: Asked if he wants a 3rd party review?

Herman: A 3rd party review of what the carrier wants to do. Maybe you need six tiny sites that won't affect anyone, on public right-of-way? Maybe the person the carrier picked to review and agree to their sites also reviewed ten other sites for them? Will he say no, the site is wrong? They'll never give him another site to review. There are conflicts.

Nelson: Asked staff about 3rd party review?

Backoff: The City currently does that and has sole responsibility to pick consultant, not the carrier, and the carrier pays for it. The new ordinance says if there's a conflict, it goes through CUP process. Workshop is also required in discouraged area. The Deadwood Drive site had a workshop, required evaluation of other sites, and then ended up on Golden Eagle Trail.

Brindley: Clarified that a public workshop is required only if proposed within a residential or agricultural zone.

Backoff: If you have a church in a residential zone, it would require a public workshop and CUP process.

Brindley: There's a standard requirement for all CUP's, to post the sign within 10 days of application submittal to City. Ordinance requires off site posting if site is not visible from public right-of-way. This goes above & beyond what's required for standard discretionary projects.

Herman: Asked if 3rd party review would look at alternative sites beyond what the carrier says are alternative sites?

Backoff: City would have a 3rd party review of alternative sites. If someone wants other sites looked at, that could be pursued.

Herman: Asked if a site analysis would be done if someone at a workshop proposed several mini sites instead of one large site?

Backoff: Can direct the carrier to do. It was done before the Appeal.

Herman: Residents got an alternative analysis at 4 PM for a 5 PM meeting. You have a review of what they say, but not an alternative with equal weight. If both sites are equal, and one is less obtrusive, they should have to go with that even if it's more money.

Eric Clifton, resident: Discussed 3rd party review. The lack of planning in this becomes a real issue. You have to have information and understand what you're approving. We don't know where all the towers are. The carriers should be required to supply a location map and tell the actual coverage area of each site. The whole process is inept. You're relying on information from the carriers and in the last case it was incorrect. It was their documentation that shot down the alternative site. They give you what they want to and say it's a dire need. It's a time crunch. The Ordinance is good for the community. The City needs to throw the book at the carrier who put up antennae's illegally on Golden Eagle. There are a lot of residents who won't grant an easement on Golden Eagle. Yet it was approved because AT&T said the landowner approved it. Agree that the bandwidth need is there. AT&T said one location wouldn't work and now magically it does. It's bad information. An outside consultant needs to review & understand the coverage maps to see if tower is needed.

Nelson: Asked if coverage maps are part of it?

Kramer: It's included now, but City is tightening up requirements going forward to get better quality maps in the future.

Nelson: Asked if they'll have to define their reason for being there?

Kramer: There may be three companies already there, but under settled law, we can only look at the coverage of the applicant before us. Because, if you have AT&T you can't roam on Sprint, etc. The maps are important to see if there are any potential co-location sites and understand their coverage goals.

Norris: Inquired why they'd put in more than is needed?

Clifton: It's finding appropriate zones. Believe this last one happened because corporate said it's been a long time, so they needed to get it in. Don't think it had to do with a good location. They want the fattest pipe & as many antennae's possible so they'll have these massive freeways before anyone stops them. The technology is getting better.

John Signorino, resident: The City needs an alternative & independent site analysis done. If that's missing, there's no ordinance here. He supports a 30' max in residential and 800' separation should be minimum. If those residents don't care, they should be able to go in. Need more detail. There are over 100 in the City. They need to be regulated with quarterly audits. City took on obligation and need to protect residents. Those with expired permits should go through CUP process as outlined. Should discourage towers from being on private roads. The AT&T tower is on two private roads, only one resident agreed and City allowed two towers. All other residents are opposed.

Milan Louis Brandon, 22 year resident: Speaking for Brandon family in opposition to the Ordinance. Since the 70's, aesthetic zoning regulations have been permitted to provide for public welfare of surrounding community. They must reflect a reasoned and public

use justification. If it doesn't advance such use, it's not enough. Mr. Kramer stated on 12/11 that the purpose of the Ordinance is "only for aesthetics." (Figure shown). Discussed purpose of zoning. It's to cluster like uses in districts suitable for a given use in the interest of minimizing impacts, visual and otherwise. The Ordinance ignores this legal justification by requiring a 1,000 foot separation between sites. This creates the cell tower farm that the residents suggested. The tiny cluster has a lower visual impact than a string of cell tower trees. Peer review and analyzed journals have shown RF signal has no impact on health and negligible impact on property values; let's assume Mr. Herman's radiation dome really exists. If spread out to 1,000 feet, it would subject more residents to the alleged RF radiation, health risks and property devaluation. This violates the justification that says we're trying to preserve the public benefit. The arbitrariness of the Ordinance is quite apparent. The sites best suited in San Marcos are on ridgelines and most are agricultural. It will discriminate against Agricultural and put them on City lots, closer to resident's homes. One tower per lot and 1,000' spacing exacerbates this. During the fires, the wind knocked out land line phones and he couldn't make calls. There was no cell service then. Limiting them will impact the community. Each additional site would have environmental impacts and require more removal of vegetation as opposed to adding to another site. It will violate the City's commitment to preserve the environmental integrity of the land they've inherited. It's designed to placate certain neighbors who simply don't want a cell tower tree and it doesn't help mitigate aesthetic impacts.

Nelson: Inquired if he's the only resident?

Brandon: There are six residents.

Nelson: It's all subjective.

Brandon: Zoning is about clustering like uses to minimize impacts. Asked if we'd want to spread out industrial facilities across the City? Would you put a pig farm in residential to perhaps spread risks?

Backoff: Commented that he doesn't see a scale on the graphic shown. It's not an accurate portrayal. There's an exception to the rule, if there's a lack of coverage in an area, they can do additional sites, but there has to be a 1,000 foot separation.

Kramer: There's a fundamental difference in cell sites compared to other uses. The use goes out to the public. Customers don't come to the site. The City's authority is limited under Federal and State law. Aesthetic preservation of property is the strongest authority. Disagreed that spreading them out increases risk. Moving them further from each other takes them out of a zone where there might be a cumulative effect. When clumped together you must evaluate all of them because there is an additive effect. Separated sites reduce the overall signals.

Michael Hunsaker, resident: Distributed AB 162 handout to Commissioner's. He believes the complaints regarding legal issues with the Ordinance are valid. There are more than enough problems to strike down the Ordinance. He's concerned if it's passed, it will become an appeal to the City Council, and then the Council will come through with a bad Ordinance in response to the Appeal, rather than putting it back to the Planning Commission where it should be. There should be a severability clause so the good portions can be salvaged in the likely situation where it's challenged. Have not seen any draft EIR public notice comment period. Changes involved backup generators and

should be part of EIR. He is not for any administrative permits because it eliminates public input. A Workshop is not really a public participation if you have no voice or power. City should throw the book at companies who don't follow rules. In the Questhaven area, there are a number of cases where enforcement was lax. CUP's should be required everywhere and public notices for administrative. Congestion Management District annexation is not required and should be, just like any other commercial enterprise. He believes that the last minute changes, less than 24 hours notice, are a Brown Act violation. There were questions regarding mixed use and public property. The City has decided that some of its commercial operations are public properties and are exempt, giving their properties undue advantage. They should be subject to all requirements. Mixed use with residential should be a separate category. Creekside and University District are public, city-owned properties and should have same regulations.

Nelson: Asked if City is subject to same rules?

Backoff: Exception is emergency communications, fire & police. If a facility meets the requirement of the code, is stealth and doesn't require a CUP, it goes through an Administrative review process like any other facility. Discussed severability update clause, which is part of the Zoning Ordinance. The Draft EIR is part of the Zoning Ordinance and included the Telecommunications chapter. As part of it, there was an EIR that covered the entire document. The City's amending the Ordinance and it's more restrictive. An Addendum is allowed by CEQA when there are not substantial changes and it's not required to go through a public review process.

Brindley: With the adoption of the Addendum, the Ordinance is not to accommodate physical development of facilities. Any future projects processed would require the City to make an environmental determination based on the proposed project, just like anything else.

Doug Logan, resident: Thanked City staff for writing Ordinance. Not sure the 1,000 feet distance makes sense. Most are concerned about the distance to an existing residence. Maybe there are areas where no one would care if they're closer? Thinks it should be 1,000 feet between structures. If not doable and carriers must close a significant gap and they provide conclusive proof there's no other site, it gets back to the 3rd party review. Need to analyze Section D.1.1. Who makes that determination? Who says there's conclusive proof, other than the cell tower companies? What if residents have legal counsel that says they don't have legal access to a private road? Does City approve it based upon applicant's counsel? Legal access issue should be resolved and if City Attorney can't handle, it should go to a specialized Attorney. It's a burden to the road. The roads are for residential use and he believes the carriers should get written consent from all easement owners and provide some compensation. Overall, he likes the Ordinance. Recommend looking at the 1,000 feet. It should be from a residence not between each cell tower.

CLOSE PUBLIC HEARING

Kramer: The issue of the separation from a house is a signal that what we're doing is regulating RF. The ordinance requires camouflage. It's a suspect regulation. In terms of the legal access, the City is requiring a demonstration of it. It's not the City job to adjudicate the rights of property owners. City's job is to make sure they have facial evidence of a right. The City asks the applicant and owner to certify there's legal

access. If it's not the case, the owners enforce their own legal rights. If it's not true, it gives the City a permit enforcement and potential permit revocation avenue for misrepresentation of a material fact. City has reached as far as they can. The owners of the property must resolve it between themselves.

Backoff: It must be written documentation.

Kramer: Have gone as far as appropriate for a local government.

Nelson: Inquired when it goes to Council?

Backoff: Jan. 14th.

Nelson: Asked if signs are required at cell sites?

Kramer: FCC has rules for sites to notify the public. 1). Antenna towers. There's a registration requirement that requires a sign. 2). Where emissions can be accessed by the public, such as a rooftop on a commercial building, there are specific signage requirements. Those signage requirements are included in the permits issued today.

Nelson: Commented that there's no sign at a church near his house.

Kramer: It's because the emissions are not accessible by the public. They go out, not downward or up.

Backoff: Reminded Commissioners to adopt the modifications as per staff memo handed out earlier and acknowledged correspondence received along with staff comments.

Norris: Asked about not having antennae's in a residential neighborhood?

Backoff: If there's a conflict, would have to be treated as discouraged, which requires a workshop and CUP process.

Action:

COMMISSIONER KILDOO MOVED TO RECOMMEND APPROVAL TO CITY COUNCIL OF TA 13-001 AS SET FORTH IN RESOLUTION PC 13-4383; WITH STAFF CHANGES AS PER MEMO DATED 12/18/13 AND THE ADDENDUM TO THE GENERAL PLAN & ZONING ORDINANCE UPDATE FEIR; SECONDED BY COMMISSIONER NORRIS AND CARRIED BY THE FOLLOWING ROLL CALL VOTE;

AYES: COMMISSIONERS: KILDOO, MAAS, MINNERY, NELSON,
NORRIS, SCHAIBLE

NOES: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ABSTAIN: COMMISSIONERS: NONE

PLANNING DIRECTOR COMMENTS

Backoff: Wished everyone a Happy Holiday. Apologized for the hectic December & January schedule and appreciates the Commissioner's effort and hard work in reviewing documents.

PLANNING COMMISSIONERS COMMENTS

Nelson/Norris: Merry Christmas.

ADJOURNMENT

At 8:45 p.m. Commissioner Nelson adjourned the meeting.

Dean Nelson, Chairman
SAN MARCOS PLANNING COMMISSION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS PLANNING COMMISSION