

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

November 15, 2004

Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Allan Berland, Chairman
Steve Thompson, Vice Chairman
Hank Barner
Don Dickenson
Randy Greenberg
Wade Holland
Jo Julin

Commissioners Absent: None

Staff Present: Alex Hinds, Director, Community Development Agency
Brian Crawford, Deputy Director of Planning Services
Ben Berto, Principal Planner
Johanna Patri, Senior Planner
Eric Steger, Department of Public Works, Senior Engineer
Jessica Woods, Recording Secretary

Minutes Approved on: **December 13, 2004**

Convened at 2:32 p.m.
Adjourned at 6:12 p.m.

1. ROUTINE TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

M/s, Holland/Julin, and passed unanimously, to incorporate the staff reports into the Minutes. Motion passed 7/0.

- b. Continuances –Item 6 (Gobar) to December 13, 2004, and Item 7 (Moritz) to December 13, 2004 based upon requests from the respective applicants/property owners.
- c. Approval of Minutes - October 25, 2004

Jack Byars, architect, expressed concern for Condition 15 of the Salwen Costal Permit in regard to the requirement to remove utility poles adjacent to Ocean Parkway, if feasible. Commissioner Greenberg indicated that the Commission took action and the conditions of approval cannot be changed unless there is another public hearing. She further noted that the Director has discretion to require or not require removal of utility poles according to the language of the condition. The requirement to underground new utility lines is, however, clear in its intent. The Commission and staff agreed.

Commissioner Thompson excused himself from the Planning Commission meeting at 3:00 p.m. due to a prior engagement.

M/s, Julin/Greenberg, and passed unanimously of those present, to approve the Minutes of October 25, 2004 as amended. Motion passed 6/0 (Commissioner Thompson absent).

Commissioner Dickenson corrected page 5 of the September 28, 2004 Joint Meeting Minutes with the Board of Supervisors to read, “He further stated that at a previous meeting he asked the LAFCO Executive Director whether or not LAFCO had any ability to force annexation of the property and the answer from LAFCO was no.”

2. COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

3. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions

Brian Crawford, Deputy Director, reported that the Board approved the Point Reyes Affordable Homes applications. Staff also noted that some Section 8 federal funding would be reinstated and that should allow the applicant to maintain some, but probably not all, of the detached single-family units at affordable sales prices.

November 23, 2004: Kent Woodlands Property Owners Appeal of the Lamar Design Review application.

December 7, 2004: Smith Appeal of Armstrong Garden Center Design Review and Use Permit applications

- b. Report on On-Going/Pending Development Projects
- c. 2005 Planning Commission Meeting Schedule

Commissioner Dickenson expressed concern for not having a set schedule. He believed it would be easier if there is a consistent schedule to follow. He pointed out that there are three dates that did not

fall on the second and fourth Monday and he asked staff to explain in relation to February 7th, June 13th and June 27th. Staff agreed that pending confirmation of holidays, the schedule could be revised as suggested.

4. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER)

Fredric Divine, architect, addressed the Commission about variance issues in the unincorporated Greenbrae community. By way of example, he expressed concern for variances that would be needed for his project, which is a very small remodel. He believed the County could make the findings for approval. He then provided staff with some documents to use in their analysis. He explained that the site has a huge oak tree and a steep site, but it is also located on a street that happens to be 115 feet wide and just above the subject property it is only 90 feet wide, so there is a site condition on their street. He added that there are conditions that make this site different and he expressed concern for the variance rules being reviewed by the County and during that process, work would be stopped on his project. He noted that his client received signatures in support of his project. Also, his client is in support of the County reviewing the current zoning rules and procedures for variances, but felt his construction should be able to continue during the review process.

Chairman Berland asked Mr. Kannin if the Association had any thoughts on these issues. Ted Kannin, former Member of Architectural Review Committee/Greenbrae Property Owners Association, stated that the general review had been more of an aesthetic understanding of the project than setback lines, but he cannot represent the official policies. He further added that the Committee is not as active as it was in the 90s.

Ben Berto, Principal Planner, noted that much of the Greenbrae Community had received variances that allowed homes with front yard setbacks that vary from 5 to 15 feet rather than the 25-foot setback required by conventional zoning. Staff added that the Board took action to rescind these area-wide variances in response to changes in State zoning and planning laws and the net result is that a substantial number of homes have nonconforming setbacks. Staff stated that even in situations where people are not proposing large expansions, they must apply for a Variance and special findings must be made. Staff informed the Commission about the Community Development Agency's recent considerations to initiate a review process of alternative standards for the Greenbrae community that may eliminate the need for variances related to the historic nonconforming setbacks. Also, as part of that process, staff would conduct community outreach in order to determine if there is a consensus about possible changes in local zoning rules. Staff further noted that the matter would be brought back to the Commission at a later date for further discussion.

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions

November 29, 2004

- Proaps and Tong Design Review Clearances: Appeals (Vermet) of administrative Design Review clearance approvals for two property line fences on single-family residential lots (Novato/Calipso Shores). *Note: There are two appeals, filed by a single appellant, of two separate administrative actions for fences bordering both sides of the appellant's property.*
- Gray Design Review/Variance/Coastal Permit: Appeal (Bently) of Deputy Zoning Administrator conditional approval for the demolition of an existing residence and construction of a new single-family residence that exceeds the building height limit specified by the zoning district applicable to the Seadrift Subdivision (C-RSPS) (Seadrift Road/Stinson Beach [Seadrift]).
- Antonioli Lot Line Adjustment/Precise Development Plan: Continued hearing from August 9, 2004 for Lot Line Adjustment to reconfigure four lots and Precise Development Plan to establish development envelopes and standards (Novato/Crest Avenue).

December 6, 2004 Special Meeting

- Oakview Master Plan: *Public hearing to consider recommended action for Master Plan proposing 28 single-family residential lots and a 94,000 square foot assisted living facility (Marinwood/Northwest of Highway 101/Lucas Valley Road interchange).*

December 13, 2004

- Moritz Coastal Permit, Use Permit, Design Review: *Continued hearing from August 23, 2004 for new single-family residence and legalization of guesthouse and agricultural worker housing (Bolinah/Horseshoe Hill Road).*
- Gobar Design Review: *Continued hearing from September 13, 2004 to consider design modifications for an expansion and remodel of a single-family residence (San Rafael/Unionstone Drive).*

January 2005

- Single-Family Residential Design Guidelines: *Public hearing to consider Draft Single-Family Residential Design Guidelines (Countywide).*

Development Code Technical Amendments: *Public hearing to consider recommending adoption of technical corrections and other minor revisions to the Development Code (Countywide).*

Proposal to construct a 308 square-foot detached equipment shed, in-ground swimming pool/spa, and approximately 4,380 square feet of additions to an existing single-family residence, resulting in an adjusted floor area of 6,513 square feet on a 65,000 square foot property. The subject property is located at **26 Unionstone Drive, San Rafael**, and is further identified as **Assessor's Parcel 164-354-05**.

(This item was continued from the hearing of September 13, 2004, and is being recommended for further continuance to the hearing of December 13, 2004.)

Chairman Berland asked for a motion.

M/s, Greenberg/Julin, and passed unanimously of those present, to continue the hearing to December 13, 2004. Motion passed 6/0 (Commissioner Thompson absent).

Continued public hearing to consider a proposal to construct a new 2,996 square foot single-family residence with approximately 1,230 square feet of porch area and a 979 square foot detached garage and storage structure sited on a woodland knoll upslope and approximately 300 feet south of the existing development on the 84.33-acre subject property. Construction of a new approximately 660-foot long driveway off the existing driveway will provide access to the proposed building site, located approximately 800 feet west of the front (eastern) property line and the existing entrance off Horseshoe Hill Road. As proposed, the residence will have a maximum height of 25 feet above natural grade. The proposed garage, sited 50 feet east of the proposed residence, will have a maximum height of 22.16 feet above natural grade through section and 25 feet at the downslope elevation. The applicant also is proposing to legalize and convert to farm worker housing an existing "as-built" 1,500 square foot single-family residence located off the existing driveway and east of the historic development on the subject property. In addition, the applicant is proposing to convert the existing, 1,200 square foot primary single-family residence to a guesthouse by removing the kitchen. The applicant is proposing to demolish two existing guest houses: (a) a 400 square foot structure southwest of the farm worker housing unit; and (b) a 420 square foot structure east of the proposed guest house. The proposed new residence will be served by construction of an on-site mound sewage disposal system located down slope from, and east of, the new residential site and two 10,500-gallon water storage tanks north of the new residential site. The existing development will be served by construction of a new on-site sewage disposal system located at the lower portion of the property. All development and the agricultural production will be served by an existing well. The proposal does not include the withdrawal or use of water from Pine Gulch Creek. The property owners propose to continue the existing cattle grazing operation, owned and managed by the ranch manager who also will occupy the farm worker-housing unit. The owners propose to convey to the County an Agricultural Conservation and Production Easement and Declaration of Restrictions over an identified "Agriculture Production Zone" to provide permanent preservation of potential agricultural lands and to restrict and maintain the farm worker housing unit for use by farm workers who are actively engaged in the production of agriculture at a below market rental rate as determined by the County. The property is located at **5675 Horseshoe Hill Road, Bolinas**, and is further identified as **Assessor's Parcel 188-090-13**.

(This item was continued from the hearing of August 23, 2004, and is being recommended for further continuance to the hearing of December 13, 2004.)

Alex Hinds, Agency Director, summarized the staff report and revised recommendation that the Commission grant the continuance at the request of the applicant to further clarify the relationship between the project and the Williamson Act, especially as amended by Assembly Bill 1492. Staff further apologized for any inconvenience caused by the continuance.

Johanna Patri, Senior Planner, noted that staff was directed at the August 23rd Planning Commission hearing to draft the agricultural conservation and production easement with declarations of restrictions. A draft of the easement has been completed and is provided as an attachment in the staff memo for the Commission's review. Also, the draft easement was distributed to the Marin Agricultural Advisory Committee and some of the Committee members discussed with staff the terms of the easement. Suggestions from Committee members have been incorporated into the draft easement that is before the Commission. Staff noted that this easement must have Board of Supervisors approval before it becomes effective. Staff further pointed out that the easement presented was adapted from a draft easement provided by MALT.

Commissioner Julin asked staff if the main issue revolved around the term "incidental." Agency Director Hinds responded that there has been a tremendous amount of confusion on this matter. Staff added that a home for a farm or ranch owner who leases land to an agricultural operator or a home for a farm or ranch operator are both allowed under the Williamson Act. Staff explained that many counties have tried to define what is a reasonable agricultural production level to justify being in the Williamson Act. Some places link that to the types of improvements that are on the land and the amount of farm income produced by the agricultural operation. Staff further indicated that they would be in contact with the State Department of Conservation prior to the continued hearing date to provide as clear a recommendation as possible to the Commission at the next meeting.

Commissioner Holland looked forward to the results of that meeting. He then stated that the draft easement is receiving positive reviews. He expressed concern for the process issue and desired the parties involved and most affected to be kept in the loop as early as possible. Agency Director Hinds responded that the revised recommendation was a decision based

on having an abundance of caution regarding compliance with AB 1492 and the Williamson Act and staff did not desire to put the applicant or the County in a position of potentially being in a material breach of a contract.

Commissioner Barner expressed concern for the examples described in the State literature on the Williamson Act with respect to revenue and net income and questioned whether that is an appropriate example for Marin. Agency Director Hinds expressed staff's intent to obtain enough clarity from the meeting with the Department of Conservation to provide as solid a recommendation as possible to the Commission at the next continued meeting.

Commissioner Barner believed some examples confuse agricultural and open space uses. Also, in terms of project description, he expressed confusion as to how the residence for Florence Vierra would be handled. Senior Planner Patri responded that Mrs. Vierra would be the guest of the Mortiz's as long as she desired and staff's understanding is that it would be a guesthouse without a kitchen.

Commissioner Greenberg asked staff why the square-footage of the guesthouse is not included in the residential development because in her view, the square-footage of the guesthouse should be included in the overall development insofar as it adds to the residential square-footage of the primary dwelling. She then asked staff to consider if that square-footage were included, what would the consequences be in terms of compliance with the Williamson Act.

Commissioner Dickenson believed it would be very important to receive an interpretation from the State on this matter.

Commissioner Holland agreed with Commissioner Greenberg in regard to whether the square-footage of the guesthouse is part of the residential development with respect to the Williamson Act and AB 1492.

The hearing was opened to the public.

Roger Roberts, representing the Marin Conservation League, recognized that this is a negotiation and they desired to be kept informed and not have any surprises. They further hoped that they would be informed about any changes in the language that would affect this project in order for MCL to review.

The public hearing was closed.

Chairman Berland asked for a motion.

M/s, Holland/Barner, and passed unanimously of those present, to continue the hearing to December 13, 2004. Motion passed 6/0 (Commissioner Thompson absent).

Chairman Berland announced at 3:51p.m.that the Commission would take a short recess and then reconvene with the next agenda item.

Public hearing to consider the Imwald Appeal of Church of the Nativity (Cingular Wireless) Design Review and Use Permit proposing to approve the installation of a wireless telecommunications facility, including antenna panels atop of the Church of the Nativity. The proposal consists of 4 antenna panels (each of which are 4 feet high, 1 foot wide) that will be installed and screened by a new, roof-mounted cupola, along with ground-level equipment south of the church, to be screened by landscaping. The 35-foot long, 7 foot high cupola will result in a total building height of 42 feet above grade. The appeal is based on neighborhood opposition to the project, its proximity to residences, a need for more consideration of alternatives, inadequacy of the applicant's radio frequency report, and possible future co-location of additional wireless facilities. The Deputy Zoning Administrator approved the project on August 26, 2004. The subject property is located at **333 Ellen Drive, San Rafael**, and is further identified as **Assessor's Parcel 164-441-14**.

Ben Berto, Senior Planner, summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and adopt the attached Resolution denying the Inwald Appeal and sustaining the Deputy Zoning Administrator's conditional approval of the Church of the Nativity Development Plan and Use Permit.

Commissioner Greenberg asked staff how the San Rafael Fire Department was able to establish a moratorium on cellular telephone facilities. Principal Planner Berto responded that Cingular Wireless has pursued various alternatives over this coverage area, but he could not provide the Fire Department's rationale for choosing not to allow the proposed facility at their Marinwood station. Commissioner Greenberg asked staff if the parcels located around the church are privately owned and developable. Principal Planner Berto responded that staff is not certain about the ownership of specific parcels around the church, although much of the surrounding area is privately owned.

Commissioner Julin discussed the relationship of the antenna to the neighborhood and asked staff to provide the interior elevation of the proposed facilities in relation to those using the building. Principal Planner Berto responded that the issue is not proximity of the facilities *per se*, but proximity to the direction of the radio frequency emissions. In this project, the EMF emissions are being directed laterally away from the interior of the building.

Commissioner Dickenson pointed out that under Federal law this Commission has no jurisdiction to discuss health standards.

The hearing was opened to the public.

Jacqueline Smart, representing Cingular Wireless/applicant, agreed with staff's recommendations and is present to answer any questions of the Commission.

Chairman Berland asked Ms. Smart if there are available AT&T sites that would take care of the coverage problems. Ms. Smart responded that this site would be eventually used for T-Mobile, so there is a need for this type of coverage in the project area. The fire station and the water tank should have provided good coverage but were denied.

Commissioner Greenberg stated that Cingular merged with AT&T and expressed concern for Cingular applying for an antenna site that would be used by a different company (T-Mobile). Ms. Smart responded that initially this was for Cingular, but Cingular has since initiated a sale of its sites to T-Mobile, although the sale has not been finalized. Commissioner Greenberg questioned the need for this antenna at this site because AT&T documents show adequate coverage for this area and more is not needed. Gerald Bushberg, representing, Cingular Wireless, responded that the AT&T and Cingular network work off of a different frequency and the frequencies would not be interchangeable as a result of the merger, so there is a need for this site despite the merger of the two companies. He further added that coverage must be provided to all AT&T customers and other customers that are not covered in the area.

Commissioner Greenberg noted that documentation suggested that one of these technologies would be used at the proposed site. Mr. Bushberg responded that what is being phased out is the analog site and, as it stands today, the 800-megahertz and the pre-existing 1900-megahertz would not be removed and the sale of the higher frequency would go to T-Mobile.

Mr. Bushberg responded to earlier questions about exposure and noted that the exposure is less than one percent because these are directional antennas. Also, in the EMF study he assumes 100% of the signals bounce back and when measuring the actual exposure it is expected to be much lower than the study projection.

Charles Pick, architect, representing Church of Nativity, explained that the length of the cupola is an extra two feet to hide the antennas from view and no architectural element would block the signals. He pointed out that it would have the same appearance of the existing church. He further stated that it is important to note that it was the DZA that recommended that additional cellular phone providers use this location and it was never their intention to promote this location.

Commissioner Julin asked the architect the estimated cost of the cupola. The architect responded that it would be about a quarter of a million dollars, although that figure could change through the future design and construction phases.

Commissioner Holland asked staff if the church has no obligation to accommodate any other carriers. Principal Planner Berto responded that the ordinance requires staff to address the possibility of co-location, however, the church is not required by the conditions to accept other carriers. The intent of the condition is to allow for future consideration of the church as a potential co-location site, consistent with the Telecommunications Facilities Policy Plan (TFPP). Agency Director Hinds explained that it is better to have the companies co-locate in fewer locations than having separate locations.

Commissioner Greenberg asked Mr. Bushberg the distance required between antennas and asked what this structure would accommodate. Mr. Bushberg responded that it is about a five-foot horizontal separation and in terms of others co-locating, he'd rather not guess.

Commissioner Dickenson clarified that the solid piece at the end of the Cupola would be where the antennas would be located. The architect responded in the affirmative. He further added that it was not designed for multiple sites.

James Bell, representing Church of Nativity, stated that the site is five acres, with development only on the small, level, upper portion of the site. Also, the church has not addressed the issue of co-locating, but they had no intention to add additional sites.

Barbara Inwald, appellant, provided the Commission with material for their consideration and expressed opposition to the installation of a wireless communication facility on the church property. She felt it would be prudent to wait until Cingular and AT&T merge to understand whether this antenna is necessary. Also, she provided for the Commission's review photographs depicting other areas that could be used to locate such a facility. She added that radio frequency is not the only issue and felt the guidelines of the County Telecommunications Facilities Policy Plan (TFFP) were not followed for this site and the neighborhood is opposed.

Cindy Flinn, Ellen Court, San Rafael, urged the Commission to uphold the appeal by Barbara Inwald and reject the application for the antenna site at the Church of Nativity and she provided material in that regard to the Commission for their consideration.

Ms. Inwald stated that she contacted several experienced realtors that indicated that she and the surrounding neighbors would be liable if they did not disclose the antennas. Their homes prices could drop. She further urged the Commission to consider the appeal and noted that she would provide additional information if needed.

The public hearing was closed.

Commissioner Dickenson discussed the map and many thousands of people, not just local residents, who would get additional service and noted that all of Marin Creek, Marinwood, Lucas Park and St. Vincent's would receive increased coverage by this antenna. Principal Planner Berto concurred. Staff added that this site appears to provide the greatest amount of coverage for their customers.

Commissioner Holland desired clarification from Ms. Smart in regard to the colors shown on the map. Ms. Smart responded that the green color is excellent coverage; yellow is intermediate coverage, and red is no service.

Commissioner Barner asked staff to what degree the other sites were investigated and the reason why the sites were not acceptable. Principal Planner Berto responded that the memorandum provided to the Commission discussed the unavailability of alternative sites.

Commissioner Barner believed there is not a real need for this facility. Staff responded that Cingular is required under their license agreement to provide service to their customers in terms of filling gaps in service.

Chairman Berland asked Ms. Smart when this project was proposed for the church was it known by Cingular that there would be a possible merger with AT&T. Ms. Smart responded in the affirmative.

Chairman Berland asked Ms. Smart what kind of financial commitment would this involve from Cingular. Ms. Smart responded that Cingular's contribution would be monthly to the church for rental of the space as well as a portion of the construction cost of the cupola.

Brad Chapman, leasing specialist for Cingular, responded that there is initially a five-year term with five, five-year renewal terms for a total of 30 years. He further added that it is consistent with Marin County as far as the lease rates. He further reiterated that it would be a monthly rent as well as sharing the cost of construction, but they are not solely funding the project.

Chairman Berland asked Mr. Chapman if Cingular could terminate the lease under five years. Mr. Chapman responded in the affirmative. He clarified that that Cingular reviewed this site about four years ago in looking at other sites they did drive tests to figure out the coverage and the engineers indicated that this location is the best for Lucas Valley and a necessary site for their network. With the merger, there is the 1900-megahertz that Cingular uses and an 800-megahertz band that AT&T uses which would not automatically switch until customers upgrade their phones.

Chairman Berland asked Mr. Chapman the constraints of termination. Mr. Chapman responded that if Cingular finds that it is a redundant site they could terminate the lease.

Commissioner Holland asked Mr. Chapman to discuss the relevance of whether it fills Cingular coverage gaps because eventually it would be a T-Mobile site. Mr. Chapman responded that they are building the Cingular wireless network and how that network moves around is not predictable. He stated that T-Mobile may be acquiring Cingular Wireless' California network. Within California, T-Mobile has been using the Cingular network because they do not own their own network, but with the merger this would leave some open sites that T-Mobile may acquire to initiate their own California network. So the gap must be filled regardless.

Commissioner Julin asked Mr. Chapman to discuss the financial involvement. Mr. Chapman responded that an approximate estimation of \$250,000 was given for the project that would include the cupola and re-roofing. He added that Cingular might have to conduct some structural reinforcements, which would be out of their pocket to accommodate their antenna.

Mr. Bell explained that the financial commitment on the part of the church is substantial. He added that if they were to continue operating in that building, it would cost close to half a million dollars, with the roof being the biggest part. The amount of the annual rent received in connection with the cell phone facility is a small amount compared to what the church members would have to contribute, but it is important because it opens up the possibility of longer-term financing, which they may need in order to complete the project. He further added that the commitment of Cingular to the church is simply a monthly lease payment and an initial upfront payment of \$10,000.

Chairman Berland clarified with Mr. Bell that the church is making a substantial investment. Mr. Bell responded in the affirmative. He also noted that the church would have the right to terminate the lease under certain circumstances as well.

Commissioner Greenberg asked Mr. Chapman how many people in this target area are Cingular customers and how many of those are in the yellow or gray areas. Mr. Chapman responded that he did not have the specifics, but believed the number was close to 3,000 customers.

Commissioner Julin asked staff to define “*stealth site*.” Staff responded that it is encouraged in the TFFP policies in lieu of a stand-alone monopole. The basic idea is to disguise facilities to reduce visual and community character impacts.

Agency Director Hinds added that the Commission has discretion to determine whether this project is consistent with the Facilities Plan and that should be the basis of whether the project is approval or denied.

Commissioner Barner noted that he would have difficulty supporting staff’s recommendation as well as making some of the findings. He pointed out that part of the difficulty is that the County has made it a practice not to include these types of facilities in residential areas. Also, he cannot make the following Findings: VIII.C, IX.B and X.D. He stated that he is not convinced that appropriate sites have been fully evaluated and he has insufficient information about co-location possibilities and in particular why the City of San Rafael rejected the project at the water tank site. He further suggested to uphold the appeal and not approve the Church of Nativity Design Review and Use Permit. Commissioner Julin concurred with Commissioner Barner’s comments and supported the appellant.

Commissioner Dickenson supports staff’s recommendation and is prepared to deny the appeal. He had always questioned the wisdom of co-locating in regard to EMF, but this proposal is very appropriate and architecturally the cupola is a nice addition to the church, which resolves a problem with the leaking skylight over the chapel. He further pointed out that all the consultants agree, including the appellants’ consultant, that in terms of health issues, there are none.

Commissioner Greenberg expressed concern for the surrounding neighborhood and noted that long-term studies on health effects associated with EMF exposure have not been conducted because this is a new, rapidly expanding technology. Also, being located very close to these antennas would affect the property values of the surrounding neighborhood and for the church to overlook this issue seems very unfair. She pointed out that this is a residential area and the County policy indicates that this is a site of last choice. She did not believe these antennas should be located on the same elevation within such a short distance from a home. She felt the burden should fall on their congregation and not on the neighbors. She also stated that the co-location with the AT&T sites must be fully explored and that data must be provided before a decision is made. In addition, should this resolution be approved she recommended the following language: “*that there would be no co-location allowed in this particular instance, since this is a residential area,*” which the County’s other policies suggest is not an appropriate location for this antenna. She further reiterated that she could not support making a determination on this matter tonight because all the necessary information has not been provided.

Commissioner Holland believed the findings could be made, but, due to the many uncertainties in terms of corporate ownership he is very uncomfortable, so he would be inclined to support the appeal and allow the applicant to figure out the long-term structure that would support their application.

Chairman Berland wished the church had realized that there is a lot of opposition in the neighborhood. He added that the Commission is not allowed to take into account the health issues, so he felt constrained. In terms of whether it is necessary or not, he concluded that Cingular would not be investing a significant amount of money if this facility is not necessary. He further noted his support for staff’s recommendation and would deny the appeal.

Commissioner Dickenson believed it is unfortunate that the deliberations are getting hung up on the need for the facility as it relates to corporate ownership or status, which can change over time. He further felt it is inappropriate to second-guess the project in that light and suggested that the Commission make a decision on the merits of what is proposed based upon County policy.

Chairman Berland asked for a motion.

M/s, Julin/Barner, to uphold the appeal and deny the Church of Nativity Development Plan and Use Permit because the Findings VIII.C, IX.B and X.D in the recommended resolution cannot be made.

Commissioner Holland expressed concern that the motion does not provide a sufficient basis for upholding the appeal because of a lack of a nexus with land use issues. He believed the only land use issue is co-location and asked staff for guidance in that regard. Deputy Director Crawford responded that, based upon the Commission’s comments, a legitimate

rationale for not approving the project at this time could be based upon insufficient information in the record to conclusively decide or determine that there are no other existing feasible sites within this coverage area that Cingular Wireless could operate in a way to both provide adequate coverage to their customers and better comply with the TFFP and other relevant standards. Staff added that co-location is encouraged primarily to address potential visual and community character impacts by reducing the number of separate telecommunication facilities, although co-location can also affect the amount of radio frequency emissions and exposure levels in the project area. Staff further indicated that should the majority of the Commission wish to deny this application, it would be prudent to do that within the context of the TFFP by basing the decision on the lack of information regarding the feasibility of those sites and that might relate to the AT&T/Cingular merger or whether there are other sites that should be explored.

Commissioner Barner believed the Commission could make the finding that this is not consistent with the County's TFFP as well as located within a residential area that has the lowest priority of all potential sites. He further believed they must make a strong case that what is presented tonight is the worse case scenario in terms of location.

Deputy Director Crawford reiterated that if the majority of the Commission desired to deny the project, then the Commission should deny the project on the basis of inadequate alternative sites analysis rather than on the basis of potential health effects or visual impacts since the administrative record does not support denial on the latter two grounds.

Commissioner Julin amended the motion and included staff's analysis that the Commission could deny the project on the basis of inadequate alternative site analysis as well as Commissioner Barner's comments that this project is not consistent with the County's Telecommunication Plan and locating within a residential area should be the lowest priority. Commissioner Barner agreed with the amendment.

Commissioner Greenberg believed they must explore other alternatives, but would agree to uphold the appeal because there is not sufficient information at this point. Chairman Berland believed there might be a potential flaw in the Commission's reasoning.

Commissioner Julin pointed out that this is a case where the lack of facts speaks for themselves and, in this case it is the absence of facts and sufficient information that prevents approval of the project. She views the surrounding community as being very concerned and she urged the Commission to uphold the appeal.

Commissioner Greenberg reiterated the motion as she understands it as follows: *"to uphold the appeal based on inadequate alternative sites analysis and given that the County's policy places residential siting as the lowest priority that the alternative sites analysis should be more complete."* Commissioner Julin agreed with the summarization.

Motion passed 4/2 to uphold the appeal (Chairman Berland and Commissioner Dickenson opposed and Commissioner Thompson absent).

Chairman Berland adjourned the Planning Commission meeting at 6:12 p.m.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION PC NO. 04-017

**A RESOLUTION APPROVING THE INWALD APPEAL AND DENYING THE CHURCH
OF THE NATIVITY DEVELOPMENT PLAN AND USE PERMIT WITHOUT PREJUDICE
333 ELLEN DRIVE, SAN RAFAEL
ASSESSOR'S PARCEL 164-441-14**

* * * * *

SECTION I: FINDINGS

- I. WHEREAS Cingular Wireless on behalf of the Church of the Nativity is requesting Design Review and Use Permit approval for the installation of a wireless telecommunications facility, including antenna panels atop of the Church of the Nativity. The project consists of four antenna panels (each of which are 4 feet high, 1 foot wide) that will be installed and screened by a new, roof-mounted cupola. The 35-foot long, 7 foot high cupola will result in a total building height of 42 feet above grade. An equipment cabinet is included in the application and will be bunkered into the hill in a location 35 feet to the south of the church. A 6-foot high retaining wall and new landscaping will be installed to screen the cabinet. The subject property is located at 333 Ellen Drive, San Rafael, and is further identified as Assessor's Parcel 164-441-14.
- II. WHEREAS the Marin County Deputy Zoning Administrator held a duly noticed public hearing on August 26, 2004, to consider the merits of the project, and hear testimony in favor of and in opposition to the project.
- III. WHEREAS the Marin County Deputy Zoning Administrator found that this project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), is consistent with the Marin Countywide Plan, the Marin County Telecommunications Facilities Policy Plan, and findings for a Use Permit and Design Review, and therefore approved the project subject to conditions intended to ensure future compliance with applicable policies and standards.
- IV. WHEREAS the appellant, Barbara Inwald, filed a timely appeal of the Deputy Zoning Administrator's conditional approval.
- V. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 15, 2004, to consider the appeal and the merits of the project, including, but not limited to, public testimony in favor of and in opposition to the project.
- VI. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines, because: 1) the project consists of installation of a new telecommunications antenna structure and associated equipment cabinet, which would not result in environmental impacts; and 2) a radio frequency report has been submitted that concludes radio frequency exposures in thermal and non-thermal measurements would be well below Federal Communications Commission standards for the general public.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project does not fully comply with the Marin Countywide Plan and the Marin County Telecommunications Facilities Policy Plan for the following reasons:
 - A. The Marin Countywide Plan incorporates by reference the policies of the Marin County Telecommunications Facilities Policy Plan (TFPP). (See Countywide Plan Objective CF-8.)
 - B. The TFPP discourages the development of new commercial wireless facilities in or near areas where they will create land use conflicts, particularly in residential areas unless there are no other suitable or available

sites in suitable areas. The TFPP recommends co-locating or clustering new wireless communication facilities according to a list of preferred locations, with residential sites being the least preferred among them, unless a preferred site within the coverage area does not exist or requiring a preferred site within the coverage area would have the effect of prohibiting wireless service or result in adverse land use effects that would be avoided or reduced at an alternative location. (See TFPP Policy LU 1.4 and Program LU 1.4.2.)

- C. The TFPP requires service providers to submit with their development applications information that clearly demonstrates that the project proposal satisfies applicable location and design policies and standards, including an alternative sites analysis that can be used to determine whether the project complies with the location standards set out in the TFPP. (See TFPP Policy LU 1.4, Program LU 1.4.2, and Policy RP 1.4.)
- D. The project, as currently proposed, has not sufficiently demonstrated through the application submittal materials and other information provided by testimony at the November 15, 2004 Planning Commission hearing that the proposed location for the project clearly complies with the location standards of the TFPP within the context of the preferred sites set out in the TFPP and other possible or alternative facility sites within the proposed coverage area. For example, in light of the recent merger between Cingular Wireless and AT&T, existing or planned AT&T facility sites within or adjacent to the proposed coverage area should be identified and considered through an alternative sites analysis with respect to their feasibility and relative merits insofar as compliance with TFPP policies are concerned. Existing facility sites operated by other carriers and other locations not currently used for telecommunications facilities should also be identified and carefully considered to determine their suitability as alternative locations. The compatibility between frequencies of Cingular Wireless and AT&T should be further evaluated to determine the feasibility of existing AT&T facility sites that may or may not be able to provide coverage in the project area.

VIII. WHEREAS the Marin County Planning Commission finds that, notwithstanding Finding VII above, the project complies with Countywide Plan and TFPP policies related to preservation of designated sensitive areas, including Ridge and Upland Greenbelt Areas, Stream and Creekside Conservation Areas, and the Bayfront Conservation Area, as well as other areas with habitat, scenic resource, or cultural resource values. In addition, the project complies with the TFPP policies requiring new or modified telecommunication facilities to avoid or minimize to an acceptable level adverse visual effects and potential adverse health effects associated with human exposure to radio frequency emissions. The project also complies with TFPP policies related to public safety and operation of the proposed facility.

IX. WHEREAS the Marin County Planning Commission finds that, as modified by conditions of approval, the Mandatory Findings for a Use Permit in Section 22.48.040 of the Marin County Development Code can not be made because Use Permit Finding 22.48.040. B requires that proposed uses subject to a Use Permit be consistent with the Countywide Plan. For the reasons set out in Finding VII above, this finding cannot be made because it cannot be determined, based upon the current administrative record, that the project complies with the Countywide Plan and policies TFPP incorporated therein by reference.

X. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the design requirements contained in Marin County Code Section 22.16.030.K.1 and the findings for Design Review contained in Marin County Code Section 22.42.060 of the Marin County Code can be made because:

The existing structure to allow for screening of telecommunications equipment would result in a structure with a height, mass, and bulk proportionate to the size, configuration and topography of the site and would provide adequate setbacks from property lines and other buildings on the subject and surrounding properties. Construction of the addition to the existing structure to allow for screening of the telecommunications equipment would conform to a conditionally permitted use in the RSP-1.0 zoning district which governs the subject property and would be situated solely on the subject property. The existing and proposed landscaping would adequately screen the improved structure and equipment cabinet from off-site locations, would stabilize and prevent the erosion of graded soils around the structure, and would enhance the privacy of the occupants of the subject and surrounding properties. The addition to the existing structure to allow for screening of the telecommunications equipment would minimize drainage alterations, grading and excavation, tree removal, and

other adverse physical effects on the natural environment. Finally, the design of the addition to the existing structure to allow for screening of the telecommunications equipment would be compatible with development on the site, would respect the surrounding natural environment, would utilize colors and materials consistent with the prevailing community character, and would not diminish views from surrounding properties. The structure currently has a maximum height of 35 feet above grade that would increase to a maximum height of 42 feet above grade with the construction of the cupola. The additional height, beyond 30 feet, is compatible with the structure located on the property and is appropriate given the setbacks that the structure maintains from the property lines is adequate for allowing an exception to the height limit as permitted under Section 22.20.060.E of the Marin County Development Code.

SECTION II: DECISION

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies without prejudice the Church of the Nativity Precise Design Review and Use Permit for failure to make all of the findings necessary for approval.

SECTION IV: ACTION

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 15th day of November, 2004, by the following vote to wit:

AYES: Barner, Greenberg, Holland, Julin

NOES: Berland, Dickenson

ABSENT: Thompson

ALLAN BERLAND, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Planning Secretary