

**COMMUNITY DEVELOPMENT DEPARTMENT
OFFICE MEMORANDUM**

DATE: **December 3, 2009**

TO: **Mayor and Members of the City Council**

FROM: **Hanson Hom, Community Development Director** *Hanson Hom*

THROUGH: **Gary Luebbers, City Manager** *GL*

RE: **Opportunity for Council to appeal decisions of the Planning Commission of November 23, 2009 and the Administrative Hearing of November 25, 2009.**

Attached is the "Appeal Report" which is presented in the form of Draft Minutes from the Planning Commission Hearing and an Action Summary from the Administrative Hearing. The Planning Commission draft minutes and Action Summary from the Administrative Hearing note items that may be appealed and the final appeal date. **Staff reports and the Planning Commission meeting videos are available on the City's web site. One set of reports and draft minutes will be placed in a binder in the Council Office.**

Council should specify the reason for an appeal and indicate any appealed items on which it wishes to have expanded notification.

Attachments: A. Planning Commission Action Summary
B. Administrative Hearing Action Summary



**DRAFT MINUTES
SUNNYVALE PLANNING COMMISSION
November 23, 2009
456 West Olive Avenue, Sunnyvale, CA 94086**

7:00 PM - Study Session – West Conference Room

1. **Brief Overview of Future NASA/Ames Projects – (25 minutes)**
2. **Update on 49er Stadium Project – (20 minutes)**
3. **Public Comment on Study Session Agenda Items (5 minutes)**
4. **Comments from the Chair (5 minutes)**

8:00 PM – Public Hearing – Council Chambers

The Planning Commission met in regular session with Chair Chang presiding.

CALL TO ORDER/SALUTE TO THE FLAG

ROLL CALL

Members Present: Chair Bo Chang; Vice Chair Nick Travis; Commissioner Charles Hungerford; Commissioner Larry Klein; Commissioner Dianne McKenna; Commissioner Harriet Rowe; and Commissioner Brandon Sulser.

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City Attorney; Don Johnson, Chief of Police; Andrew Miner, Principal Planner; and Debbie Gorman, Recording Secretary.

SCHEDULED PRESENTATION - None

PUBLIC ANNOUNCEMENTS/CITIZENS TO BE HEARD

Speakers are limited to three (3) minutes. If you wish to address the Planning Commission, please complete a speaker's card and give it to the Recording Secretary. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by Planning Commission Members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the Planning Commission.

APPROVAL OF MINUTES of November 9, 2009

Comm. Klein moved to approve the minutes of November 9, 2009. Vice Chair Travis seconded. Motion carried 6-0-1, with Chair Chang abstaining.

PUBLIC HEARINGS/GENERAL BUSINESS

1. **2009-0076 - Commercial Vehicle Parking in Residential Zones (Study Issue) AM**
(Continued from November 9, 2009.)

ACTION: Comm. McKenna made a motion on 2009-0076 to recommend to City Council to initiate an ordinance to amend Title 10 (Vehicles and Traffic) and Title 19 (Zoning) of the Municipal Code to incorporate the 10,000 pound weight limitation for parking purposes in all applicable sections with modifications: to amend the language in the proposed ordinance, section 10.16.160 to read "10,000 lbs. or more" to be consistent with other language in the ordinance; and to add a footnote to the ordinance that "the ordinance is intended to be consistent with the California Vehicle Code." Comm. Klein seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This recommendation will be forwarded to City Council and is scheduled to be considered at the December 15, 2009 Council meeting.

2. **2009-0745 - Clearwire LLC [Applicant] Birchwood Properties, LLC [Owner]:** Application for a Special Development Permit to allow a fifth wireless telecommunications carrier to add three panel antennas and three microwave dishes on an existing monopole and associated ground equipment for a site located at **1259 Birchwood Drive**. (APN: 104-29-003) NC

ACTION: Comm. Sulser made a motion on 2009-0745 to approve the Use Permit with the attached conditions. Comm. Rowe seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than December 8, 2009.

3. **2009-0510 - BCI Sites for Clearwire [Applicant] Pacific Gas And Electric Co [Owner]:** Application for a Use Permit to allow the installation of three panel antennas and three microwave dishes on existing lattice tower and cabinets, and a Variance application to allow an extension to the top of the existing lattice tower (approximately 6' extension) for a site located at **602 Weddell Drive** (APN: 110-15-019) SL

ACTION: Comm. Klein made a motion on 2009-0510 to deny the Use Permit and Variance. Comm. Sulser seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than December 8, 2009.

4. **2009-0744 - Clearwire LLC [Applicant] Sunnyvale Office Pklp [Owner]:** Application for a Special Development Permit to allow a sixth wireless telecommunications carrier to add three panel antennas and three microwave dishes on an existing monopole and associated ground equipment for a site located at **1184 North Mathilda Avenue.** (APN: 110-25-042) NC

ACTION: Comm. Rowe made a motion on 2009-0744 to approve the Special Development Permit with the attached conditions. Comm. Sulser seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than December 8, 2009.

5. **Bylaws for all Boards and Commissions** (Revisions to Council Policy 7.2.19 Sections 1 and 2.A. - I.) **and Adoption of Resolution Repealing Any Existing Bylaws and Resolutions – KFS, TR**
(The Planning Commission considered this item at the November 9, 2009 meeting and comments were captured in the minutes. This item is on the agenda again to allow a formal recommendation to be made to the City Council in the form of a motion.)

ACTION: Comm. Klein made a motion to recommend to City Council Alternatives 2, 3, and 4: to approve revisions to Council Policy 7.2.19 *with changes* to Attachment A to this report to incorporate bylaws for all boards and commissions, and adopt a Resolution; to reduce the number of members of the Board of Building Code appeals to three; to reduce the number of members of the Housing and Human Services Commission to five. The changes are to modify Council Policy 7.2.19: G(I) that the selection of the Chair and Vice Chair shall be the *first* item on the agenda instead of the last; G(II)(f) that board and commission chairs *may* attend Council meetings (or to appoint an alternate on either a case by case or long-term basis) *for the purpose of discussing the action of the Board or Commission*; and H(V) to include language that membership on a board or commission does not preclude service on an ad-hoc committee and membership on an ad-hoc committee does not preclude service on a board or commission. Comm. Hungerford seconded. Motion carried, 6-1, with Comm. Sulser dissenting.

APPEAL OPTIONS: This recommendation will be forwarded to City Council and is scheduled to be considered at the December 15, 2009 Council meeting.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS
- STAFF ORAL COMMENTS

City Council Meeting Report

Ms. Ryan commented about planning related items considered by City Council at their November 17, 2009 and items that are scheduled for the November 24, 2009 Council meeting.

Other Staff Oral Report

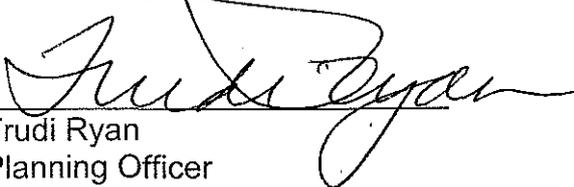
Ms. Berry commented about recent cases related to cell tower applications. She said two cases, one state and one federal court opinion, have affirmed the local agencies authority to regulate aesthetics. She said she wanted the *Commission to be aware of these affirmations as a denial can make the local agency more vulnerable to a suit.*

INFORMATION ONLY ITEMS

ADJOURNMENT

With no further business, the Commission meeting was adjourned at 9:24 p.m.

Respectfully submitted,


Trudi Ryan
Planning Officer



ADMINISTRATIVE HEARING

ACTION SUMMARY

Wednesday, November 25, 2009

A public hearing was held by the Administrative Hearing Officer at 2:00 p.m. in the West Conference Room, City Hall, 456 W. Olive Avenue, Sunnyvale, CA for the purpose of considering the following applications:

location	805 Devonshire Way (APN: 309-28-027)
file number/ proposed project	2009-0753: Use Permit to allow a fence over 7' tall (approximately 7'1") in the front yard.
environmental review	A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines
project planner	Mariya Hodge, 408-730-7659, mhodge@ci.sunnyvale.ca.us.

ACTION: Approved subject to the same conditions imposed by the Planning Commission on Miscellaneous Plan Permit #2009-0156, which is to modify the fence to comply with one of three options, as listed below:

- 1) The fence shall be set back from the front property line so that it does not extend more than 2 feet beyond the face of the garage (approximately 19-foot setback required), and the fence shall not exceed 6 feet in height as measured from the grade (6 feet 10 inches as measured from the top of the nearest adjacent public curb);
- 2) The fence may remain in its current location at a 6-foot setback from the front property line, and the fence shall not exceed 4 feet 6 inches in height as measured from the top of the nearest adjacent public curb (approximately 3 feet 10 inches above grade);
- 3) The fence shall be set back 11 feet from the front property line, and the fence shall not exceed 6 feet 5 inches in height as measured from the top of the nearest adjacent public curb.

APPEAL OPTIONS: May be appealed to the Planning Commission by Thursday, December 10, 2009.

location	1133 Strawberry Court (APN: 202-08-036)
file number/ proposed project	2009-0545: Use Permit to allow up to an approximately 9' tall fence in the front yard.
environmental review	A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines
project planner	Ryan Kuchenig, 408-730-7431, rkuchenig@ci.sunnyvale.ca.us.

ACTION: Approved the Use Permit with modified conditions of approval. Condition 1 modified to read "Project Design - Project shall be redesigned to meet one of the following options: a. The fence shall be reduced to six feet high and relocated to be no more than 15 feet from the front property line; or b. The fence shall not exceed the height of four feet at any point, as measured from the highest finished grade, at its proposed location."

APPEAL OPTIONS: May be appealed to the Planning Commission by Friday, December 18, 2009.