



Agenda

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HISTORIC DISTRICTS REVIEW BOARD FIELD TRIP

TUESDAY, June 24, 2014 at 12:00 NOON

HISTORIC PRESERVATION DIVISION, 2nd FLOOR CITY HALL

HISTORIC DISTRICTS REVIEW BOARD HEARING

TUESDAY, June 24, 2014 at 5:30 P.M.

CITY COUNCIL CHAMBERS

AMENDED AGENDA

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: May 27, 2014
- E. FINDINGS OF FACT & CONCLUSIONS OF LAW

Case #H-14-024	350 Delgado Street	Case #H-14-039	801 Abeyta Street
Case #H-14-040	1230 Cerro Gordo Road	Case #H-14-041	111 Paseo De Peralta
Case #H-14-042	335 Magdalena Street	Case #H-14-043	337 Magdalena Street
Case #H-14-033	359 Garcia Street	Case #H-14-035	557 San Antonio Street

- F. BUSINESS FROM THE FLOOR
- G. INFORMATIONAL ITEMS

1. A Resolution Declaring the Governing Body's Intention to Bring People to the Santa Fe Plaza by Providing a Safer Environment and Increased Economic Development Opportunities. (Mayor Gonzales, Councilors Ives and Dimas) (Issac Pino)

H. ACTION ITEMS

1. Case #H-13-085. 100 N. St. Francis Drive. Westside-Guadalupe Historic District. Basham & Basham P.C., agents for TKJ Inc., owners, proposes to install a telecommunications tower and antennas with related equipment in an 8' high stuccoed wall enclosure. A waiver is requested to locate the site at less than the required 64' setback from the adjoining lot line. (Section 14-6.2 (E)(5)(k)). (David Rasch).
2. Case #H-13-072. 123 E. Buena Vista St. Don Gaspar Area Historic District. Jean Pierre Campbell, agent/owner, requests primary elevation designation for a contributing residential structure. (David Rasch)
3. Case #H-14-043. 336, 338, or 340 Otero Street. Downtown and Eastside Historic District. Rad Acton, agent for Stonewall and Betty Jackson, owners, proposes a preliminary request to construct two residential structures on a sloped and vacant lot where the maximum allowable street frontage height is 15'-2" and the rear maximum allowable height is 15'-3". (David Rasch).

4. **Case #H-14-045.** 125 W. Water Street. Plan A Architecture, agent for Botwin Eye Group, owner, proposes to remodel a non-contributing commercial structure by altering the architectural style, installing a fabric awning, metal security gates, and wood screening, and replacing doors and windows. (David Rasch).
5. **Case #H-14-046.** 712 Gildersleeve Street. Don Gaspar Area Historic District. Jon Dick – Archaeo Architects, agent for Marion Tassin, owner, proposes to remodel a contributing residential structure by constructing a 5002 sq. ft. addition at 6' lower than the adjacent parapet height and construct 6' high yard walls. (David Rasch).

H. COMMUNICATIONS

I. MATTERS FROM THE BOARD

J. ADJOURNMENT

Cases on this agenda may be postponed to a later date by the Historic Districts Review Board at the noticed meeting. Please contact the Historic Preservation Division at 955-6605 for more information regarding cases on this agenda.

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HISTORIC DISTRICTS REVIEW BOARD
June 24, 2014

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MINUTES OF THE
CITY OF SANTA FÉ
HISTORIC DISTRICTS REVIEW BOARD

June 24, 2014

A. CALL TO ORDER

A regular meeting of the City of Santa Fé Historic Districts Review Board was called to order by Chair Sharon Woods on the above date at approximately 5:30 p.m. in the City Council Chambers, City Hall, Santa Fé, New Mexico.

B. ROLL CALL

Roll Call indicated the presence of a quorum as follows:

MEMBERS PRESENT:

Ms. Sharon Woods, Chair
Ms. Cecilia Rios, Vice Chair
Mr. Bonifacio Armijo
Mr. Edmund Boniface
Mr. Frank Katz

MEMBERS ABSENT:

Ms. Christine Mather [Excused]
One vacancy

OTHERS PRESENT:

Mr. David Rasch, Historic Planner Supervisor
Ms. Kelley Brennan, City Attorney
Mr. Matt O'Reilly, Land Use Director
Mr. Ike Pino, Public Works Director
Mr. Carl Boaz, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Historic Planning Department.

C. APPROVAL OF AGENDA

Ms. Rios moved to approve the agenda as presented. Mr. Boniface seconded the motion.

Mr. Armijo requested an amended in the caption of the fifth case, Case #H-14-046 where the area should be 500 square feet instead of 5002 square feet.

Ms. Rios accepted the amendment as friendly and the agenda was approved as amended by unanimous voice vote.

D. APPROVAL OF MINUTES: May 27, 2014 (or June 10, 2014)

Chair Woods asked if there were any changes to the minutes of May 27, 2014.

Ms. Rios requested the following changes to the minutes:

On page 7, 4th paragraph, add "of the wall" after "portion."

The 9th paragraph on page 7 should read, "Ms. Rios read an email she received from Jane Farrar regarding the property and wall at 350 Delgado. Ms. Farrar stated she was a neighbor to the property for 51 years and stated she felt the property and wall were historic and urged the Board to protect and keep the property and wall intact as it has been for over 50 years."

On page 17, 5th paragraph, it said, "Ms. Rios asked ... and that should be deleted.

On page 20, the 2nd paragraph should be deleted as the 4th paragraph said the same thing. The 4th paragraph should read, "Ms. Rios asked what interior ceiling heights were being proposed for the building closest to the street."

Mr. Armijo requested the following changes:

On page 15, 3rd paragraph, should say, "The board" instead of "he board."

On page 16 - midway down the page, it should say, "Mr. Armijo said the objection was with the four foot ~~dominance~~ chimney over the parapet."

On page 39 it should say, "Mr. Armijo said he had been around city permitting for years. Mr. Rasch and Mr. O'Reilly were ~~up against it in a tough situation.~~"

Ms. Rios moved to approve the minutes of May 27, 2014 as amended. Mr. Armijo seconded the motion and it passed by unanimous voice vote except Mr. Boniface abstained.

Mr. Boaz said those changes requested were to the minutes of June 10, 2014, not May 27, 2014. He also said the minutes of May 27, 2014 had already been approved in a previous meeting.

Ms. Rios clarified that her motion was for the June 10, 2014 minutes.

E. FINDINGS OF FACT & CONCLUSIONS OF LAW

Case #H-14-024	350 Delgado Street
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There were no changes requested.

Mr. Katz moved to approve the Findings of Fact and Conclusions of Law as presented. Ms. Rios seconded the motion and it passed by unanimous voice vote except Mr. Boniface abstained.

F. BUSINESS FROM THE FLOOR

There was no business from the floor.

G. INFORMATIONAL ITEMS

- 1. A Resolution Declaring the Governing Body's Intention to Bring People to the Santa Fe Plaza by Providing a Safer Environment and Increased Economic Development Opportunities. (Mayor Gonzales, Councilors Ives and Dimas) (Isaac Pino)**

Mr. Pino made presented the resolution. He said there had been a resolution afloat since April to close the Plaza to vehicles and open only to pedestrians. This was the tenth committee to be hearing this

resolution. He distributed a packet showing in color what was proposed. Part of the resolution was the introduction of park furniture into the area. The intent was to purchase 8-10 park bench - table - umbrella combinations on Lincoln Avenue. It was not an extension of anyone's business and not reserved for a restaurant or a bank. There would simply be tables and places to sit outside of the plaza grassed area. Everything that happened on Lincoln Street such as police, fire, etc. would all be moved over to the east side of the plaza San Francisco Street would remain open to vehicular traffic. The furniture could be used where located or moved to another city park if they found that would make more sense. He emphasized this would be in the street and not on the plaza park area.

Ms. Rios asked if the HDRB had no say regarding the type of furniture now or in the future.

Mr. Pino said he was told the Board would not since it would be on the street.

Ms. Rios asked if the tables would have umbrellas. Mr. Pino agreed.

H. ACTION ITEMS

1. **Case #H-13-085. 100 N. St. Francis Drive.** Westside-Guadalupe Historic District. Basham & Basham P.C., agents for TKJ Inc., owners, proposes to install a telecommunications tower and antennas with related equipment in an 8' high stuccoed wall enclosure. A waiver is requested to locate the site at less than the required 64' setback from the adjoining lot line. (Section 14-6.2 (E)(5)(k)). (David Rasch).

Chair Woods assured everyone present that this was a public hearing. Each speaker would be recognized and speak from the podium and anyone who wanted to speak would be allowed to speak. She also reminded the audience about the decorum in these chambers. There would be no clapping, yelling, booing or making noise of any kind unless the speaker had been recognized and was speaking from the podium. It was like being in a judge's court room. Just as the board respected everyone's right to speak she asked that the public respect the decorum of this chamber. That way, everybody could be heard. She again reminded them not to talk in this room because the board could not hear what was being said to them. Conversations needed to be out in the hallway. Everyone deserves a chance to be heard.

She explained the way the public hearing worked. First thing to happen was the applicant would present their application to the Board. Then she would ask for anyone from the public who wished to speak concerning this case. That was their opportunity to be heard. She also clarified that the Board did not make its decision based on the number of people for or against a case. The Board made the decision based on the ordinances and laws of the city.

If possible, she welcomed a spokesperson for a group that was present to speak representing the group. She added that if the person before them said exactly what they wanted to say there was no need to repeat the testimony. They could just say I agree with that person.

She also explained that this is a quasi-judicial hearing so everyone who speaks needs to be sworn in. At the time for public testimony she would ask everyone who wanted to speak to stand and be sworn in together and then to give their name and address when they spoke. Each speaker would be under oath when speaking.

Chair woods announced the case located at 100 N. St. Francis Drive and asked for a staff report. Mr. Rasch gave the staff report as contained in his memo [attached as Exhibit A].

Questions to Staff

Chair Woods asked for clarification if the Board was voting on the waiver only and not whether there would be a tower or not.

Mr. Rasch said the Board would either be approving or denying the waiver for the tower. Chair Woods said that wasn't what she understood.

Ms. Brennan said the Board would be applying the visual impact standard to the proposal. Chair Woods asked the City Attorney to explain both to the Board and to all of the public what the Boards jurisdiction was.

Ms. Brennan said she summarized the Board's jurisdiction and a rather long memo. The Board had jurisdiction under Santa Fe City Code 14 – 6.2E4b – “to review and approve applications for towers and antennas located story districts in accordance with applicable requirements of Code 14 – 5.2 and in accordance with Section 14 – 6.2E, the Telecommunications Facilities Ordinance.” The Board is applying these standards in the context of Federal Law that does not allow the City to take actions that prohibit or effectively prohibit the delivery of telecommunications services within the City and that prohibits the City from regulating the placement, construction, and of modification of telecommunication facilities on the basis of environmental, including health effects, radiofrequency emissions to the extent Facilities comply with applicable FCC emissions regulations.

Also, there are time standards which can be stayed in accordance with the applicant's consent. Four new towers, we are required to act within hundred and 50 days and for modifications we are required to act within 90 days. We are within that.

Mr. Katz said, “Ms. Brennan the section you were citing said that the H Board reviews the application and determines whether there is no other less intrusive means or alternatives. So is that also something that we would determine?”

Ms. Brennan said, “Yes that is correct.”

Mr. Katz asked what standard the Board would use as a basis for making that determination – use the purposes in the first section of this telecommunications facilities ordinance, minimizing the land use impacts.

Ms. Brennan agreed. The purposes and relevant standards are set out in the telecommunications code itself. In her memorandum there were a number of standards applied to visual impact.

Ms. Rios asked, in reference to the waiver. In terms of the waiver, the tower is 64 feet high so that meant the setback had to be 64 feet. What is the applicant asking as the waiver?

Mr. Rasch asked to allow him to measure the actual tower set back from the sideline and he would report it.

Mr. Katz asked if it would be 58 feet.

Mr. Rasch explained that it is a triangular piece of property, so what he would measure is the setback from the closest property line, the setback from the property line at St. Francis, and the setback from the property line at W. Alameda St. It is clearly over 64 feet to West Alameda.

Ms. Rios asked in reference to the streetscape if there was anything similar to this tower anywhere within the 600 feet of the tower.

Mr. Rasch said this is exactly the reason why the applicant is before the Board tonight there are no other cell towers within this streetscape.

Ms. Rios asked about electrical wooden poles and if he knew what the height of them were.

Mr. Rasch said he did not know.

Mr. Boniface asked how tall the Marcy Street tower was as a comparison.

Ms. Brennan said it was over 150 feet high.

Mr. Boniface noted in the application, the applicant talked about shared co-location. He asked if the tower were approved whether other additional antennae or equipment would be governed by this Board.

Ms. Brennan responded that if the Board determined to make that approval, one of staff recommendations would be that anything that would increase the height or the radius, the extension of the arms holding antennae be brought back to the Board.

Mr. Boniface said, to be clear, that it would be both additional height as well as additional antennae.

Ms. Brennan said that was correct and staff also suggested that the entire tower antennae would be painted if there were additions or changes so that it would be a uniform color.

Mr. Rasch reported that the setback from the Northwest property line was 12 feet 9 ½ inches; and the setback from St. Francis was 34 feet 3 and a half inches.

Applicant's Presentation

Chair Woods asked that anyone who was to speak on behalf of the applicant all be sworn in together. They were sworn in.

Mr. Peter Dwyer, 2205 Miguel Chavez Rd., Said he was sworn to alleviate concerns about his statements. However, he was acting as legal counsel and here primarily as AT&T's legal counsel although he had prepared many of the application materials, he was acting principally as their legal counsel and if the Board had questions about the application the records, he could have one of the AT&T representatives that sworn testimony and he would introduce some sworn testimony to affirm that the application materials are true and correct.

He wanted to respond to a few things that were asked earlier about what they were doing here tonight. They did have some meetings with the city staff because this was an unusual application. As Ms. Brennan pointed out, this was under 14 – 5.2E of the City Code. So it was unusual in the sense that the Board was not even applying the historic code. This was the telecommunication code and that was designated as a duty of the H Board when the telecommunications ordinance was rewritten in an attempt to make sure that the Board had continuing review of authority but it was the same as the review authority for other bodies when the applications were not in historic districts.

These kinds of facilities are permitted anywhere within the city of Santa Fe. There are not restrictions by zone and it is not prohibited in the historic districts. The standards are set out fully for the Board in the staff report so they could see what the code said about what has to be done in the historic districts. But he thought the first thing to acknowledge was that it was not prohibited to have these cell towers in the historic districts.

The second thing to acknowledge is that the underlying zoning on this property is C-2. And the code clearly favors a C-2 property as an area for these types of facilities to be developed. The reason was because C-2 was one of the most intensely commercial zones of the City. And therefore, it is appropriate for use for commercial and industrial facilities. And the Board saw the pictures of what was there right now. It's a gas station; it's a fast food restaurant and they were building the extension off of an existing dumpster enclosure. So that is the type of property they were beginning with.

He added that they have had some success building sites in Santa Fe but not without objections. It is not unusual, regardless of the zone or the nature of the application for it to be contested. He was sure they would see that tonight also.

In terms of the particular application, he felt it was important to note that this was not the first attempt to build this area and he. There had been multiple attempts and there has been work through the process with the neighborhoods and the community. For example, The Solana Center was a prior site that was proposed for this because, it too was a commercial area and it would have been west of the historic districts. But it was opposed by the neighborhood. They said that they did not want it right in the Casa Solana

neighborhood. In the packet is a map of the area and the Board could see the Casa Solana Center was nestled right in the middle of the Solana neighborhood. And the neighbors did not want the site to be in the middle of the neighborhood. So they looked at alternative sites.

One of the sites would have been the Alto Field. Versions of sites there began as far back as 2008 with alternative designs on art objects. The City was contacted about potentially integrating it into existing light stands. And for a number of reasons, that site - AT&T never received a lease for that site. So obviously one of the limiting factors on finding sites was to find someone who is a willing lessor in order to proceed with the site application.

So that didn't pan out. Nor did the Solana Center. They did work with the neighborhood to try to move it away from the Casa Solana neighborhood. Basically, it has been moved away from the residential area and toward the commercial area, the corridor along St. Francis.

In this particular area C-2 zones, the Telecommunications Ordinance controls the heights, not the Historic styles or streetscape. They discussed it with the staff and believed to they would agree that height is not the issue for this site because height would be allowed up to 100 feet under the Telecommunications Ordinance. That's the height limit for this particular project, for this particular site, and that is the Ordinance for this site.

So it is the other criteria that are enumerated in the staff report that are the criteria for evaluation by this Board on this application.

In terms of the design, all of the sites that AT&T designs go through a multistage process. They are first given a search ring which is in the packet and shows that it is a small area, much smaller than people would hope. People sometimes hope that the company could build a site on the periphery of the town in some uninhabited area and deliver coverage in the urban area. It is shown on page 30. Far from being able to move it out to the outskirts of town, the search ring itself is relatively small. It extends basically from the Casa Solana Center to a short distance east-west and north-south of the current search ring which is very close to their proposed site. With the current technology the company must have many, many cell sites all across Santa Fe that handoff phone calls from one to the other and use the same signals in a repeat fashion at distant locations.

People have asked why AT&T did not look at DeVargas Mall but that was outside the search ring to the North and East.

Mr. Dwyer said he contacted a number of the neighbors himself either with direct phone calls or through emails or otherwise to make himself available for information in anticipation of the concerns about the site. Some people asked about the Lodge of Santa Fe. That is North outside of the ring. It was actually considered to be leased for another search ring. That search ring was abandoned and this site was found for that search ring. It was an alternative and it was considered but in the context of a different area.

In terms of the design, it was a difficult process. Once the site was established as a possible candidate,

AT&T went to the State Historic Preservation Office because they have a national programmatic agreement to comply with where there is the possibility of, not only from the state but from all the tribes. And that is done on all sites. So they have concerns about the site and the site design and were presented with the simple monopole design because that was the best alternative that could be worked out between AT&T and the staff. In the staff report the Board could see that they talked about stacking antennas but doing that would make the pole higher. They talked about a three pole design alternative but it would only proliferate the number of poles and thus need a bigger ground area and the lot is very small. So it was not viable to use a three pole design. Other alternatives like art objects were discussed but rejected. And the State History Preservation Office in fact, gave the approval during the NEPA process for the alternative shown tonight minus the shroud. The shroud was the company's attempt to get rid of the bristly look of the antennas at the top and ameliorate the aesthetic impact. But after having built one at the Baillio's site, the staff took pictures of that site and didn't like the design. Neither did the State Historic Preservation Office. So they went through the process on design, came to the staff, tried to consider alternatives. They had an ENN meeting and opened it up to the public about design alternatives. Mainly at the ENN meeting he characterized that as being opposition to any such site and not a particular design on this site.

They got to the point of the hearing tonight and then SHPO was contacted by someone and they said they did not agree to that shroud because it wasn't in the proposed design at the time that AT&T met with them.

Mr. Dwyer said both he and Ms. Brennan had independently met with SHPO two years ago about this because he wanted to inform SHPO that they were going to go forward through this process that it had to be a process that allowed public participation. They could not meaningfully go to an ENN meeting and a zoning hearing without being able to agree to conditions of approval and potentially some minor design changes. So he thought they were trying to be upfront with them but then two years later they thought the site had died off and gone as an issue. SHPO said they had never agreed to the shroud so they asked that the shroud be removed. They would like also to have a pole that was not "fake." So AT&T agreed to remove the shroud and that was also in the staff report as a recommendation both from SHPO and from the city staff.

That was the process they went through in terms of design and he reiterated that in order for them to move forward as a community they would need to have available current wireless technology. It was not an optional thing for modern society. He suspected Mr. Furstenberg would disagree with him and say it was an option that they should opt out of. But AT&T proposed this site because they needed it and not just because they wanted to do something out of the blue. AT&T would not be here with all of their staff and spending a lot of money trying to design and build a site unless it was something they really needed.

Mr. Dwyer asked Mr. Lyndon Dreen to come forward.

Present and sworn was Mr. Lyndon V. Dreen, 1426 North Marvin Street, Suite 101, Gilbert, AZ, who stated that the application materials before the Board were true and accurate.

Mr. Dwyer said he didn't think they needed any further sworn testimony at this time but he offered that

he could provide further information for that Board if they would find that helpful. He pointed out that the Board was likely to hear many concerns that did not involve the City Code. He said Mr. Jeffrey Burling, a Radio Frequency Engineer, was present. As a Radio Frequency Engineer, he designs sites and helped AT&T decide where the sites should go. He could explain why AT&T needed to put the tower at this site. He didn't think it was a zoning issue but he was available so he could answer such questions for the Board.

Mr. Dwyer also introduced the site acquisition manager for AT&T and another engineer.

Mr. Dwyer said they would be very happy to answer any questions the Board has and they were relying principally upon their application materials. He was very aware of the opposition and said in advance of any introduction of their materials, that the Uniform Building Codes adequately addressed their primary concerns because, as with all structures, there are risks from wind damage and things like that. He knew there had been a lot of discussion about that. But ideally, the building codes are taking care of that issue and the remedy would be to change the building code if they felt there was any danger of falling over. It should be a building code issue and should be resolved through that method. He further explained that the site plan showed a 64 foot radius which was the full height of the tower. In order for tower to fall 64 feet they would have to unscrew the base bolts on the tower and push it over because it is bolted to the ground with steel on a pad. It was very unlikely that any tower would fall over at all and he was not aware of any falling over in Santa Fe. But should they fall over, they would not fall the full 64 feet.

In conclusion, he said he felt they had made a good-faith effort to find a site in a commercial zone away from the neighborhood that would be buildable. And it was a simple pole. It was the best design for this site and AT&T had made a good-faith effort to work with the community to look at alternatives. In response to those who would question why they needed to have a site at all, he said that in order to have coverage, 4-G, streaming, internet that works on tablets, readers and phones, AT&T needed to have more reliable sites in Santa Fe. He noted that some people say they didn't care about AT&T because they had Verizon. From his perspective such a comment, did not help at all because it was their competition. Competition was part of the Telecommunications Act and they were supposed to compete with Verizon. If AT&T had bad coverage and Verizon had good coverage it was an argument why they needed this site because AT&T needed to be able to compete with others around Santa Fe.

Public Comment

Chair Woods asked for a show of hands of those who wished to speak. And many raise their hands. She said she would give each speaker two minutes to speak and a representative for a group 10 minutes. There were one or two groups present. She asked everyone who intended to speak to stand in order to be sworn in together.

Present and sworn was Mr. Steven Carrillo, 1043-E Don Diego, who said, "I am here tonight in my capacity As the President of the school Board for Santa Fe Public Schools to read a resolution that we passed last year. It is Resolution 2012/13-23 - opposing the construction of a cell tower adjacent to Gonzales Community School. Whereas the health and safety of our students, our school and its community

our fundamental concerns of the Santa Fe Public Schools Board of Education, and whereas AT&T has announced plans to construct a cell tower at the Berger King adjacent to Gonzales Community School, and whereas this site is located in a historic district of Santa Fe and the cell tower would detract from the visual appearance of the historic district, and possibly reduce home values in the neighborhoods, and whereas this site is at the corner of St. Francis and Alameda, and should the tower fall, it would block traffic at a major intersection, and whereas there is also a gas station at this site, and should the tower fall on the gas tanks, it would cause an inferno, and whereas there is significant if not conclusive evidence of the carcinogenic potential of exposure to low frequency electromagnetic fields from cell towers, especially for children, and whereas concerns about the possible safety, health, or aesthetic impacts of a cell tower could cause families with children to move out of the neighborhood, or not to move into the neighborhood, thus impacting the enrollment and/or diversity of Gonzales Community School, and whereas the Historic Review Board has jurisdiction over whether a cell tower can be built at this site, therefore, be it resolved that the Santa Fe Public Schools Board of Education communicates to the Santa Fe Historic Review Board, the Santa Fe City Council, and AT&T its opposition to the construction of a cell tower at this location. Thank you for allowing me this opportunity."

Present and sworn was Ms. Nicole DeJurenev, President of the Casa Solana Neighborhood Association, speaking for the association. She said, "Before I start, I have a drawing of the area. Here's the Arroyo. Nowhere in the applicant's 180 pages or 200 pages of ongoing stuff did he mention Gonzales School, for instance. Here's Gonzales up here and then there are all these Chinese elms or Siberian elms. It's sort of a little forest tree event around the Arroyo. And here is the tower which at this juncture is 12 feet from the end of the crumbling Arroyo. So if this were to catch on fire, it would move over to the school. And I think you drove down here today when you took a look - here is the pass through. So there is lots of traffic zooming on St. Francis and could hit the tower or could hit the gas pumps and things could burn up. This is a very crowded site. There are trucks unloading stuff Burger King and gas being pumped into these six gas pumps down here. I'm just trying to point out that this is a very congested area and not an appropriate place for a cell tower that has a small electrical substation at its base and if it should arc could catch this whole area on fire and we are really concerned that our houses could burn down too. This is not... This is serious. The city has fire regulations now in place.

Let me start from the beginning of my speech. And I am delighted to see so many people who have total expertise on construction and how neighborhood should be and thank you all for being here. Our neighborhood, Casa Solana includes, goes to the end of St. Francis, so it includes the Burger King area, it includes Gonzales and Dragon Fly. So together, there are thousands of us that are represented. I would ask you please, do not grant AT&T a waiver of the setback requirements for their 64 foot cell tower in our neighborhood. AT&T is a rich and powerful corporation that can pretty much bully and by what they want. They do not have a problem running roughshod over the opposition. AT&T is the King of dropped calls nationally. Do not be fooled into thinking that they need this tower for wireless and broadband connectivity for the safety and benefit of Santa Fe. No. They don't care about that. They even admit that this tower would not improve reception for the residents of Casa Solana because all of our tall trees block line of sight. They relate in acquiring bandwidth and their technology is limited to line of sight and short range. Let's be realistic. AT&T wants to erect this tower so they can rent space to other telecommunications providers. This tower is being erected solely to increase AT&T's bottom line. AT&T after all, is a for profit public corporation

with thousands of stockholders. Please do not grant AT&T, this for-profit setback waiver as their profit grab could cost the residents of Casa Solana and the schoolchildren nearby. Santa Fe historic districts state historic preservation and land-use have failed to require AT&T to disclose the exact proposed location of the tower and the exact distances of the setbacks. Well we saw that. What is it? You put it in a book.

I do a lot of development. And when I present a building plan, I have everything mapped out. There's no fooling around. But they do not have a plan with the distances marked on it where the tower exactly is going to be. I count this as very irresponsible. AT&T has applied for a 64 foot tower which without any further approval from any of the financial agencies, they could extend to 100 feet or more. As you know, city code requires that before the foregoing tower be 100% of the total height of that tower, 12 feet is the smallest setback for the tower which is at the edge of this crumbling Arroyo. So there is nothing in their presentation that says they are going to do special treatment to the ground such as steel posts or anything that would make it secure. So if God forbid we should have a flash flood, which we could well have if it was to rain all of a sudden like it was last year, it could just undermine the whole tower. I don't think it's a good building practice. Please follow our own City Ordinances and deny AT&T a setback waiver for this tower at the Burger King location.

The tower would be a scant 35 feet from heavily traveled St. Francis Drive. Now they told you something else, but I got these figures out of the presentation of the applicant. So here is the cell tower. It is 34 feet to St. Francis from the cell tower and this is in a note on the application. You can look it up. 60 mph winds are no longer uncommon as well as tornado winds, any of which could top of the tower on to St. Francis causing vehicle damage and loss of life. AT&T's application never even addresses the possibility of the danger to St. Francis motorists to 30 feet of cell tower fell across the highway. They don't even talk about it in the application. Please do not grant the setback waiver. AT&T's tower will be 12 feet from the crumbling Arroyo and strong winds or tornado or flash flooding could drop the tower with its electrical base among the dense tree line, possibly arcing to Gonzales Community School."

Chair Woods alerted the speaker that she had half a minute left and asked that she wrap it up.

Ms. DeJurenev said, "We all think this is a horrible idea. The least of our worries is the State Historic Preservation has selected the ugliest and most noticeable design in direct contradiction to Santa Fe's own ordinances. And ugly design will not kill us but fire could destroy our neighborhood and schools and risk our very lives. AT&T's proposed tower is a public safety hazard. The city of Santa Fe has wisely put in place fire and lifesaving ordinances to protect us, its citizens. Why would you vote to remove these reasonable protections if you felt, yes, to grant AT&T this setback variance? You would open the city of Santa Fe to great financial liability. Where is it written that the ability to talk on your cell phone, text, email, view sports, TV and movies trumps anybody's right to life? How would you feel if your vote caused the loss of even one life?"

Ms. De Jurenev's written statement is attached to these minutes as Exhibit

Present and sworn was Mr. George Kaschner who asked for a point of information. "Did the opposition's package get loaded into the packets that were handed out?"

Mr. Rasch said it did.

Mr. Kaschner said, "A point of information to share with you, the streetlights along the streetscape are 28 to 30 feet tall. My name is George Kaschner. I am the father of two children attending Gonzales Community School, a member of the Gonzales PTA and a Board member of the neighborhood association. I am a veteran of the US Navy where I served as a nuclear powered prototype instructor. I have worked as a scientist at Los Alamos National Lab for over 17 years. The views that I express here are my own although they result from my career experiences. Santa Fe City Code Chapter 14.6 Re: telecommunications facilities waivers says that a waiver may be granted only if it is found that the waiver is in the best interests of the community as a whole and will not jeopardize public health, safety, and welfare. If AT&T were actually considering the community and public interests rather than their own, this application would not exist. To construct a cell tower at the proposed location is clearly a matter of convenience, rather than considered care. In both the nuclear Navy and at Los Alamos National Labs, equipment is designed to the highest level of safety and personnel are rigorously trained. Yet it is the human factor that is most often the root cause of accidents. It is this human factor that elevates the risk of accidents and fire during maintenance and normal operations. Although AT&T claims there is equipment is safe, it is shortsighted to overlook the history of cell tower failures due to mishaps during routine maintenance and construction. Root causes often include complacent workers performing routine operations and tired or in extreme weather conditions such as we have here. Accidents include failures to make equipment safe before performing work, dropped tools, or failures of the safety equipment. Construction accidents have resulted in collapsed towers. Burger King, Phillips 66 has a highly congested hive of activity. During rush hour it is busy with fast food consumers, commuters and harried drivers. Fuel tankers and delivery trucks with food deliveries resulting chaos. Now AT&T wants to add a cell tower and electronics enclosure and service trucks. The potential for disastrous consequences is too great a risk. This elevated risk providing the cell tower to this location is a dereliction of duty to the public health and safety. Please do not approve the setback waiver.

Mr. Rasch said the last supplement was noted as number six of seven, starting on page 45.

Present and sworn was Mr. Arthur Furstenberg who distributed a document to the Board [attached as Exhibit A]. He said, "Members of the Board, in 2012, Congress passed the Middle Class Tax Relief and Job Creation Act. It says that a city may not deny, and shall approve any request to add antennas to an existing tower as long as it does not substantially increase the size of the tower. The document I have given you is the FCC's ruling on the meaning of the word 'substantially.' If the antennas do not raise the height more than 20 feet or protrude outward more than 20 feet, that is not considered a substantial increase. What this means is that once you approve this tower, any company can add antennas that raise the height 20 feet and the width 40 feet and then another company can increase the height another 20 feet and there isn't anything the city can do to stop them. Even the city's 100 foot height limit for commercial zones is preempted by this federal law. And it won't do any good to condition your approval on a requirement that new antennas have to come back to the H Board because that condition will be unenforceable. If you approve this tower you are actually approving a tower with an unlimited number of antennas, and unlimited height, and up to a 40 foot with.

My second point has to do with the photographs submitted by AT&T. This is the photo simulation that AT&T submitted that is on page 279 of your packet from staff. When David Rasch received it, he emailed AT&T that the tower in the picture is only 25 to 30 feet tall. His email is on page 42 of your packet on submissions from the public. Yet AT&T never corrected its mistake and this is the same photo simulation that is in the packet from staff. This is the actual height of a 64 foot tower. This photo simulation is on page 43 of your packet of submissions from the public.

Present and sworn was Ms. Jan Boyer, 815 Rio Vista St. She said, "I live in the neighborhood. My house is less than a block away from this site. I am very concerned and I hope you don't allow the variance because I have been in this filling station, Burger King lot and it is scary. Cars come off of St. Francis drive into that lot at a very high speed. I have almost been hit. There have been trucks that I've seen come within inches of each other. It is a very frightening place because of all the congested traffic right there. It is really not hard to imagine that some vehicle could hit this tower, especially since it has the Arroyo right behind it and could fall that way. Also, I'm remembering that we were always told not to use our cell phones when we're pumping gas. And yet this cell tower would be right next to all these gas tanks. I don't know what kind of sense that makes in terms of safety. I also understand that in every other neighborhood where one of these cell towers went in that property values went down. There are a number of neighborhoods around the cell tower that are all watching this because it will cut all of our property values for this whole northwest section of town if this cell tower goes in. As for the need of it, I'm sorry, but I don't believe that because I understand that every device that my friends and neighbors use, there is no problem with getting coverage to have all of the devices work. So there is no need other than some kind of territorial thing for them.

Present and sworn was Ms. Victoria Bloodworth at 136 Mesa Vista St. in Santa Fe. Just to let you know, I am a parent of two students at Gonzales and live in the Casa Solana area. I just simply wanted to respond to a couple of points made by Mr. Dwyer in his presentation. And I wanted particularly to address the two topics that are under consideration for the H Board - the waiver of setback and the visual impact. Mr. Dwyer indicated that his height is not a criteria for judgment against this because of being within the 100 foot regulation. However, I do believe the visual impact of the height is definitely a matter that does come under the purview of the Board as presented by the previous presenter with the photograph of the area.

In addition, Mr. Dwyer asserted that the property is in an intensive commercial zone, which is sought for these cell towers. While the property itself, the Burger King property, is commercial, all of the neighboring properties are not. Those include Gonzales Community School, a residential complex across the street and across Alameda, the Santa Fe River Park. So I would assert that this is not an intensive commercial zone. It is rather a single commercial location within an environment that isn't largely commercial. So I think that for both of these reasons and for the safety respect for the setback, I would request that you not grant the waiver.

Present and sworn was Ms. Helen McCabe, 1121 North Luna Circle, who said, "My family and I are residents of Casa Solana. I have two children who attend Gonzales Community School where I am also a staff member. I'm here tonight to voice my opposition to the location of the AT&T cell tower. I was interested to see that the Santa Fe Chamber of Commerce is one of the only groups to come out in favor of

this tower. I think it is important to note that this is not an unbiased opinion. According to their website, the Chambers mission is to be the voice of business and their number one priority is to help member businesses grow and make Santa Fe a great place to do business. I would note that AT&T is a member of the Chamber. But Santa Fe Public Schools is also a member of the Chamber. This tower helps AT&T grow its business but it certainly does not help Santa Fe Public Schools grow their business - the business of providing a safe and welcoming environment to our students.

Gonzales Community School is a vibrant community of students, staff, and administrators who are working hard to excel and grow. This tower will cast a little shadow on our success. We will lose families and staff who are concerned about the safety of this tower. We are a neighborhood school and this tower is not a welcome sign to move into our neighborhood.

I resent the characterization that anyone who is against this tower is antibusiness. That is not the case. I just want businesses to be good neighbors. It is disingenuous for anyone to suggest that denying AT&T this tower is going to harm business in Santa Fe. AT&T is not going to pull up stakes and leave Santa Fe. No jobs will be lost. As a city, we are allowed and obligated to regulate business to protect the best interests of our citizens. It may be the Chambers mission to make Santa Fe a great place to do business. But I would see it as the H Board's mission to make Santa Fe a great place to live. The only benefit to this tower is to an out-of-state company with assets already in excess of \$277 billion.

Present and sworn was Anaren Hall who said, "I'm a fourth grade student at Gonzales Community School. I am enrolled in the gifted program and I am the outgoing Vice Chair for the Santa Fe Public Schools emergency services east council. I am opposed to AT&T's application to build a cell tower at the Burger King near my school. We are not allowed to have our cell phones at school so we don't need a service anyway. A lot of my friends live in the neighborhood Casa Solana. And they have AT&T and they don't have any problems using their phones. I protested this last year out in the snow and I thought this was over. I didn't understand why AT&T would put the 500 students at Gonzales in danger. It isn't enough that I have seven standardized tests to stress about. It is enough that I have to worry about school shootings and lockdowns. Please do not add the stress of having to worry about a needless cell tower and having this tower fall down and hurting us. AT&T has said that the chances of an accident are low. But do you think that their numbers will matter if one of us kids hurt? It is just too close to our school. I know big companies like AT&T are not worried about a few hundred kids, but I know the government of the city is looking out for us. I have the right to grow up and learn in a safe place. This tower is not safe. I beg of you to vote no to this tower for the sake of kids at Gonzales. Thank you. Goodbye.

Chair Woods said no clapping. He did a great job and he got to see democracy in action. And that makes me happy.

Present and sworn was Ms. Cindy Hall, who said, "I am the outgoing PTA president At Gonzales Community School and the current chair of the Santa Fe Public Schools Native American Student Services Committee. I'm a resident of Casa Solana and a business manager for several Plaza area's shops. But more importantly I am the parent of a bright and beautiful 8-year-old boy. I am here tonight to state my opposition to the proposed AT&T cell tower at the intersection of St. Francis and Alameda located at the

Burger King Texaco station. As a business manager at the downtown Plaza, I have worked with the Land Use and History Preservation Departments on multiple occasions. I know the lengths to which they go to protect ambience and charm of our history city. Businesses must have a sign approved, have awning colors and designs approved. Basically, every detail affecting the overall look of the historic district must be submitted for approval.

So understanding this, and the need for protection of our historic district, why would we want a 64 foot tower at the entrance of our grand city? Allowing this tower to be placed at this intersection would potentially desecrate the look and feel of Santa Fe. When you have a gold mine of a historic district such as we have, there are intangibles that everyone relates to. This is our sense of place; something that we get by preserving a whole body of architecture, buildings, and areas. We don't want to do things that will potentially compromise that. Also at hand is the issue of the tower being felt so close to our school. So many dangers are present that it is difficult to list them all. The tower could fall, it could be struck by lightning, could catch fire, the Arroyo could flood and potentially wipe out emergency contact services that rely on a tower in such an unstable area. Hundreds of horrific scenarios could be stated tonight and I could list them all but I will spare you. The undeniable factor in all of this is that the construction of a cell tower in this location puts every one of those children at Gonzales Community School at risk every day. I am here tonight to protect those students and faculty so much has asked of them daily. The last thing they should have to worry about is their safety. Our children are the ones assuming all the risk here. And quite frankly, if this tower is constructed, I will pull my child out of the school. My son would lose the amazing instruction he receives under a dedicated and humble principal, Mike Lee, and Gonzales would lose a brilliant student and family who tirelessly works to raise and improve the educational experiences of the children attending this school. I beg you to oppose this tower for the safety of our students. Here is our duty and responsibility to protect them. AT&T will tell you the risk of danger is low. But there is still a very clear risk and it is not my son's responsibility to shoulder that risk when in this day and age the unconscionable and catastrophic happens every single day. Thank you.

Present and sworn was Ms. Debby Kaschner, 1113 North Plata Circle, in Casa Solana, who said, "thank you for allowing me the opportunity to speak to you this evening. I oppose the building of a cell tower at Burger King. I am the parent of the daughter and son who attend Gonzales Community School, and we live in Casa Solana. Back in May 2012, my family attended the Early Neighborhood Notification meeting set up for the Casa Solana neighborhood. AT&T presented themselves as building this new tower to provide better service to the Casa Solana neighborhood, and to provide 4G technology. As part of the meeting discussion, AT&T explained the use of their line-of-site technology, including the limitations of it. My husband questioned them as to whether they had ever conducted any research to find out if there tower signal could penetrate the dense foliage characteristic of our neighborhood. The AT&T rep said they had not done any research of this kind and could not guarantee improved service within Casa Solana. However, they did point out that cell phone service should improve along the St. Francis corridor.

So now a cell tower is proposed for a site in which nearly ¼ of the surrounding area is unlikely to receive improved service. And this is at the public safety cost of the nearby school children, their teachers, and staff, and the neighborhood, and the city. We should not be forced to bow down to AT&T and sacrifice our safety so that they can build a potentially ineffective tower in our residential neighborhood.

We are now starting to hear AT&T suggest that the tower will benefit the entire urban area. If the goal of AT&T is true to improve coverage for the urban area, then I suggest that they be held responsible for locating a site which is closer to the urban area. Burger King and AT&T need to show respect for the community and follow the rules.

Please do not break previously well-thought-out city codes which requires that the tower remain further away from the street. Hundreds of children and their teachers walk the street next to Burger King when they set out on educational field trips every fall and spring. Making a wise decision proactively may save countless lives and see the inevitable questions of why didn't we do it differently when we had the chance. Thank you again for your time and consideration of my comments." [Her statement is attached to these minutes as Exhibit B].

Present and sworn was Mr. Michael Lee, 5 Pico Floor Path, who said, "I'm just going to support what everyone else is saying. I've been principal at Gonzales Community School for well over 20 years. I'm opposed to this for two reasons. One is aesthetic. I come in to Santa Fe on 285 every day. I can't imagine what a 64 foot tower is going to look like coming from the north side down. Secondly is dangers as have been stated. It is not enough that we have to try to protect our kids every day, but if something malfunctions with this particular tower, it is just going to be another catastrophe that we have to deal with at our schools. Thank you very much.

Present and sworn was Ms. Katie Singer, 310 Lomita St., who said, "I'm the author of the new book, An Electronic Silent Spring. I'm here to report about the Malibu fires in California in October 2007. They were caused by telephone poles, utility poles overburdened with cellular phone gear. These towers should have withstood winds of 92 miles an hour. But they toppled in 50 mile-per-hour winds. The gear toppled onto the road with such force that a guywire yanked a 2600 pound concrete anchor from surrounding rocks, landing in the middle of Malibu Canyon Road. 3800 acres burned along with 10 houses, a landmark mint, now Malibu Castle, several businesses, and two schools. Three firefighters were injured putting out the fire and central Malibu was evacuated for three days. There were four cellular companies: Verizon, Sprint, AT&T, and NextG Networks that apparently failed to coordinate weight loads with each other were properly measure distance dirty the aging poles were, having new cables and cellular phone gear headed to the intents. I urge you to vote against this tower. [She provided news articles about the fire as Exhibit C]. Present and sworn was Mr. Michael Wirtz, 161D Calle Ojo Feliz, who said, "Before I retired, I worked for the US Forest Service. And one of my responsibilities was fire safety. I was highly trained as a Class I Safety Officer on numerous large fires in the Western United States. I'm not concerned about that fire in the Arroyo. However I am concerned about the potential of lightning using this tower. I know it is probably going to be well grounded and I have been in a lookout that has been struck by lightning that was also well grounded. And it caused three fires at the terminus of the ground wires. So nothing is for sure that this will not be struck by lightning. And the fact that it is so close to gas lines and gas tanks, and more importantly, the school concerns me considerably.

It is rather interesting that this meeting is being held in June when school is out. Otherwise, I am sure these chambers would be filled with all of the kids from Gonzales School. So you, that Board, have an easy

decision to make. Choose the safety of kids over the greed of corporate America.

Present and sworn was Mr. Pres Simons, on Alamo Drive, who said, "I want to address first what I consider to be the applicant's whiny argument about competition. Anybody who is old enough to remember how AT&T had a complete monopoly on communications in this country know they fought tooth and nail against companies like Verizon and others coming up. So they are not interested in competition. That being said, I see no reason why this community... Here's my point. They were so late to the game and didn't get broadband and so they have to have all of these towers which other companies don't need. Why should we as a community rescue them from their basically stupid business decisions? Why should we bend in the rule to rescue them from their bad judgment? I think you should deny him.

Present and sworn was Mr. Tim Rogers, for 11 Cortez Pl., who said, "I live about six blocks southwest of the proposed tower location. I am wearing red because I made Gonzales parent. I have three children who are either students there or have been. This shirt actually also celebrates the history of Santa Fe and that's partly what we're talking about tonight. I am a transportation planner. I focus on pedestrian and bicycle transportation. Santa Fe River Trail is directly across the street from this property. It is our premier trail in the city. I've traveled the state and the country looking at these kinds of facilities. It is our most beautiful trail. It is probably the most beautiful trail in the state. It is top-of-the-line, 10 foot wide, concrete. It has lighting. Millions of dollars have been invested to make that trip what it is. Millions more dollars have been invested to make the River corridor what it is. It is a beautiful corridor. The trail and deliver connects our neighborhood to the historic center of Santa Fe. St. Francis divided the city but the river in the trail serve to reconnect it. The city is going to invest millions of dollars more in the trail to bring it further east, right into the heart of Santa Fe. So this cell tower really is going to be an ugly site right on our most beautiful trail which we are investing millions of dollars. The money does not come easy. Our citizens vote for bonds that put our city in debt to be able to build things like this. So the money does not come easy.

Allowing this tower to be built, in my mind, instead of an investment, is a divestment worth millions of dollars. But we don't have to do it. It's very easy. Please do not grant the waiver. Please do not allow this tower.

Present and sworn was Mr. Jerry Richardson, President of the Historic Guadalupe Neighborhood Association and speaking on behalf of that Association. He said, "first off I want to state that I am not opposed to cell towers per se. I am only opposed to the location of this cell tower. And I think, overall, it's completely inappropriate to locate a cell tower in the boundaries of the historic district, which this is. And it is completely out of character with the historic core of Santa Fe. And this tower will be visible from my neighborhood. I'm urging you not to grant a variance from the setback requirements. There is a very good reason for those setback requirements. They require that there be a setback equal to the height of the tower and that way, if it falls, it falls within the boundary of the property where the tower is located. And we know that this tower, if it falls toward St. Francis Drive, will fall into St. Francis Drive. And that creates a significant safety hazard. I would also point out that the application says it would just fall into an access lane. But there is no access lane there. There are three lanes of St. Francis and, as you know, that varies a lot of traffic.

I also concur with the comments of Mr. Furstenberg met the photos submitted by the applicant on the packets page 279 is absolutely deceptive and inaccurate. It shows a tower that is shorter than the trees in the Arroyo and that can't be right because the enclosure on that tower, if you look, is supposed to be 8 feet tall and the poll depicted is not seven times higher than that. So we shouldn't be granting an application for somebody who has filed a deceptive application.

And then I think the most important point, and I've gone to the law library at the Supreme Court and researched this myself. Once this tower is built and approved or approved in built, even if they want to make modifications and the city says it has to go back to the H Board, the H Board will have no authority to deny the application, as long as they are not making the tower more than 20 feet higher or more than twice as wide as it is. And that's because federal law encourages this collocation of antennas which the applicant has said in its application that it intends to do. And there is a good reason for that because it minimizes the proliferation of these antennas. But if you look at Section 64-09 of the Middle Class Tax Relief and Job Creation Act of 2012, which is codified at 47 USC, Section 14-55-A-1, it provides that a state or local government may not deny and shall approve any eligible facilities' request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base. And as Mr. Furstenberg has provided that FCC document they have interpreted substantially to mean that it may not increase the height of the tower more than 20 feet. So you get 64 feet and then you have 84 feet, and then you have 104 feet or whatever. This Board, even if it makes it come back before it, will not be able to stop them and it is prohibited by federal law from disapproving it. So this is it. This is our chance to make an appropriate ruling in this matter and to deny the waiver.

Present and sworn was Ms. Ann McCampbell, 11 Escuela Road, who said, "I am a physician and an environmental health consultant. I'll keep my comments extremely brief. I oppose the cell tower at the Burger King location because it's too ugly and too hazardous.

Present and sworn was Ms. Grace Anna Woods, who lived within 500 feet of the proposed site, and said, "I'm representing the residents of Alto Street on the west side and the Eastside. I'm also within a group called Citizens for a Healthy Santa Fe. So I would like to have my two minutes.

When I found out over two years ago that they were proposing this site, I have been working tirelessly and invisibly to counter this and have spent a lot of time in prayer, asking for support from our community and from people such as yourselves who could make this decision to not grant this waiver.

One of the things I found in this was one day when I went to the City Attorney's office and the height appealed to their humanity and what I got back was, once St. John's tower was built, once the Hotel Santa Fe was built, once Marcy Street was raised, once Baillios was constructed, and it was just a matter of time that the Burger King tower was built. And that was really hard to face the facts that we as citizens are not protected and that federal laws have been put into place to limit our right to free speech on the health concerns with huge documentation on the risks of cell towers and all of that. So I really didn't prepare anything tonight because I wanted to see what everybody else was talking about and so I just got some notes that I just want to address. Mr. Dwyer and your group, I understand about free enterprise. I'm a businesswoman, etc. What I don't understand is why AT&T can't work cooperatively and actually be the

good guy for once like somebody being a good guy and serve us and piggyback on Verizon's towers because that is what you guys are going to do. You are going to go; they are going to build towers and then you're going to let the XY and Z piggyback and expend these things all over the place. And in regards to the site, it is still too close to a huge residential community. And you said we have addressed all of your primary concerns, and you haven't had all. That is so central, besides the gas pumps, besides St. Francis, West Alameda, Gonzales. I'm 500 feet away. My neighbors are closer. There is a huge new complex built in the last several years of low income, disabled and elderly people right across the street from there. Who is talking about that? Nobody. So that was one thing I really wanted to say is that it's still a neighborhood, even though you move down the road a little bit from Casa Solana, it's like you have moved two inches away.

When you say shroud ...

Chair Woods asked her to wrap it up in about two minutes.

Ms. Grace Woods said, "isn't it enough when you use the word shroud, isn't that enough to alert us all? The Baillios' tower is beyond ugly. And it looks ominous and no amount of paint or camouflage or foliage or anything is going to change what it really is."

Present and sworn was Ms. Monika Steinhoff, 1298 Behana Lane, who said, "I'd like to ask the person with the cell phone to turn it off. It makes me very sick. It just does that to me. If you can turn it off for a minute line talking, that would be really helpful.

Well we've been here many times in the past but I haven't been before this particular group but I've been in front of Council. I've lived here 40 years and I am an artist and a gallery owner since about five years. And I think that this technology, first of all, when there was a meeting at Moriarty, they said that this technology would be really underground and fiber optic and not all these cell towers. And I personally think, as someone who has lived here long time and who grew up in New Mexico, that these cell towers and this technology, to some degree, or ruining Santa Fe. When we were here for a hearing some time ago before city Council, I was sitting behind the AT&T group and one of the lawyers said I think we made a mistake with the Marcy Street tower. And I've remembered it ever since because I think it is true. It was a mistake. That tower is so ugly, when the Mayor talks about what is wrong with the Plaza, it is like the elephant. When you have too much microwaves and I think everybody out to get an instrument like this because it is just a small meter and amazing to carry it around Santa Fe and to see how many people are getting ill. And I know illness is not supposed to be talked about but I think the point has already been made for all the legal reasons to not have this tower. But I think the Chamber of Commerce ought to help some of us by going around to the businesses and the churches and see what is happening to those neighborhoods that we were here last talking about the cell tower at the Methodist Church. It went up despite all of the protests and all the reasons to not put it up. The Children's Museum began having financial problems as soon as that cell tower went up. The most popular child care when the Methodist Church when my kids were little, I could not get them into that kindergarten. It has closed the one at the Baptist Church was there longer. The state-of-the-art kindergarten right next to the cell tower has closed.

Mr. Armijo said her time was up.

Ms. Steinhoff said, "I haven't said anything yet. So I want to talk about the experiment at the Railyard because I had...

Chair Woods explained that the Board was giving everybody two minutes. I'll give you thirty more seconds.

Ms. Steinhoff said, "I had a petition before AT&T put these cell tower up which is on the Hotel Santa Fe which they are paying lots of money for. I'd like someone to check how that hotel is doing. Lots of businesses in the Railyard have closed. My own business went down 50% since the end of July last year. It has been like the historic design is about for the wealth of the city. I had a couple coming in just three days ago that said they were from Phoenix which is not known for great tourism. And they said they just seen the most ugly cell tower they had ever seen. I hope you vote against this cell tower.

Present and sworn was Ms. Heather Espinoza, 224 Miramonte Street, who said, "I hate speaking in public so bear with me. I work at Gonzales Community School. My daughter goes to Gonzales Community School. I have been at my address for 42 years. I moved there when I was one. So I have been in that area. I've seen lots going on there. I has been was in a car accident on that intersection. There was a truck coming from Espanola that didn't have its brakes fixed. He lost his brakes and had 3 tons of sand. The truck went into the Santa Fe River, just scraped our car. They said if it had been 4 inches over he would have died. If he had gone the other way he would've run into the Burger King.

We had a fifth grader this year that was hit in that intersection. I leave around 5 o'clock and I watch so many people try to skip the light, going through Burger King driveway, probably 20 or more at times we have school or at rush hour. So there is plenty of chances for people to run into that cell tower when they are not paying attention, when they are trying to pass the light, and just get to where they want to be. So I am asking you to please consider not giving them the waiver. And my daughter, she also goes to Gonzales and when we were driving over here, she said. 'Momma, if they build the cell tower, are you still going to work at the school and can I change schools? So please consider that. Thank you.

Present and sworn was Mr. Rick Martinez, 1421 Mesilla Road, who said, "I'm here with Neighborhood Network. I'm here to support Casa Solana. I'm also here to support the West Side Historic Neighborhood, Guadalupe Neighborhood. But I still have some questions here. One of my real questions is what the need is. I thought we did so that on vehicle drives. I guess AT&T is putting this cell tower so it would increase the coverage for people coming into Santa Fe with AT&T and while they're driving, they can get better reception from their cars. I think this is a bad idea by making it better than 3G. Quite honestly, it is from people who say I need 4G. So what is the need? I'm also concerned about the visual views and I think visual views are important. It is important for this Board to respect the way we have grown up in the city and the way you guys have worked to make sure the visual is important. And by allowing this to happen, we're not going to say it's important any more. We're going to allow these structures to come up and it is not a good design and height is always a big concern. So let's make sure were going to keep it that way. I also thought for a long time is that they talk about Alto Park. They had a chance to purchase tower in Alto

Park. Well the city said the warranty on the lights was the reason they didn't do it. But I think AT&T can buy that warranty and overtake that work and still be able to put that cell tower up at the Alto Park. I mean there are options out there. I don't think that is just the only option. But the closer you have it to a school, the worse it is. So please keep it away from the school. And keep it away from the neighborhood. Do the right thing. Keep it historic. And it would mess up the views coming into Santa Fe from the north to the south. Thank you so much.

Present and sworn was Ms. Ann Mauer, 115 Tambloma Street, who said, "my husband and I own a home in the Casa Solana neighborhood and I recognize that the applicant may have met the design requirements of the building code. However, there is a public participation process for approval of this project. Therefore, the ultimate decision to either approve or deny the permit waiver likely will take into account the concerns of the public. Therefore I oppose granting this waiver. Thank you.

Present and sworn was Mr. Ted Disopoulos, who said, "For your entertainment this evening I am here in favor of the tower. The reason AT&T is trying to put up towers is because of people like me. The cell service in this town is terrible. If you have AT&T service you know it. If you don't, you don't travel the same byways that I do. There are safety reasons actually to have good sales service. Of the 240 million calls last year made to the national emergency number, according to the national emergency Association, one third of them were from cell phones. The day after Thanksgiving of 2012, had I not had a cell phone, I would be dead. I had a massive heart attack in Houston the day after Thanksgiving. I was in a cell area. Before I passed out I was able to make a phone call so they knew I was on the side of the road. The facts are that if I had had that heart attack going up Hyde Park Rd. to my house, I wouldn't be here. If I'd had it in Las Campanas area I wouldn't be here. There are a number of areas of the city that don't have cell phone service. So the only point I want to make is that there are significant safety and security reasons to have good cell phone service and AT&T does not have good coverage in the city of Santa Fe.

Present and sworn was Mr. David Stupen, 61 Vista de Donda, and he and his wife owned a single-family residence on Lorenzo Street four blocks south of Alameda Street is the corner of St. Francis and Agua Fria. He had a handout [attached to these minutes as Exhibit D]. He said, "Because most of what I wanted to cover - I have a PhD in physics and I'm thankful to the Historic District Review Board to give me a time to talk to the Historic District Review Board. I'm going to skip a lot of things. I'm going to skip to the third view graph which is about 16 ... Well I'm just curious about how many cell towers actually fell in the United States and how many caught fire. So I did a search on the Internet and I found about 16 cell towers collapsed in the last 18 months in the United States. That's about one collapse per month and it is rising. And this does not include the effects of Hurricane Sandy in 2012 because that is really difficult to track. When that hurricane hit, 25% of the cell towers in the United States did not function in these were all in the 10 Eastern states. And it's really hard to know how many of those were due to collapse.

I also found that six cell towers caught fire in the last 18 months in the USA. That's about one cell tower fire every three months. If you look at the last page, last two pages there is a summary from an Internet search that shows the date, location and some notes. For example, the one at the top says the tower crushed the fire chief's car. And then there is a website that I found information out of if you want to check it and look through it. I'm sorry to give you these outrageous two pages. So I really asked that you reject this

application for a variance on this AT&T tower. I think it's too close to the street and too close to the gas pumps.

Present and sworn was Ms. Stefanie Beninato, P.O. Box 1601, who said, "I am opposed granting the waiver for the cell phone tower. Number one, I believe that if the applicant has submitted a false diagram showing the visuals of the cell phone tower height that it should be automatically rejected. Secondly, I have to agree with other speakers about AT&T being kind of whiny about that this is the only technology that they can have. They are a multibillion-dollar corporation. They could have been spending some research money to develop other kind of technology that doesn't need direct line of sight. They could have been developing fiber optics technology. And as pointed out by the speaker before me, during Hurricane Sandy, cell phone towers were not reliable at all. In fact a lot of them were just shut down because there was no cell phone coverage because of the effects of the hurricane. In addition to having effects of natural occurrences like hurricanes, lightning, Arroyo's running, to me cell phone towers would be the easy thing for terrorists to do - get up there and knock it out. So to me, it's underground technology that would be much better. You also can look at the visual impact. And again, being so close to the street and coming down the hill, the visual impact is extremely great. Those kinds of high structures do not really fit in to Santa Fe. So I do think you have some ability to reject it on that basis. You also need to give them a waiver because they are not doing the setback. Setbacks are there for a reason and I think it is because in case it does fall, it is falling on the property and not on to other property. The fact that the city didn't allow it in the park - I hear it has something to do with an easement on the towers, but that would be a more appropriate location because the setback also helps lessen the visual impact. So I think that these are some reasons why you should reject this. The other thing is the so-called safety in the UCB code.

Unfortunately, in our town, sometimes inspections aren't done very well and I am aware of that personally and I've heard other people just recently speak of roofing inspectors who don't bother to get out of their trucks and do roofing inspections. So to say that it's going to be inspected and done properly, I think maybe is problematic. Thank you.

Present and sworn was Mr. Charley Goodman, 33 Teddy Bear Trail, who said, "I'm here on behalf of the Santa Fe Chamber of Commerce. This technology is a part of modern society. The Chamber supports the development of infrastructure for the citizens, the businesses, and the visitors that expect in coming to our community. I think at this point I would hope that the Board have some common sense and to prevail in this issue be Chamber supports the tower. Thank you.

Present and sworn was Ms. Nancy Faye, 728 Mesilla Road, who said, "We all know that you are charged with protecting and preserving the character of Santa Fe's 400-year-old plus historic corridor and most especially the integrity of our resources both in letter and spirit of our beloved place. Entering our city from the north or departing, this will be what people see - the skyline, the Mesa rising, the city that we love. How much do the aesthetics of this proposed tower and antennas matter? To a town celebrated internationally for our rich tradition of arts of all kind, I would say that the visual impact matters very much. Our choices are formed by our mingled cultures, our values, but we see first and last of our beloved place, it matters very much. It concretizes what we value, our tri-cultural history, our generations to come that we must educate and protect in our schools, our choices. Are our children in land not our most precious

treasures to protect? In my brief 60 years, I have seen rapid technological leaps that are staggering - in medicine, and culture and our daily lives. I still own music that is on LP's and a mini-cassette based answering machine for a phone. But these are packed away in my shed. I love technology personally. But this proposed tower is based on the line of sight technology which is sure to be supplanted by new methods in the blink of an eye. What are our values if we are willing to make exemptions today that will impact our ageless views and landscape? What benefits do we accrue in such a bargain and what do we risk losing? I urged the Board to do what their mission requires and not to grant the waivers and exemptions requested by the applicant. Thank you.

There were no other speakers from the public regarding this case and the public hearing was closed.

Chair Woods said it was now the Board's turn to ask questions of the applicant and the public needed to not speak during this portion of the meeting.

Mr. Katz had questions focused on the need. He was having trouble understanding the need. There had been discussions of some kinds of technologies. Other cell companies seemed to have service in these areas. He asked what the problem was.

Mr. Dwyer said he would ask Mr. Burling to answer that question and provide handouts and exhibits they had prepared graphically that need.

Mr. Burling said, "I don't know what the other carriers, what sort of coverage they provide. I'm focused on providing what we consider adequate coverage for our customers. So I can't answer that - your question about comparative - our competitors' coverage."

Mr. Katz asked "Who are you seeking to serve with this tower?"

Mr. Burling said, "Well, when our customers buy of phone, they have an expectation that they'll be able to use their phone.

Mr. Katz – "Let me rephrase that question. What areas are you expecting to serve with this tower?"

Mr. Burling – "Well it's the immediate area around the intersection of St. Francis and you. That would be sort of the center of the coverage area."

Mr. Katz – "And are there any cell towers in that area?"

Mr. Burling – "Well we don't have any but I'm not aware of what other companies have."

Mr. Katz – "Have you not even looked into collocation?"

Mr. Burling – "Yes we have. If we knew about other towers, we would... That would be our first option to use existing towers. They tend to be easier to get zoned and they also tend to be well located. Because

their engineers face many of the same engineering problems that we face.”

Mr. Katz – “What is the closest tower to this area?”

Mr. Burling – “that would be the Santa Fe Hotel.”

Mr. Rasch – “Madam Chair, page 30 is the area that would be served by this tower.”

Chair Woods – “Thank you. Do you have any further questions Frank?”

Mr. Katz – “I have bunches.”

Chair Woods – “Go ahead.”

Mr. Katz – “Have you considered the possibility of a distributed antenna system that doesn’t require such high towers?”

Mr. Burling – “Yes sir. We proposed a system in 2008 but we met such resistance from the city that we just, through the informal process of meeting with the zoning authorities and so on that we abandoned that effort. And I should also add that we are returning to that concept of having ... The basic concept is having lower towers emitting a lower power signal. The disadvantage is you need a lot more of them. The system that we worked out for Santa Fe had ... I can’t remember. I think it was like 80 sites and roughly, the historic area and going off into fingers like Bishops Lodge Road and St. Francis and Cerrillos. But it was pretty much concentrated in the historic area. We also did a similar project for Las Campanas. And we were looking at like 150 sites on just a theoretical basis just to get coverage out there because it is such a large and sprawling area. And the terrain is very complex so we just needed a lot more towers.”

Mr. Katz – “And we heard some testimony from some folks in the public about the requirement to allow collocation. Would you be required to allow that on this tower?”

Mr. Burling – “all jurisdictions always encourage these telecommunications companies to collocate in order to reduce the number of towers. And we often have to, if we propose an independent structure that appears to be close to an existing tower, we have to demonstrate why. We prefer to use existing towers because they are often in extremely good locations and ...”

Mr. Katz – “That’s not what I’m asking.

Mr. Burling – “I’m sorry.”

Mr. Katz – “If you build this tower ...”

Mr. Burling – “Yes. You are going the other way. Again, it’s a requirement so we don’t build towers for ourselves. We always make them available for another carrier. It’s not the primary reason we do it, but we

found that jurisdictions look more favorably on our proposals if we allow collocation on them. And as long as another carrier is not interfering with their radio frequency signals, we really have no objection to collocating with another carrier. Our main concern is to avoid electromagnetic radio frequency interference.

Mr. Katz – “So that the testimony we’ve heard is correct that another carrier could ask to collocate on that tower and go up as much as 20 feet further.”

Mr. Burling – “Well, I don’t know anything about that aspect of the Middle Class Economic Relief Act or whatever. We don’t ... The landlord is the one that accrues most of the benefits from an additional carrier. Our role is highly limited. They will let us know. That is part of the lease agreement that we would have with the landlord. They would let us know that another carrier is interested. We would see their proposal, what radiation center they are proposing, how close to our antennas, what sort of frequency bands they want to use. And as long as it doesn’t interfere, we have no grounds for objecting to the landlord allowing a co-location on a tower on his land. We have a lease with the landlord. And that other carrier would go through the same process, hopefully, that we went through to get approval for that installation.

Mr. Katz – “I’m looking at the documents that were handed to us about the coverage with the 45 foot antenna and the 60 foot antenna. And I’m not seeing a whole lot of difference. What am I missing? Why aren’t you building a lower antenna?”

Mr. Burling - “well you’re not going to see a lot of difference. There are differences. The higher radiation center is giving us better coverage. The scale of these of our tools, as you can see from looking at this drawing, you see it is little squares, simply to handle the processing of all this information. The model simplifies reality and one of these simplifications is to simplify the terrain, the morphology, the signal into squares. And it looks like these are our 25 or 50 x 50 m. So these projections aren’t that useful in discussing that aspect, I find.

Mr. Katz – “I’m having real trouble with that answer. There’s a lot of upset about the size of the tower. There is real concern about the danger of it falling, falling into the street. And what you have given us shows that a 40 foot tower is just as good as a 60 foot tower. And why should we approve it unless you can explain to me why it would be better. What you have given to us says it’s not better.

Mr. Burling – “It does show it’s better. It doesn’t show that it is dramatically better.

Mr. Katz – “I’m not sure I can spot a single little square that shows it’s better. The same squares are colored red in both of them.”

Mr. Armijo – “Can I interject a little bit? What is the radius difference between the 64 foot versus the 40 foot? What is the expense of difference?”

Mr. Burling – “Well it’s ... The question you are asking is on a flat plane. I can answer that with, you know, on a theoretical basis. But we’re not dealing with a uniform morphology or terrain. It’s a complex thing to model it. And at low radiation centers, our models breakdown. If the radiation center is below the

clutter, if it was in the clutter, our models can't accurately predict the behavior of those installations. When we say we need a 60 foot radiation center for this particular site, what we're doing is we're balancing the capacity requirements for the site against our experience at building in this sort of morphology and this kind of terrain. Santa Fe has a slightly more dense building fabric than most American cities, especially as you get toward the core. It really breaks down as you go toward the south and the West. It turns sort of into a generic American building fabric. But knew the core, that's where we have the greatest challenge trying to model and trying to model the performance of our antennas, the signal that they put out in that kind of environment. The projections that you, when you compare the two, they are ... That's true, they do look very similar. So why do we want 65 feet or 64 foot tower. And all I can say is that from experience, that is what we have found that has worked the best. In order to cover any dense morphology, for example, find trees ... Pine tree forests around Flagstaff. We actually did study that situation where we elevated the antennas in foot increments and then we drove exactly the same route around Flagstaff and the difference was dramatic. The quality of the coverage dramatically increased as the angle of incidence to the Pine tree forests, the canopy increased. We're basically saying the same thing with dense morphologies like Santa Fe."

Mr. Katz – "But it certainly doesn't show up in what you've given us. Is that correct?"

Mr. Burling – "No, I wouldn't say that. It does show that it is not a dramatic difference

Mr. Katz – "Okay. It looks as though most of the additional service is a long these St. Francis corridor. Is that correct?"

Mr. Burling – "No. No, it will be in a sort of - the coverage areas will be shaped by the morphology and the terrain. And it will look sort of like a sort of East West oval. The ... And it will be distorted along the roads because that gives us a clear signal path.

Chair Woods – "Is there any other questions? Ed?"

Mr. Boniface – "So if I understand what you have been trying to say, basically a taller tower is better coverage.

Mr. Burling – "No, no, no."

Mr. Boniface – "Then why don't we go to the 45 foot tower?"

Mr. Burling – "well we'd need another tower to give us the capacity. It's a balance between coverage and capacity. We need a strong enough signal. The ideal tower dominates an area. When you lower the radiation center, the tower can no longer dominate an area, which means we need another tower. So that's one consideration. The other consideration is as our traffic is increasing 5000% over three years or something, you saturate the capacity of the tower. That means you need more towers to meet our customer's expectations. When you saturate the ... There is a physical limitation to how much these towers can ... How much traffic these towers can handle. At some point they can no longer handle the increase in

traffic.

Mr. Boniface – “So another words, we are looking at adding more towers in the near future of the same size.”

Mr. Burling – “No, as I said, not necessarily.

Mr. Boniface – “You said that your growth is 5000% or something along those lines.”

Mr. Burling – “Well it’s in some figures I’ve seen, it’s been 5000% over three years.”

Mr. Boniface – “So maybe in three years we have to go through all of this again.”

Mr. Burling – “Well, you have to ... If you want coverage and maybe you don’t want, you know, modern life. But you have to provide a signal to the customers that are demanding it. So if we want to provide that signal, we as a company, we have to provide more transmitters, more radios, and yes, that could mean more 60 foot towers. It could also mean, as I mentioned before, that we have a large number of transmitters at lower radiation centers emitting lower power. But either way, if you want to meet those capacity requirements, that’s what you have to do.”

Chair Woods – “Is there any other questions?”

Mr. Boniface – “well there is one thing that really puzzles me. You want to increase your coverage on St. Francis. I see that you have also looked at an alternative location at Alto Baseball Park. At the part that I don’t really understand is why you have chosen what is arguably the lowest possible spot in all of Santa Fe. It’s in the bottom of the Santa Fe River Valley. So it appears you are now trying to compensate for that by building a higher tower.

Mr. Burling – “No, we have...

Mr. Dwyer – “I’m going to ask the City Attorney for the opportunity to cross examine the witnesses.”

Ms. Brennan – “Madam Chair, he is entitled to that right.”

Chair Woods – Is he cross examining?”

Mr. Katz – “Wouldn’t he be direct examining since it is his own witness?”

Ms. Brennan – “It is his own witness. Yes.”

Mr. Dwyer – “I don’t think he’s been asked the questions and he’s answered them fairly but then you’ve rejected his answers. So I think I’m entitled to cross-examine him.”

Mr. Armijo – “Go for it.”

Ms. Brennan – “I think he is entitled to examine his witness.”

Chair Woods – “Go ahead Peter.”

Mr. Dwyer – “Mr. Burling, to you need a height of 64' for this tower or do you not?

Mr. Burling – “In my judgment, we do.”

Mr. Dwyer – “And what is your professional training for this?”

Mr. Burling – “I work for AT&T as an RF Engineer for 14 ½ years and in various companies before that.”

Mr. Dwyer – “Would you say that radiofrequency engineering is a simple thing or a complicated thing?”

Mr. Burling – “Well, on some levels it is pretty simple. When you get into the math and the complexity of the tools it gets enormously complex.”

Mr. Dwyer – “Okay. So when people ask you a question if higher is better, can you explain to them why higher is not always better and what signal interference is and why it is causing you problems question

Mr. Burling – “Well, we don't just design individual sites. When we design our networks to provide coverage over an area, what we found is that the best networks cover an area that has similar density of customers. It covers it with a very uniform matrix of sites which are interlocked with one another. That means that no site dominates another site - that all of that is evenly distributed over all the equipment. All of the sites are roughly the same height and they are emitting roughly the same power. So all of that equipment, all the processing power that exists on the site is used fairly uniformly. As the capacity as demand on the sites increases, one technique that we use is we uniformly start to lower all the sites and add additional sites between where the holes - as you lower the sites you create holes between the sites. So that's when we have infill sites.

Mr. Dwyer – “Okay. And are there more issues than just reaching people with coverage? Can you explain to them what the capacity issues are and how that affects the need for new sites?

Mr. Burling – “Well, capacity is the other sort of complex half of the equation. It's one thing to get an electronic intelligible electronic signal to someone sitting in their backyard or in their basement. But if there are a lot of people making demands on the network, a lot of people that would want to make a phone call at the same time, we quickly run out of processing - the computer that manages all of the calls. There's a hard limits to the amount of power that these sites put out. That power is distributed among all of our customers. If we have too many customers, we have no choice but to either deny them service or to drop their call in midstream. The only way to solve that is to increase the capacity of the site. And you do that either by

going to a more advanced generation of technology, for example, going from third-generation to fourth-generation. There is a quantum leap in capacity and speed. Speed translates into capacity because you don't take as much time to talk to someone if you have a very fast link. And by increasing the number of radios that we have out there and by increasing the number of channels that are available to the increased number of customers.

Mr. Dwyer – "Okay. So just to sum it up, is a 64 feet required for this site or is it not?"

Mr. Burling – "Given the network and we fill, I would say it is. In the future, we won't have any need for a high site. We are clearly going to a world where there will be thousands of transmitters in Santa Fe, probably on every street light, on every stoplight, anything that is vertical will have transmitters on them, small low powered transmitters. New Orleans, French Quarter, is a good example of that. We have a distributed antenna system. I think it is the largest in the country in Scottsdale.

Mr. Armijo – "May I intercept? If we're not going to be needing large towers in the future and you are only going to be requiring these transmitters, why would we be approving the large tower if it's going to be obsolete? And how soon would it be obsolete?"

Mr. Dwyer – "As I said at the beginning of our presentation, our response to that would be we're hoping that you would apply the existing zoning code to the existing application. Because what we're trying to do, is to build a comparable network to what we have existing around town and we cannot speculate too much about the future. Certainly we can try to do our best as we go, to improve the infrastructure as we've done with her various sites around Santa Fe. But to come to you tonight saying we will just hold off for a decade and come back and leave this gap in coverage that we've shown you if you look at the blue handout you will see a very vivid, stark difference between present and future. And so, at present, if you look on page 2, no I'm sorry on page 3, you'll see that there is a thought marked MML 00291 surrounded by green and yellow. On the following page, it is red and orange. That's what we're trying to achieve today. We would like to do that with the present 4G technology which is what people are using on their wireless devices for commercial transactions and phone calls and all that sort of thing. And then as new technology comes forward we could come back and proposed to implement those. But that will be a technological shift that currently is not occurring. So that is what we're trying to solve. We're trying to solve the current problem today with the current technology. The future technologies would entail multiple applications, many, many more sites. And so judging by the difficulty of obtaining the few sites that I've worked on here in Santa Fe, I think coming to the H Board 150 times for sites would be extremely challenging. So I'm just saying if you want to look to that future technology, yes they could be lower and with multiple sites but what we have presently is this technology and one site.

Ms. Rios – "Can any of this transmittal and technology be done under ground?"

Mr. Dwyer – "They all require hardware connections to background telephone networks. In other words, every one of these sites has to have electricity power and telephone to them. So they require that if they have a telephone signal from a hard line to function wirelessly, that is a component to serve them, not for them to distribute the signal. The technology itself at present is a line of sight technology which means

there needs to be a direct line of sight between your phone, the receiver on the phone, and the antennas. And if there is not an antenna within range of the receiver on your phone, you won't get signal. And if there is an object obstructing it like what Jeffrey was talking about in terms of morphology is like an adobe brick house. That's going to impede the signal and so will affect foliage entries. And you get varying degrees of signal, depending on the amount of objects in between the antenna and the receiving and set device.

Ms. Rios – "So the answer is no."

Mr. Dwyer – "Well, the answers are never as simple as just for no. There are some parts of it that can be done through underground technology but the line of sight part of it has to be done above ground. So you cannot develop an entire wireless system without antenna sites, if that's what you mean.

Mr. Burling – "I just want to ask, when you say underground technology, what is this? I don't ...

Mr. Dwyer – "It is physically underground."

Chair Woods – "I think Peter has answered it unless it we need more. Do we need more on this? Thank you.

Mr. Dwyer – "No. And I'd rather not get into the technological dispute because I feel Jeffrey would not have proposed to you tonight, a site that you didn't need because it costs us money, time and energy to get sites. So it seems to me a non-rational argument to say or to tell AT&T that what they are applying for they don't need. Because they are uniquely well-suited to know what they need and we have pictures showing why we needed. So it seems like the emphasis really should be on, okay, given that you have made a case for that you do need this, is this the best way under the zoning code to achieve our goals.

Ms. Rios – "I'm going to concentrate a little bit here on the design and visual aspect of this project. So this tower is 64 feet high. And I would say that some of the builders on this Board can help me here. I think perhaps the La Fonda is about 64 feet high, would you say? So we have a tower that's going to be about the height of La Fonda. And you can correct me if I'm indicating any of these statistics wrong or incorrectly. We have a 3 foot diameter at the base and about 18 inches at the top. And then at the top there is going to be 12 8' x 4' antennas.

Mr. Dwyer – "That is not correct. The arrays are 8' x 4' but there are 12 antennas in each of those. Twelve towers per array, excuse me, four antennas in each of those arrays you are looking at.

Ms. Rios – "Okay. And then at the very top there is going to be a box at the very top and that box, as I understand it, will be 10 feet high by 8 feet in diameter. Is that correct?

Mr. Dwyer – "I'm not certain what you are talking about as a box. Oh, the shroud?

Ms. Rios – "Yes."

Mr. Dwyer – “That was a recommendation. The recommendation of the staff at SHPO is to stipulate to the removal of the shroud. So we have agreed to that and if they... Of course you can do what you want in terms of approving it with or without a shroud but we are willing to stipulate to the removal of the shroud if there are questions about it.

Ms. Rios – “Well, if it doesn't have the shroud, it's going to have exposed antennas?

Mr. Dwyer – “Yes.”

Ms. Rios – “in my opinion, I think that this ... I'm not necessarily opposed to towers but I am opposed to the location of this particular tower because it is much too high. And I think that the visual impact on this is very great. Notwithstanding these safety and health issues that have been expressed this evening. I think that the very height of this at 64 feet - that is extremely high. And I think the visual impact on the streetscape is very negative.

Action of the Board

Chair Woods – “I think that we could be ready for a motion after Frank. Yes, go ahead.”

Mr. Katz – “why don't I just do a motion?

I would make certain findings with regard to the requirement of a waiver of the setback from it.

1. One requirement is that it does not damage the character of the streetscape. I would find that it does. There is nothing of this size in the streetscape that David pointed out to us – that each streetscape is to be considered.

2. The second is to prevent a hardship to the applicant or an injury to public welfare. I would make a finding that this, to the contrary of preventing injury, increases the risk of injury. I know that we don't expect these towers to fall down. No one plans to have that happen. But we've had testimony that it does happen – that it happened twelve times last year and that there were fires in six of these. So I don't think we can ignore that and I think what we are talking about here and the problem is this location on a Burger King site with a gas station, gas tanks, with a lot of traffic. This is not the site. I don't think you meet the second requirement for the waiver.

3. I think you meet the third requirement for the waiver.

4. As to the fourth requirement the need for the waiver is very much due to special circumstances that are the result of the actions of the applicant. Well, I think the applicant has just chosen the wrong site. A multi-pole design would be much more aesthetically pleasing; a much better design, but you cannot do it on that site. And I think, again, you've chosen the wrong site by your actions.

6. And the sixth one, provide the least negative impact with respect to the purpose of this section: And that's the key thing. And boy is this not the least negative impact. And I thought the testimony was very interested about the distributed antenna systems. Great one in New Orleans and the other place you identified. You've been talking to the City about it since 2008. Remember those discussions. It could be done here. You could work with the City to get that done. It would not be

obtrusive. It would not be visually negative impacts. So I don't think you meet that standard either.

On the basis of that, I would move to deny the application for the waiver of the setback.

Ms. Rios – "Second."

Chair Woods – "Is there any discussion?" All in favor?

The motion passed by unanimous voice vote.

The Board recessed at 7:57 p.m. until 8:03 p.m.

Action of the Board

Mr. Katz said he needed to make another motion in reference to Case #H-13-085 because the first motion dealt with the denial of the waiver for the set back.

Mr. Katz moved in Case #H-13-985 to deny the application on the basis of the fact that: 1) that it didn't meet the setback standard; 2) that it was not the least intrusive means or alternative to the proposed siting that was practicable; and 3) that it didn't comply with historic code because it was not harmonious with the streetscape (from the telecommunications facility section of the code). Ms. Rios seconded the motion and it passed by unanimous voice vote.

2. **Case #H-13-072. 123 E. Buena Vista St.** Don Gaspar Area Historic District. Jean Pierre Campbell, agent/owner, requests primary elevation designation for a contributing residential structure. (David Rasch)

Mr. Rasch gave the staff report as follows:

BACKGROUND & SUMMARY:

123 East Buena Vista Street is a single-family residence that was constructed before 1928 in the Spanish-Pueblo Revival style with undulating parapets and a corner portal with exposed wooden elements. A sensitive addition was constructed at the north end of the building between 1951 and 1960. The historic steel casement windows were replaced at an unknown non-historic date. The building is listed as contributing to the Don Gaspar Area Historic District.

The applicant requests a primary elevation designation before applying for Board review of a remodeling project.

STAFF RECOMMENDATION:

Staff recommends that the Board designate the south and east elevations as primary (1-6 on the floorplan).

Questions to Staff

Chair Woods asked in what year the back stairway was put on.

Mr. Rasch said it was between 1951 and 1960.

Ms. Rios asked if the footprint remained the same. Mr. Rasch agreed.

Ms. Rios asked if in the proposal, the window openings would change since they proposed new windows.

Mr. Rasch said there was no evidence the openings would change.

Chair Woods said they could already have been changed.

Mr. Armijo thought that was not likely since the sills were not changed so that would indicate no change. Mr. Rasch agreed.

Applicant's Presentation

Present and sworn was Ms. Louisa Campbell, 123 E. Buena Vista, who said it was hard to know what changes had been made.

Chair Woods noted staff was proposing south and east as primary and asked for the applicant's opinion.

Ms. Campbell agreed that the entrance to the house was primary.

Mr. Armijo explained that staff had recommended façades 1-6 which included the east elevation.

Ms. Campbell said that was a side street so she didn't understand why it would be primary.

Mr. Rasch said primary façades identified the character of the building so the Board designates what captures why this is considered a historic contributing building.

Questions to the Applicant

Chair Woods explained the options. The Board could postpone the case so you could do research on

the window openings. But you would want to ask that the Board postpone it.

Ms. Campbell said they did research on the house and it was built 100 years ago and the only thing changed were the windows.

Public Comment

Present and previously sworn was Ms. Stefanie Beninato who said just because the windows got changed but not the openings meant it should be designated as primary and Mr. Armijo's observation about the concrete sills was convincing. So the Board could designate 1-6 as primary.

Ms. Campbell said she felt she was too inexperienced to speak.

Action of the Board

Ms. Rios moved to approve Case #H-13-072 per staff recommendations to designate the south and east (façades 1-6) on the floor plan. Mr. Armijo seconded the motion.

Mr. Boniface asked for a friendly amendment to also recognize that the window openings are original but not the windows. Ms. Rios accepted the amendment as friendly and it passed by unanimous voice vote.

3. **Case #H-14-043. 336, 338, or 340 Otero Street.** Downtown and Eastside Historic District. Rad Acton, agent for Stonewall and Betty Jackson, owners, proposes a preliminary request to construct two residential structures on a sloped and vacant lot where the maximum allowable street frontage height is 15'-2" and the rear maximum allowable height is 15'-3". (David Rasch).

Mr. Rasch said the address would become one of these numbers but not all three.

Mr. Rasch gave the staff report as follows:

BACKGROUND & SUMMARY:

336, 338, or 340 Otero Street is a vacant lot in the Downtown & Eastside Historic District. The applicant requests a preliminary hearing to request additional height due to topographic evidence showing slope of more than 2' along the proposed building footprints. The maximum allowable heights are 15' 2" for a street-frontage building and 15' 3" for a non-street-frontage building. The massing model shows that buildings will be cut into the slope by up to approximately 7' and 4' of additional height is requested.

STAFF RECOMMENDATION:

Staff defers to the Board to grant up to an additional four feet of height due to topographic evidence

along the proposed structure footprints.

Questions to Staff

There were no questions to Staff.

Applicant's Presentation

Present and sworn was Mr. Rad Acton, 1206 Upper Canyon Road, who said one issue had to do with the lowest grade against the garage compared with the highest parapet street edge at 18'. So they had about ten feet of slope across the building envelope. This building envelope was simply a diagram at the time. He felt he just had to show that any kind of 3,500 square foot house on this site would have that grade change across it since the lot was long and narrow going down that slope. So whatever they did on this site would exceed 15' feet at any point on the lot. There was a 7' cut going to the street.

It was very interesting process with the neighbors by modeling the house but he needed 18' for the 3 car garage and a maximum parapet height of 13'-14'. He could show the Board what more precisely lays out the footprint. And neighbors the neighbors had seen the footprint and had strong ideas about it and he was addressing all of them.

Questions to the Applicant

Chair Woods clarified that what the Board could consider was only what was in front of the Board. Mr. Acton had a chance to do it. He might be better off by waiting.

Mr. Acton said this was an \$800,000 lot and his client wanted to buy it and he was under pressure from sellers to buy. He wanted a flat one-story house with a concrete slab - with the 3 car garage and consistent with the story poles- and the 18' height would exceed the 15' 3" maximum. He wanted the buyer to have hope that he could pursue the sale. He wanted a little security for that.

He wanted to pursue agreements with the neighbors that the house wouldn't exceed that height. You could see the corner that sticks up at the living room. It was 16' above grade that meant 19' above the lowest point. And they would lower that and set it back and the neighbors would comment at the point. He was at the modeling stage and just wanted to do that one thing here tonight.

Chair Woods referred to the cross section, as they come across the sloped area and the difference between the height on the perimeter as opposed to another point on the house.

Mr. Rasch said the street height maximum was 15' 2 and the rest at 15' 3. From Otero, it would be 15' 2" but because of the significant slope it could go up to 19' 2" without an exception. So on the perimeter it couldn't exceed that. The applicant was setting it into a cut. But where the cut ends at the Living Room was highest point. The City reads from the cut. If the garage was separated, it would be a different building.

Mr. Acton said the owner clearly wanted the garage connected. Without the four feet allowed it would have parapet at 11' all around the house.

Chair Woods asked when you go around the grade at the perimeter what the lowest and highest elevations were.

Mr. Acton said they went around to every corner of the house and presented an actual floor plan to the neighbors. It was a courtyard house. We went around agreed to put up story poles at each corner. The elevations range at 16' at highest at garage - pointed out on the site plan. That would have a four foot fill condition to the slab. He shared the heights around the house for the Board.

He said he did a survey of all houses on Otero Street. There was a stair stepping of houses all along Otero Street. We propose and Otero scale that would respect that scale. Most of them were between 20 and 26' at lower level and 9 - 14' at upper level. The highest point was the living room corner and highest interior ceiling.

Mr. Acton was prepared to commit out of ground no more than 16' high. That meant that from the lowest point it was 18' total height. They could request as much as 19' 3" but were requesting 18' here tonight. So 16' would be the highest point out of grade. The finished floor was 7070 and grade was 7069 at the garage so it was a fill of one foot.

Mr. Rasch clarified that he read from natural grade.

Chair Woods commented this was really tough to figure out when you sink it down. If the Board could just think of perimeter grade it would be easier to understand.

Public Comment

Present and sworn was Ms. Dolores Ortiz, 342 Otero, who said her concern was mass and height. She expected a building there but didn't want to just see a wall out of her window and wanted the building not to be massive. The height was an issue. In one corner it already felt like it was too high but Mr. Acton said he would work it out.

Present and sworn was Mr. Joseph Coyle, 335 Otero, across from lot and representative of the Otero Street Condo Association. Their sense was to oppose any height above 15' 3", largely for aesthetic reasons. The lot was a huge bulge. It was almost at the crest of the hill and the street was significantly below the bulge. This hill had a three sided valley around it. The south, west and north portions were in the valley with roof heights significantly below the hillock. He was sure it would be beautifully but any house would perforce break the context of Otero Hill up from Paseo. They knew that the context would be broken and have an aesthetic price to pay. They just wanted to minimize it.

Present and sworn was Mr. Fritz Denny, who owned a house two houses down - an old Stamm home

which was 9' 6" pretty much on the same level he was talking about. He saw the sign and hadn't looked at any plans. He didn't know why the Board was deciding this without neighbors seeing the plans. He thought it would dwarf his house. He was just concerned with what it would look like. He would be happy if it was never developed and it seemed like the cart before the horse here.

Ms. Brennan explained that this was a preliminary action where the Board was asked just to define the height. Any design would have to be within that envelope at another hearing.

Ms. Rios reminded the Board that the decision was binding. Ms. Brennan agreed.

Present and previously sworn was Ms. Beninato, who said she didn't know how big the lot was but 3500 feet with 3 car garage was very large area. She appreciated that Chair Woods was trying to simplify it. But there was a four foot difference so you would be approving a 20' height and it would be more than a 4 foot allowance. She also heard they were asking for a variation of 4' and 7' which would require an exception.

There were no other speakers from the public.

Mr. Acton said in talking with Fritz Denney and his concern that from the corner nearest his home he could relocate that mass away and move it away from that corner. There was room on the site. It was a half-acre and zoned R-21. They could put 11 units on it. They were proposing one house on the site. The fellow was moving here and wanted to be a good neighbor. He proposed a group charette with all the neighbors. They've already come up with some wonderful ideas. The lot was not historic.

Mr. Katz was really uncomfortable with approving the height without a design and not understanding why they were asking for additional height.

Mr. Acton said he wanted to assure neighbors he would design it within what the neighbors wanted.

Action of the Board

Mr. Katz moved to postpone Case #H-14-043 until there was more on design. Mr. Boniface seconded the motion and it passed by unanimous voice vote.

- 4. Case #H-14-045. 125 W. Water Street.** Plan A Architecture, agent for Botwin Eye Group, owner, proposes to remodel a non-contributing commercial structure by altering the architectural style, installing a fabric awning, metal security gates, and wood screening, and replacing doors and windows. (David Rasch).

Mr. Rasch gave the staff report as follows:

BACKGROUND & SUMMARY:

125 West Water Street is a commercial structure that was built between 1921 and 1931 in a vernacular manner. The building has been significantly remodeled with a change to simplified Spanish-Pueblo Revival and a non-historic infill of the front portal. The building is listed as non-contributing to the Downtown & Eastside Historic District.

The applicant proposes to remodel the property with the following six items.

1. The architectural style of the building will be altered and somewhat unified by adding brick coping to the parapet, installing a tile wainscot under the existing window, and changing the existing arched portal opening to a narrower and taller arched opening
2. Windows will be altered. The large second floor window on the south elevation will be removed and replaced with two 6-lite windows with arched tops. The four odd single-lite windows on the east elevation will be removed and the openings infilled with wall.
3. Doors will be altered. The paired 3-lite French doors on the second floor south elevation will be removed and replaced with an 8-lite door with an arched top. A 3-lite French door on the east elevation will be removed and replaced with a 6-lite window. Also on the east elevation, a 6-lite French door will be removed and changed to a 6-lite window along with the removal of the adjacent 6-lite French door and 3-lite sidelite which will be infilled with wall. In addition, a door opening will be cut into the south elevation with a single-lite window at the back end of the recess.
4. An arched metal security gate will be installed in the south façade portal entry.
5. The east elevation will have a cedar fence screen installed at the utility panel and a low wall will infill an opening.
6. A 16' wide x 4' high x 4' deep cloth awning will be installed over the front window and recessed door vestibule.

STAFF RECOMMENDATION:

Staff recommends approval of this application which complies with Section 14-5.2(D)(9) General Design Standards, Height Pitch Scale and Massing and (E) Downtown & Eastside Historic District.

Questions to Staff

Ms. Rios asked what the ordinance said about awnings.

Mr. Rasch said it was silent except in the sign code but in the Downtown and Eastside District, the Board has authority to approve exterior alterations of any alteration.

Chair Woods asked if historic buildings had arches.

Mr. Rasch said they came in later but most of them had headers over windows.

Applicant's Presentation

Present and sworn was Mr. Steven Samuelson, who said it was an unloved building right now. It had a terrible renovation and now was empty. It was once a wonderful restaurant. It went through the renovation to have five offices or retail spaces so that was why it had so many doors and separate meters so he wanted to screen all the panels there. The pueblo style had no style and they felt a brick coping would add to streetscape. He had a drawing with pedimented windows instead of arched that he showed.

Questions to the Applicant

Ms. Rios asked what colors would be used.

Mr. Samuelson said they would use off-white trim and Adobe stucco like Doodlits next door. He had photos of next door. For the awning, he offered 3 choices: mahogany, wheat or burgundy all of which would go well with the Adobe color.

Ms. Rios asked about the wainscoting.

Mr. Samuelson showed the colors to the Board.

Chair Woods asked if the canale could be a downspout on the side.

Mr. Samuelson thought so.

Chair Woods found the arches contrived. She hated to see one more fall in that direction and asked for the French door to have vertical mullion as well.

Mr. Armijo said he was going more to Territorial with the windows and asked if that would carry to the east.

Mr. Samuelson said he could add some Territorial elements there.

Mr. Boniface asked if there was supposed to be casing on both sides.

Mr. Samuelson agreed - casing, not bull nosed.

Mr. Boniface asked if there was a door beneath.

Mr. Samuelson agreed. It was frameless glass window in the recess with a door to the left.

Mr. Boniface asked if there was no brick coping on the porch.

Mr. Samuelson said no but was willing to do that if the Board ordered.

Public Comment

Present and previously sworn was Ms. Beninato who said this building needs some work and she was happy to see that. That downspout would be great. The windows should not be arched.

Her biggest concern was the cloth awning. Over next to Pasquals had an awning as well but might be the only ones there to have one.

Mr. Samuelson showed that the building next to it had an awning.

Action of the Board

Mr. Boniface moved to approve Case #H-14-045 at 125 W. Water Street as submitted and with the following conditions:

- 1. That a 3.5" or nominal 4" casing be added to pedimented windows on the south elevation;**
- 2. That the French doors on the south second floor have a 2 over 3 window light pattern;**
- 3. That the stucco color be Adobe;**
- 4. That the awning be mahogany colored.**

Ms. Rios seconded the motion and asked for a friendly amendment

- 5. That the applicant get rid of the downspout with a canale to the side;**
- 6. That there be no rooftop appurtenances and**
- 7. That the wainscoting design be submitted to staff.**

Mr. Boniface accepted the amendments as friendly and clarified that they were accepting the newly submitted drawings of the south façade.

Chair Woods asked that those facing east would be six lite.

Mr. Boniface accept that as friendly and the motion passed by unanimous voice vote.

5. Case #H-14-046. 712 Gildersleeve Street. Don Gaspar Area Historic District. Jon Dick –

Archaeo Architects, agent for Marion Tassin, owner, proposes to remodel a contributing residential structure by constructing a 500 sq. ft. addition at 6" lower than the adjacent parapet height and construct 6' high yard walls. (David Rasch).

Mr. Rasch gave the staff report as follows:

BACKGROUND & SUMMARY:

712 Gildersleeve Street is a single-family residence that was constructed before 1936 in the Spanish-Pueblo Revival style with Territorial Revival window surrounds. In 1999 one of the two garage door openings on the west elevation was infilled with a door and window wall. The building is listed as contributing to the Don Gaspar Area Historic District and the east elevation is designated as primary.

On September 25, 2007 and June 10, 2008, the Board approved remodeling of the building, including the construction of a balcony on the west elevation.

Now, under new ownership, the applicant proposes to remodel the property with the following three items.

1. A two-story 502 square foot addition will be constructed on the rear, west elevation.
2. An existing fireplace on the north elevation will be removed and a similar fireplace will be constructed on the south elevation.
3. A clerestory window monitor will be constructed on the roof to the maximum allowable height of 15' 1".
4. Windows will be replaced with thermal pane windows. Some window locations and opening dimensions will be altered. No historic windows on east elevation.
5. Stuccoed yardwalls will be constructed at the sides and rear of the lot to the maximum allowable height of 6'.

STAFF RECOMMENDATION:

Staff recommends approval of this application which complies with Section 14-5.2(C) Regulation of Contributing Structures, (D) General Design Standards, and (E) Downtown & Eastside Historic District.

Questions to Staff

There were no questions to staff.

Applicant's Presentation

Present and sworn was Mr. Jon Dick, 112 Escondido, who said the new owners' primary efforts here were interior elevations and keeping the exterior as original and quiet as possible. There was no change to the primary façade. Most fenestration on the north, south and west sides were to create exterior space with covered dining and terrace on the second level and extend it 15' with a simple stucco wall replicating what was there before and setting it in 4" on the north side and slightly lower to show it not as original but respecting the vernacular with trimmed openings to simple replication. The west elevation was a hodgepodge of windows and garage opening. They were retaining the butterfly roof on the west side due to need for drainage and just adding a clerestory at the center which didn't exceed the maximum height and met set back requirements.

Questions to the Applicant

Chair Woods said in the Code under D 5 b it said "repaired" rather than "replaced" so taking off the fireplace on north façade could be done on the inside but she asked if that fireplace could remain because it was a feature on the exterior. You could add one but it was a contributing building. She asked Mr. Rasch if that would need an exception.

Mr. Rasch said if the Board felt it was a character-defining feature, but if not, it would not require an exception.

Mr. Dick had no problem retaining it if the Board found it character-defining. But it was funky. If you could see the far right window, there was a protrusion that might have been a slot from the second to first floors.

Chair Woods thought that would not need to be retained.

Public Comment

Ms. Beninato (previously sworn) didn't think these plans were on the web but she heard about a six foot yard wall and on Gildersleeve the walls were much lower. She thought a six foot yard wall would be inharmonious.

Mr. Dick explained that the six foot wall was in the back. On the front, the wire and wood fence would be retained and refurbished. As seen from Gildersleeve it appears as one story but the back wall would not be visible from Gildersleeve.

Mr. Armijo asked how large the clerestory would be.

Mr. Dick said it was 12' long and six feet wide. It wouldn't be visible from the public right of way and didn't exceed the allowable height.

Mr. Armijo asked if the west was not changed.

Mr. Dick said it was not greatly changed. The three windows and doors were 15' out from existing but not enclosed in the heated space.

Mr. Boniface asked about his statement that they were trimmed out.

Mr. Dick explained there was no casing around the openings. They were punched openings in the stucco wall.

Mr. Boniface noticed the canale with a chain hanging down.

Mr. Dick said it was existing and they would just extend the canale across the new addition with a rain chain down to retain the water.

Mr. Boniface asked what material would be used.

Mr. Dick said it was a metal canale.

Mr. Armijo thought at the chimney shown on page 25 that element was probably an old coal chute.

Chair Woods asked if that wall was floating and not roofed.

Mr. Dick agreed.

Mr. Rasch pointed out that when it was connected to the house, it was a building but not a yard wall.

Mr. Boniface asked about the canale on an unroofed portion of the house.

Mr. Dick explained it was just a trough running across the top. It might not be apparent that it was not roofed.

Ms. Rios thought that was a little strange.

Mr. Rasch said the alley was a public way but this proposal would close it off with a six foot wall so it wouldn't be viewed by many people. He mentioned there were a few done by Trey Jordan on East Palace. It was considered an outdoor room.

Mr. Dick added that the owner proposed a more contemporary version of the west elevation and he suggested the quieter exterior space as part of the building. He was intentionally blurring the distinction. The whole back yard would be a landscaped garden. It was done with intent to stay within code.

Mr. Armijo asked if it had a covered dining room on the upper level.

Mr. Dick agreed. The terrace was upper level and to the north on the lower level was the dining level. The terrace had three punched openings and was shaded for afternoon summer sun.

Chair Woods asked if that design had any impact on the contributing building for open space.

Mr. Rasch said the east elevation was primary and this addition wouldn't impact the east elevation. It was not a high integrity contributing building. It would still always read as an addition because it comes in 4" on either side. It was definitely a contemporary idea for how to do it because they were not used to seeing unheated additions but it didn't impact the other elevations and was really reversible. That was one of the primary tenets of historic preservation. He agreed it was a contemporary treatment of this space.

Chair Woods had a lot of respect with Mr. Dick as architect but she was struggling with this. She asked if it would make any sense on the west that part of it not be so high but read more as a railing and the rest as a deck or whether that would make sense. It would really change the massing and usually the Board asked for setbacks but that could be argued either way. She suggested not putting on the left side.

Mr. Dick said they just saw the addition as a delicate extension of the building. The overall massing was not changed and they didn't want to mess with it. So they would just set it in enough to show it was a little different and what it could look like by cleaning up the west elevation. They wanted to keep the double space so the terrace would give them relief in the afternoon sun.

Action of the Board

Mr. Boniface moved to approve Case #H-14-046 at 712 Gildersleeve Street as submitted. Mr. Katz seconded the motion and it passed by majority voice vote with all voting in favor except Mr. Armijo who voted against.

I. COMMUNICATIONS

There were no communications.

J. MATTERS FROM THE Board

Ms. Rios asked to change her vote on the last motion.

Chair Woods said first a motion to reconsider had to be approved by a majority.

Ms. Rios moved to reconsider Case #H-14-046. Mr. Armijo seconded the motion and it passed by unanimous voice vote.

Mr. Dick asked if the chimney remained or not.

Mr. Boniface clarified that it was allowed to be removed.

K. ADJOURNMENT

The meeting was adjourned at 9:32 p.m.

Approved by:



Sharon Woods, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.

Mr. Boniface moved to approve Case #H-14-046 at 712 Gildersleeve Street as submitted. Mr. Katz seconded the motion and it resulted in a tie vote with Mr. Boniface and Mr. Katz voting in favor and Mr. Armijo and Ms. Rios voting against. Chair Woods voted in favor and the motion passed by majority 3-2 voice vote.

Mr. Dick asked if the chimney remained or not.

Mr. Boniface clarified that it was allowed to be removed.

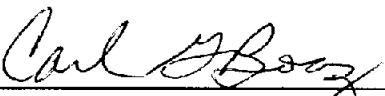
K. ADJOURNMENT

The meeting was adjourned at 9:32 p.m.

Approved by:

Sharon Woods, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.

From: "de Jurenev, Nicole" <nicoled009@comcast.net>
To: "Keough, Ceal" <ckeough@cybermesa.com>, "geokasch" <geokasch@juno.com>
Cc: "de Jurenev, Nicole" <nicoled009@comcast.net>
Sent: Friday, June 20, 2014 11:00:56 AM
Subject: My speech for 6/24 Meeting

Before I begin, let me point out some of the items on this site sketch.

Hello, Honorable Historic Districts Review Board. I am Nicole de Jurenev, President of La Nueva Casa Solana Neighborhood Association. This includes the homes in Casa Solana, the Gonzales Community Elementary School and the Dragonfly School. Together we represent thousands of Santa Feans.

PLEASE DO NOT GRANT AT&T A WAIVER OF THE SETBACK REQUIREMENTS FOR THEIR 64 FOOT CELL TOWER IN OUR NEIGHBORHOOD

AT&T is a rich and powerful corporation who can pretty much bully and buy what they want. They do not have a problem riding rough-shod over the opposition. AT&T is the king of dropped calls nationally. Do not be fooled into thinking that they need this tower for wireless and broadband connectivity for the safety and benefit of Santa Fe. No! AT&T was late in acquiring bandwidth and their technology is limited to line of sight and short range. They even admit that this tower would not improve reception for the residents of Casa Solana because all our tall trees block line of sight. Let's be realistic. AT&T wants to erect this tower so they can rent space to other telecommunication providers. This tower is being erected solely to increase AT&T's bottom line. AT&T is after all a for profit public corporation with thousands of stock holders.

PLEASE DO NOT GRANT AT&T THIS FOR-PROFIT SETBACK WAIVER AS THEIR PROFIT GRAB COULD COST THE RESIDENTS OF CASA SOLANA AND THE SCHOOL CHILDREN THEIR LIVES.

Santa Fe Historic Districts, State Historic Preservation and Land Use have failed to require AT&T to disclose the exact proposed location of the tower and the exact proposed distances of the setbacks. Why would this be? AT&T has applied for a 64 foot tower, which without any further approval from any of the afore mentioned agencies, they could extend to 100 feet or more. As you know, City code requires that the "fall" area of any tower be 100% of the total height of that tower. Twelve feet is the smallest setback for the tower, not the required 100 feet.

PLEASE FOLLOW OUR OWN CITY ORDINANCES AND DENY AT&T A SETBACK WAIVER FOR THIS TOWER AT THE BURGER KING LOCATION.

WHY?

The tower would be a scant 34 feet from heavily traveled St. Francis Drive. 60 miles per hour winds are no longer uncommon as well as tornado warnings, either of which could topple the tower onto St. Francis causing vehicle damage or loss of life. AT&T's application never even addressed the possibility of the danger to St. Francis and it's motorists should 30 feet of cell tower fall across the highway.

PLEASE DO NOT GRANT THIS SETBACK WAIVER

AT&T's tower would be 12 feet from the crumbling Arroyo Mascras. Again, strong winds, a tornado, or monsoon flash flooding could topple the tower with it's electrical base igniting the dense tree line possibly arching to Gonzales Community School. Do we want to risk the lives of our precious children?

There was not one mention of Gonzales in AT&T's application.

PLEASE DO NOT GRANT THIS SETBACK WAIVER

The Burger King driveway is used as a short cut to beat the light at the corner of St. Francis and West Alameda Street. Speeding vehicles turning off St. Francis with either drunk or sober drivers, could easily smash any wall and topple the cell tower, a sure risk of fire danger.

PLEASE DO NOT GRANT THIS SETBACK WAIVER

This 64 foot tower, if it fell, would be a mere 40 feet from the Burger King Grease Bin and Telco Box.

What a lovely fire that would make.

PLEASE DO NOT GRANT THIS SETBACK WAIVER

And, my personal favorite, the 6 Gas Pumps at Burger King. The tower could fall, arcing next to the pumps.

As we have all too often witnessed, both here and abroad, gas is a wicked and vociferous accelerant.

UNDER NO CIRCUMSTANCES GRANT THIS SETBACK WAIVER!

The City of Santa Fe has issued extreme fire restrictions banning: grilling, ATV's, Motorcycles, Rocket

Fireworks and even Smoking in our public parks. We are in our fourth year of extreme drought and have

only had about 2 1/2 inches of any kind of moisture since January.

In addition to packet submissions from concerned citizens, Casa Solana has submitted two Opposition

packets. All go into great detail, supported by City Ordinances, proving AT&T's proposed tower at

Burger

King is a horrible idea. The least of our worries is that State Historic Preservation has selected the ugliest

and most noticeable of all the designs, in direct contradiction to Santa Fe's own ordinances. Ugly and

too tall will not kill us, but fire could destroy our neighborhood and schools and risk our very lives.

AT&T'S PROPOSED TOWER IS A PUBLIC SAFETY HAZARD!

The City of Santa Fe has wisely put in place thoughtful and life-saving ordinances to protect us, it's citizens.

Why would you vote to remove these reasonable protections? If you vote yes to grant AT&T this setback

variance you would open the City of Santa Fe to great financial liability. Where is it written that the ability to talk on your cell phone, text, email, view sports, TV and movies trumps anybody's right to life?

How would you feel if your vote caused the loss of even one life?



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

WIRELESS TELECOMMUNICATIONS BUREAU OFFERS GUIDANCE ON INTERPRETATION OF SECTION 6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB CREATION ACT OF 2012

DA 12-2047
January 25, 2013

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act)¹ became law. Section 6409(a) of the Tax Act provides that a state or local government "may not deny, and shall approve" any request for collocation, removal, or replacement of transmission equipment on an existing wireless tower or base station, provided this action does not substantially change the physical dimensions of the tower or base station.² The full text of Section 6409(a) is reproduced in the Appendix to this Public Notice.

To date, the Commission has not received any formal petition to interpret or apply the provisions of Section 6409(a). We also are unaware of any judicial precedent interpreting or applying its terms. The Wireless Telecommunications Bureau has, however, received informal inquiries from service providers, facilities owners, and state and local governments seeking guidance as to how Section 6409(a) should be applied. In order to assist interested parties, this Public Notice summarizes the Bureau's understanding of Section 6409(a) in response to several of the most frequently asked questions.³

What does it mean to "substantially change the physical dimensions" of a tower or base station?

Section 6409(a) does not define what constitutes a "substantial[] change" in the dimensions of a tower or base station. In a similar context, under the *Nationwide Collocation Agreement* with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, the Commission has applied a four-prong test to determine whether a collocation will effect a "substantial increase in the size of [a] tower."⁴ A proposed collocation that does not involve a substantial increase in

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat. 156 (enacted Feb. 22, 2012) (Tax Act).

² *Id.*, § 6409(a).

³ Although we offer this interpretive guidance to assist parties in understanding their obligations under Section 6409(c), *see, e.g., Truckers United for Safety v. Federal Highway Administration*, 139 F.3d 934 (D.C.Cir. 1998), the Commission remains free to exercise its discretion to interpret Section 6409(a) either by exercising its rulemaking authority or through adjudication. With two exceptions not relevant here, the Tax Act expressly grants the Commission authority to "implement and enforce" this and other provisions of Title VI of that Act "as if this title is a part of the Communications Act of 1934 (47 U.S.C. 151 et seq.)." Tax Act § 6003.

⁴ 47 C.F.R. Part 1, App. B, *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, § 1.C (*Nationwide Collocation Agreement*).

EXHIBIT A'

size is ordinarily excluded from the Commission's required historic preservation review under Section 106 of the National Historic Preservation Act (NHPA).⁵ The Commission later adopted the same definition in the 2009 *Declaratory Ruling* to determine whether an application will be treated as a collocation when applying Section 332(c)(7) of the Communications Act of 1934.⁶ The Commission has also applied a similar definition to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review.⁷

Under Section I.C of the *Nationwide Collocation Agreement*, a "substantial increase in the size of the tower" occurs if:

- 1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- 2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- 4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

Although Congress did not adopt the Commission's terminology of "substantial increase in size" in Section 6409(a), we believe that the policy reasons for excluding from Section 6409(a) collocations that substantially change the physical dimensions of a structure are closely analogous to those that animated the Commission in the *Nationwide Collocation Agreement* and subsequent proceedings. In light of the Commission's prior findings, the Bureau believes it is appropriate to look to the existing definition of "substantial increase in size" to determine whether the collocation, removal, or replacement of equipment

⁵ See 16 U.S.C. § 470f, *see also* 47 C.F.R. § 1.1307(a)(4) (requiring applicants to determine whether proposed facilities may affect properties that are listed, or are eligible for listing, in the National Register of Historic Places).

⁶ See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd. 13994, 14012, para. 46 & n.146 (2009) (2009 *Declaratory Ruling*), *recon. denied*, 25 FCC Rcd. 11157 (2010), *pet. for review denied sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir.), *cert. granted*, 113 S.Ct. 524 (2012); 47 U.S.C. § 332(c)(7).

⁷ See 47 C.F.R. § 17.4(c)(1)(B); National Environmental Policy Act Compliance for Proposed Tower Registrations, WT Docket No. 08-61, *Order on Remand*, 26 FCC Rcd. 16700, 16720-21, para. 53 (2011).

on a wireless tower or base station substantially changes the physical dimensions of the underlying structure within the meaning of Section 6409(a).

What is a “wireless tower or base station”?

A “tower” is defined in the *Nationwide Collocation Agreement* as “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”⁸ The Commission has described a “base station” as consisting of “radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics.”⁹ Section 6409(a) applies to the collocation, removal, or replacement of equipment on a wireless tower or base station. In this context, we believe it is reasonable to interpret a “base station” to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station.¹⁰ Moreover, given the absence of any limiting statutory language, we believe a “base station” encompasses such equipment in any technological configuration, including distributed antenna systems and small cells.

Section 6409(a) by its terms applies to any “wireless” tower or base station. By contrast, the scope of Section 332(c)(7) extends only to facilities used for “personal wireless services” as defined in that section.¹¹ Given Congress’s decision not to use the pre-existing definition from another statutory provision relating to wireless siting, we believe the scope of a “wireless” tower or base station under Section 6409(a) is not intended to be limited to facilities that support “personal wireless services” under Section 332(c)(7).

May a state or local government require an application for an action covered under Section 6409(a)?

Section 6409(a) states that a state or local government “may not deny, and shall approve, any eligible facilities request...” It does not say that a state or local government may not require an application to be filed. The provision that a state or local government must approve and may not deny a request to take a covered action, in the Bureau’s view, implies that the relevant government entity may require the filing of an application for administrative approval.

⁸ See *Nationwide Collocation Agreement*, § I.B.

⁹ See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 10-133, *Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report*, 26 FCC Rcd. 9664, 9481, para. 308 (2011).

¹⁰ See also 47 C.F.R. Part 1, App. C, *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, § II.A.14 (defining “tower” to include “the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein”).

¹¹ 47 U.S.C. § 332(c)(7)(A). “Personal wireless services” is in turn defined to mean “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.” *Id.* § 332(c)(7)(C)(1).

Is there a time limit within which an application must be approved?

Section 6409(a) does not specify any period of time for approving an application. However, the statute clearly contemplates an administrative process that invariably ends in approval of a covered application. We believe the time period for processing these applications should be commensurate with the nature of the review.

In the *2009 Declaratory Ruling*, the Commission found that 90 days is a presumptively reasonable period of time to process collocation applications.¹² In light of the requirement of Section 6409(a) that the reviewing authority “may not deny, and shall approve” a covered request, we believe that 90 days should be the maximum presumptively reasonable period of time for reviewing such applications, whether for “personal wireless services” or other wireless facilities.

Wireless Telecommunications Bureau contact: Maria Kirby at (202) 418-1476 or by email: Maria.Kirby@fcc.gov.

-FCC-

For more news and information about the Federal Communications Commission please visit: www.fcc.gov

¹² See *2009 Declaratory Ruling*, 24 FCC Rcd. at 14012-13, paras. 46-47.

APPENDIX

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.

(1) **IN GENERAL.** Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) **ELIGIBLE FACILITIES REQUEST.** For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves —

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.** Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.

H-Board Meeting: June 24, 2014

Statement from Debby Kaschner (Page 1 of 2)

Thank you for allowing me the opportunity to speak to you this evening. My name is Debby Kaschner and I oppose the building of a cell phone tower at Burger King. I am a parent of a daughter and son who attend Gonzales Community School, and we live in Casa Solana.

Back in May of 2012, my family attended the Early Neighborhood Notification meeting set up for the Casa Solana neighborhood. AT&T presented themselves as building this new tower to provide better service to the Casa Solana neighborhood, and to provide 4G technology. As part of the meeting discussion, AT&T explained their use of line-of-sight technology, including the limitations of it.

My husband questioned them as to whether they had ever conducted any research to find out if their tower signal could penetrate the dense foliage, characteristic of our neighborhood. The AT&T rep said they had not done any research of this kind and could not guarantee improved service within Casa Solana; however, they did point out that cell service should improve along the Saint Francis corridor.

So now a cell tower is proposed for a site in which nearly one-fourth of the surrounding area is unlikely to receive improved service, and this is at the public safety cost of the nearby schoolchildren, their teachers and staff, the neighborhood, and the city. We should not be forced to "bow down" to AT&T and sacrifice our safety so that they can build a potentially ineffective tower in our residential neighborhood.

We are now starting to hear AT&T suggest that the tower will benefit the "entire urban area." If the goal of AT&T is truly to improve coverage for the "urban area" then I suggest that they be held responsible for locating a site which is closer to

EXHIBIT "B"

H-Board Meeting: June 24, 2014

Statement from Debby Kaschner (Page 2 of 2)

the urban area. Burger King and AT&T need to show respect for the community and follow the rules.

Please do not break previously well-thought out city code which requires that the tower remain further away from the street. Hundreds of children and their teachers walk the street next to Burger King when they set out on educational field trips every fall and spring. Making a wise decision proactively may save countless lives and save the inevitable questions of "why didn't we do it differently when we had the chance?"

Thank you again for your time and consideration of my comments.

Respectfully submitted,

Debby Kaschner

Gonzales Parent and Casa Solana Resident

<http://www.scpr.org/blogs/environment/2012/09/13/9969/sprint-verizon-t-sign-12-million-settlement-over-2/>

Sprint, Verizon, AT&T sign \$12 million settlement over 2007 Malibu Canyon fire

Molly Peterson | September 13th, 2012, 6:52pm



Larry Cummings VPP LACOFD

Canyon Fire, October 2007.

California utility regulators have settled a dispute with three telecommunication companies over responsibility for a wildfire in Malibu five years ago.

When Santa Ana winds swept through Malibu Canyon in October of 2007, they knocked over three utility poles. Those poles sparked a fire that burned nearly 4,000 square acres. It destroyed 14 structures and three dozen cars.

Cell phone companies had antennas on the poles, or shared pole ownership with other telecommunication companies. The California Public Utilities Commission investigated whether these five companies contributed to the fire by unsafely mounting equipment there.

EXHIBIT "C"

The settlement just announced resolves liability for three companies: Sprint, Verizon, and AT&T. Together they'll pay \$12 million in equal shares. About \$7 million will go to the state's general fund and the rest goes into a new utility pole inspection fund.

The Public Utilities Commission is still investigating two more companies, Southern California Edison and NextG. Regulators say the settlement can help deter other utilities that maintain electronic equipment in wildland or fire-prone areas.

Power poles topped with communications gear go unchecked

- By [Hans Laetz](#)
- Posted April 23, 2009 at midnight



Karen Quincy Loberg / Star staff An October 2007 wildfire in Malibu burned 14 structures, thousands of acres and forced the evacuation of the city.

A wind-whipped 2007 wildfire that destroyed 14 structures in Malibu has sparked a probe into why Southern California Edison is allowing various wireless communications companies to add heavy, wind-catching cables and antennas to wooden electric-wire poles without calculating possible collapse risk.

Some government officials say the utility's decision may mean that no one is keeping track of weight and wind-load dangers on power poles across Edison's 50,000-square-mile service area, home to 13 million people in Ventura and 10 other counties.

Malibu Mayor Andy Stern was aghast at the state's inquiry into who, if anyone, was in charge of making sure utility poles are not top-heavy.

"If Edison is not responsible for the safety of its own poles, then who the hell is?" Stern asked. "Why are we learning this now, when there are hundreds of these poles in Malibu?"

The formal probe by the California Public Utilities Commission was triggered by the collapse of three utility poles in Malibu Canyon on Oct. 17, 2007, which snapped in 50-mph winds. The wooden poles had just passed a state-mandated inspection by Edison, and should have withstood winds of 92 mph. State investigators are looking into the likelihood that they were overburdened by new cellular phone gear.

An Edison spokesman said the matter was under litigation and formal comment would have to come from the company's response to PUC's investigation, which is due to be filed soon.

The three poles were supporting four sets of heavy, insulated fiber-optic trunk lines; cell antennas; a 66,000-volt electrical circuit; a 16,000-volt local distribution circuit; and street lights. The gear toppled onto the road with such force that a guy-wire yanked a 2,600-pound concrete anchor from surrounding rocks, landing in the middle of Malibu Canyon Road, the state report says.

In four hours, the subsequent fire burned 3,836 acres, 10 houses, a landmark Malibu castle, several businesses and classrooms at two schools. Three firefighters were injured putting out the fire, and central Malibu was evacuated for three days.

Reports from the Los Angeles County Fire Department and field investigations by PUC staff "provide us with a prima facie (presumed true) showing that violations have occurred and that the Malibu fire stems from the violations," state investigator Kan Wai Tong wrote in a report that was adopted Jan. 29 in an unanimous vote of the Public Utilities Commission in San Francisco. The poles did not meet PUC requirements, he wrote.

Although the five commissioners voted to accept the report and open the investigation in late January, the decision was not publicized. Officials in Ventura County and other cities say they were not notified about the probe. Under PUC rules, the quasi-judicial investigation may take months to conclude and could result in a new state rule on the matter.

"If the poles had been maintained, inspected, and constructed in compliance with the applicable PUC general orders, the poles clearly would have withstood the winds," Tong wrote.

Phone company officials said they cannot talk on the record because of myriad lawsuits filed over the fire. But one said the PUC finding was preliminary and erroneously relies on a presumed 50-mph maximum wind gust based on measurements in Calabasas, nine miles away, and winds exceeded 100 mph in the canyon that night.

Edison is a state-regulated utility owned by the shareholders of Edison International, a for-profit company that could be on the hook for hundreds of millions of dollars in damages from this one fire alone.

Four cellular companies involved

The unusual investigation was ordered after a senior Edison safety investigator asserted in writing that calculating overall wind and weight loads on power poles had become the responsibility of four cellular companies that bought access to the poles in the past two decades.

"Edison contends in its letter that Edison was not required to approve the additional load added by other parties," Tong says in his report.

The PUC said Edison and four cellular companies — Verizon, Sprint, AT&T and NextG Networks — apparently failed to coordinate weight loads with each other, or properly measure just how sturdy the aging poles were as heavy new cables and cellular phone transceivers and antennas were added. PUC rules state all utilities that use aerial lines jointly share in responsibility for all aspects of their safety. And state common law includes the legal theory of "joint and several liability," meaning every partial owner is responsible for the entire damage bill caused by a negligent act by it or any other defendant, said Jack Sweeney, a longtime Thousand Oaks attorney.

Sweeney, a professor at Ventura College of Law, said a pole owner "cannot escape liability for a failure of the pole by selling a part interest in the pole to another entity, which adds its own heavy cables to the weight already supported by the pole."

Los Angeles County Supervisor Zev Yaroslavsky said it was "absurd" that Edison believes it's not responsible for the safety of the poles after selling access to them to cell companies.

The PUC findings also confirmed the opinions of some Malibu Canyon-Las Virgenes Road residents, who had observed that the poles had been leaning toward the road for years.

PUC questions rejected

Two of the wireless companies, AT&T and NextG, have rejected many of the state's questions as outside the purview of the Public Utilities Commission, because numerous damaged parties have filed lawsuits.

“AT&T objects to each question to the extent that it requests documents or information protected from disclosure by the attorney-client privilege ... and/or were prepared in anticipation of litigation,” its company lawyers said.

AT&T lawyers specifically objected to being ordered by the state regulatory commission to explain exactly what caused the disastrous fire, and countered “there is no evidence establishing that the subject poles did not meet the safety factors” required by state law.

The firm also said it needs more time to gather documentation for wires that were installed by an outside contractor 17 years ago for a cellular phone company that has been sold four times since.

The PUC said Verizon could not provide an installation date but did provided wind load analysis from more than a decade ago. Sprint told the PUC it installed its gear in 1997 but could not find any records of weight calculations.

The final company to add equipment to the poles, NextG, installed its gear in 2004, but has no record of any weight or wind capacity calculations, the PUC report says. NextG is a San Jose company that installs cell transmitters on poles and links them with fiber cables for several service providers.

Malibu’s mayor noted that hundreds of houses sit under older power poles heavily burdened with new communications cables.

“Those things are 4 feet away from people’s houses, and they say ‘No one is ultimately responsible to assess the weight loads on them?’” Stern asked.

“Then you’re telling me these are time bombs waiting to go off.”

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Almost 1 Cell Tower Collapse per Month in Recent Years, plus Hurricane Sandy

25 Cell Collapses total Found in Web Search 2003-2014 plus Hurricane Sandy. 16 collapses in last 18 months. Almost 1 per month.

date	location	notes	Web site
5/10/2003	Peoria, IL		http://www.inti.gob.ar/cirsoc/pdf/antenas/TowerFailuresCausesandCures.pdf
11/2/2003	Oswego, New York	crushes fire chief's car	http://www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle
3/18/2008	La Merida, CA		http://www.inti.gob.ar/cirsoc/pdf/antenas/TowerFailuresCausesandCures.pdf
1/24/2009	Wellesley MA	welding fire	http://www.metrowestdailynews.com/article/20090124/News/301249964
11/10/2009	Torrance CA	Fire	http://www.randommadnessintorance.net/2009/11/cell-phone-collapse.html
12/14/2009	Tulsa, OK		http://www.inti.gob.ar/cirsoc/pdf/antenas/TowerFailuresCausesandCures.pdf
2/18/2011	Clinton PA		http://www.lehighvalleylive.com/hunterdon-county/express-times/index.ssf/2011/02/high_winds_likely_cause_in_cel.html
4/4/2011	Ballard County, Ky		http://www.kfvs12.com/story/14380276/afternoon-update-cell-tower-2-homes-collapse-in-ballard-county
10/31/2012		Associated Press	Hurricane Sandy takes out 25 percent of cell towers in US
10/31/2012			http://gadgets.ndtv.com/telecom/news/hurricane-sandy-takes-out-25-percent-of-cell-towers-in-us-286624
3/6/2013	South St Louis MO		http://southcity.fox2now.com/news/news/123681-cell-tower-collapse-could-have-been-prevented
3/19/2013	Laredo, TX	1 killed	https://www.osha.gov/doc/topics/communicationtower/index.html
5/16/2013		Fire + lean	http://www.nbcnewyork.com/news/local/Cell-Tower-Lean-New-Jersey-Police-Monmouth-County-207722061.html
5/28/2013	Copiah County, MS		http://www.msnewsnow.com/story/22439997/2-killed-in-cell-phone-tower-fall
7/8/2013	Bensalem. PA	welding fire	http://www.nbcphiladelphia.com/news/local/Cell-Phone-Tower-on-Fire-in-Bucks-County-212489511.htm
7/8/2013	Bensalem. PA	welding fire	http://www.myfoxphilly.com/story/22659415/fire-causes-cell-pho
7/20/2013	San Ramon CA		http://emfsafetynetwork.org/cell-tower-collapses-near-san-ramon-california/
10/1/2013	near Willow, AK		http://www.adn.com/2013/11/14/3176538/willow-cell-tower-collapses-as.html
10/20/2013	jefferson county MO	leaning tower	http://www.ksdk.com/story/news/2013/10/30/jefferson-county-leaning-cell-phone-tower/3318551/
10/25/2013	Alascom, AK		http://www.adn.com/2013/11/14/3176538/willow-cell-tower-collapses-as.html
1/13/2014	Chewelah, Wash		http://www.spokesman.com/stories/2014/jan/13/in-brief-cell-tower-near-ski-resort-collapses-in/
2/2/2014	Clarksburg, West Virginia	2 towers--3 killed	http://www.dailymail.co.uk/news/article-2550553/Firefighter-two-contractors-dead-two-cell-phone-towers-collapse-maintenance.html
3/14/2014	North Adams, MA	wind	http://www.masslive.com/news/index.ssf/2014/03/heavy_wind_and_rain_causes_col.html
3/26/2014	Blaine, Kansas	2 towers --2 killed	http://www.wibw.com/home/headlines/Two-Kansas-Towers-Reported-Down-Possible-Injuries-252268221.html?hpt=us_bn9
5/10/2014	HUDSONVILLE, Mich		http://www.wzzm13.com/story/news/local/grandville/2014/05/09/report-cell-tower-collapse-in-ottawa-co/8906223/
total cell tower collapses		25	
total collapses in 2013-2014			16 = 10.6 collapses/year (plus Hurrican Sandy) in recent years 2013-2014

EXHIBIT "D"

About 4 Burning Cell Towers per Year: 1 Cell Tower Fire Every 3 months

Six Burning Cell Towers Reported on Web 2013-2014			
Total of 13 Burning Cell Towers Total Found from Web Search			
date	location	note	Web page
4/14/2006	Temple Hills, prince george county md		http://www.washingtonpost.com/wp-dyn/content/article/2006/04/14/AR2006041400981.html
7/4/2007	Howell NJ or MI		http://blog.mlive.com/annarbornews/2007/07/updated_cell_phone_tower_fire.html
5/10/2010	Madison, WI		http://stopthecap.com/2010/05/20/water-tower-fire-wipes-out-wimax-and-cell-phone-service-on-madison-wisconsins-west-side/
5/10/2010	Madison, WI		http://www.ajc.com/news/news/local/cell-phone-tower-to-be-taken-down-following-fire/nQPC6/
1/13/2011	Rancho Cucamonga, CA		http://dailybulletin.mycapture.com/mycapture/enlarge.asp?image=33602303&event=1151611&CategoryID=34298
1/21/2011	Poulsbo, WA		http://www.northkitsapherald.com/news/124300644.html
1/22/2011	Wall, Tinton Falls and Neptune, NJ.		http://ireport.cnn.com/docs/DOC-543602
1/22/2011	Wall, Tinton Falls and Neptune, NJ.	interesting video at	https://www.youtube.com/watch?v=ZPNYGWCAkPQ
12/2/2011	Lilburn GA	Fire	http://www.cbs46.com/story/16175764/cell-phone-tower-on-fire-in-lilburn
12/2/2011	Lilburn GA		http://www.ajc.com/news/news/local/cell-phone-tower-to-be-taken-down-following-fire/nQPC6/
5/16/2013	New Jersey		https://www.google.com/search?sourceid=chrome-psyapi2&ion=1&espv=2&ie=UTF-8&q=cell%20tower%20fire%20nj
6/21/2013	Levittown ?	burning tower photo	http://levittownnow.com/2013/06/21/nearby-cell-tower-on-fire-may-collapse/
7/8/2013	West Salem, OR		http://archive.statesmanjournal.com/VideoNetwork/2534345110001/Ospreys-cause-fire-in-West-Salem-cell-tower
8/21/2013	sanford FL	Fire--dismantled	http://www.wftv.com/news/news/local/cell-phone-tower-catches-fire-seminole-co/nZX69/
1/6/2014	Brownsville TX		http://www.rcwireless.com/celltowernews/2014/01/10/cell-tower-catches-fire-crown-castle-operates-as-reit/
1/6/2014	Brownsville TX		http://www.brownsvilleherald.com/news/local/article_dfc15d14-7754-11e3-b856-0019bb30f31a.html
2/4/2014	Las Vegas NV	Fire	http://www.lasvegassun.com/news/2013/feb/04/cell-tower-fire-closes-us-95-exit-ramp-jones-boule/

total cell tower fires	12	6 fires in 2013 and 2014 (18 months) = about 1 cell tower fire every 3 months
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