

Special Meeting
January 23, 2012

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:02 P.M.

Present: Burt, Espinosa, Holman, Klein, Price, Scharff, Schmid, Shepherd, Yeh

Absent:

Study Session

1. Emergency Medical Services.

Dr. Harold Cohen of SPC/TriData presented the Emergency Medical Services Study to the Council. This report was commissioned at the request of Council after TriData did a Fire Services Utilization Study in 2010 and the City Council sought to understand more about the Palo Alto Fire Department's Emergency Medical Services delivery model. Dr. Cohen reviewed the Palo Alto Fire Department's EMS efforts and made 21 recommendations in the report. He also provided staff with a five year strategy to improve service delivery. These recommendations included staffing, deployment, relationships with County EMS and support functions. Staff will review these recommendations and consider them for implementation.

Herb Borock spoke regarding the facility transport was guaranteed to collect the amount of money charged as it was not an emergency transport. He added the report indicated Station Seven would close. That station shouldn't close as it was required to be covered by Stanford under the Department of Energy. He suggested the report may have had a typographical error.

Stephany Munoz said that civil servants have Medicaid payments to health services providers matched. This suggested the government receives a discount on medical services. The police and sheriff in the county have the right to send a person against their will in an ambulance.

Special Orders of the Day

2. Appointment for One Position on the Architectural Review Board Ending September 30, 2014.

First Round of voting for one position on the Architectural Review Board ending September 30, 2014:

Voting For Laurie Abbot Chase: Burt, Holman, Klein, Scharff

Voting For Ron Halfhill:

Voting For Robert Kuhar:

Voting For Lee Lippert: Espinosa, Price, Schmid, Yeh

Voting For Brent McClure: Shepherd

Voting For Richard Pearce:

City Clerk, Donna Grider announced that no candidate received the required minimum 5 votes.

Second Round of voting for one position on the Architectural Review Board ending September 30, 2014:

Voting For Laurie Abbot Chase: Burt, Holman, Klein, Shepherd

Voting For Ron Halfhill:

Voting For Robert Kuhar:

Voting For Lee Lippert: Espinosa, Price, Scharff, Schmid, Yeh

Voting For Brent McClure:

Voting For Richard Pearce:

City Clerk, Donna Grider announced that Lee Lippert with 5 votes was appointed to the Architectural Review Board ending September 30, 2014.

City Manager Comments

City Manager, James Keene, reported: 1) that on February 1, 2012 the recycling center would permanently close, 2) Assembly Members Jerry Hill, Rich Gordon and Paul Fong were hosting an informational meeting on gas pipeline safety on Thursday, January 26, 2012, from 6:00-8:00 p.m. at City Hall, 3) the Zilowatt Project, a collaborative project between Palo Alto Utilities and Palo Alto Unified School District, was a non-profit organization started by parents to create a better energy curriculum for schools, and 4) parking banners were being placed in the downtown area to direct the public to public parking facilities.

Minutes Approval

MOTION: Council Member Espinosa moved, seconded by Council Member Price to approve the minutes of November 1, 2011.

MOTION PASSED: 9-0

Oral Communications

Eric Diesel noted his employment background and development of property. He described Louis Lesser's business background prior to moving into an assisted living facility. He stated Mr. Lesser had been the victim of massive elder abuse financial crimes. He reported the alleged perpetrators' history of fraud and convictions. He stated he had been attacked physically by the alleged perpetrators, who also stole his assets. He attempted to report the crimes to the Palo Alto Police Department; however, the Palo Alto Police Department would not take a report or investigate the criminals.

Omar Chatty stated someone was killed the prior day in Sunnyvale on Caltrain. He indicated he would attend the Sunnyvale City Council meeting in two weeks to raise the issue of replacing the train with Bay Area Rapid Transit (BART). He asked the City Council to begin discussions about replacing Caltrain with BART to save lives. He stated a blended solution was not better. He was hoping for Congressional bills to redirect funds from High Speed Rail to BART. He felt BART was a solution to connecting the Bay Area. He wanted grade-separated BART brought up the Peninsula. He stated his purpose was to raise awareness of the situation as communities become more urbanized and dense.

Stephany Munoz mentioned the volunteer recycling efforts of 16 to 18 years ago, which reduced the profits of garbage companies. She stated that

citizens were forced to recycle with garbage companies, rather than with non-profit agencies. She did not support closing the recycling center, and suggested the rate structure should be changed to provide citizens with a choice in recyclers.

Consent Calendar

MOTION: Council Member Espinosa moved, seconded by Council Member Klein to Agenda Item Nos. 3-4.

3. Budget Amendment Ordinance 5139 in the Amount of \$13,600 and Approval of a Contract with TJKM in a Total Amount Not-to-Exceed \$163,600 for Professional Services for a City-wide Sign Inventory and Retroreflectivity Analysis Project (CIP PO-11000).
4. Adoption of an Ordinance Approving and Adopting a Plan for Improvement to Juana Briones Park Authorizing the Addition of a Park Restroom Located Adjacent to Fire Station Number 5 and Clemo Avenue.

MOTION PASSED: 9-0

Action Items

5. PUBLIC HEARING: Appeal of Director's Architectural Review Approval of the Co-Location by AT&T of Wireless Communications Equipment on 20 existing utility poles located at 179 and 595 Lincoln Av.; 1851 Bryant St.; 1401 Emerson Av.; 1880 Park Blvd.; 134 Park Av.; 109 Coleridge Av.; 1345, 1720 and 2326 Webster St.; 1248 and 2101 Waverley St.; 968 Dennis Dr.; 370 Lowell Av. (Waverley side); 105 Rinconada Av.; 2704 Louis Rd.; 464 Churchill Av.; 255 N. California Av.; 1085 Arrowhead Wy.; and Oregon Expressway near Ross Rd. *QUASI-JUDICIAL

Mayor Yeh advised he would not participate in Agenda Item No. 5 due to his place of residence and a 12-month lease on the property. He left the meeting at 7:44 P.M.

Vice Mayor Scharff asked if there were any disclosures of communications relative to this project.

Council Member Shepherd stated she had been contacted by AT&T and she had viewed the prototype, but she had received no information other than that provided in the Packet.

Director of Planning & Community Environment, Curtis Williams, stated Ms. French would give the overview presentation and he would make additional comments.

Assistant Director of Planning & Community Environment, Amy French, reported AT&T, also known as New Cingular Wireless PCS LLC, proposed co-location of wireless communication facilities, also known as the Distributed Antenna System (DAS), on 20 utility poles jointly owned by the City of Palo Alto and AT&T. She stated the City Council reviewed the Master License Agreement in 2011 for this DAS project. She indicated AT&T had agreed to the agreement in principle, and Staff anticipated the agreement would soon be signed. She stated the 20 installations would be comprised of one antenna vertically oriented above existing utility poles, on top of a 12-foot pole extension, and two equipment boxes mounted on the side of each pole between 10 feet and 20 feet above grade. She indicated the heights of existing poles and nearby street trees, if any, varied by location. She said the antenna design was deemed aesthetically streamlined from the original proposal of two antennas, and also deemed as better meeting the City's Wireless Communications Facilities Standards. She noted the Standards required stealth design and small equipment screened from public view, and prohibited the removal of required landscaping. She reported the review procedure required Architectural Review only for co-location projects. She noted approximately 30 public speakers, both for and against, attended the Architectural Review Board (ARB) public hearing on December 8, 2011. She indicated the ARB recommended conditional approval to the Director of Planning, who approved the application with the understanding that the Council would review the anticipated appeals in a public hearing. She reported the approval conditions required: removal of the second antenna; placement of the battery backup cabinet above the prism cabinet; and Public Works and Utilities selection and approval of trees. Staff noticed the Director's decision by mail, timely appeals were received in December 2011, and notice cards were mailed regarding the Council hearing date. She said Staff received several additional appeals and letters, and those had been forwarded to the Council. She noted the ARB discussed in August 2011 the AT&T prototype and shared guidelines for placement of all DAS installations. She indicated the guidelines were designed to help AT&T determine locations which met the criteria. She stated the AT&T submittal included an analysis of each proposed and alternative location based on aesthetics and cell-phone coverage needs. She reported the decision on the AT&T installation prototype would set the course for the applicant's future DAS applications in approximately 60 additional locations in Palo Alto. She said the Director's decision to approve this project followed the ARB's recommendation, which was based on the applicant meeting the 11 applicable Architectural Review findings. She indicated the purpose of Architectural Review was to promote visual environments which were integrated into the aesthetics of the

immediate environment with the streetscape setting. She reported the ARB findings were provided in the Record of Land Use Action (ROLUA) and they referenced Comprehensive Plan Policies B13 and B14 to support the approval. She stated ARB Finding 15 was not applicable to the project. She noted Heather Young, Chair of the ARB, was present to represent the ARB and its consideration of the project. She also noted the presence of Dieter Preiser of RCC to answer the Council's technical questions. She reported during the review process Staff met with Mr. Preiser at the applicant's expense to assist Staff with the analysis of the application materials, including the noise report. Mr. Preiser reviewed the AT&T letter regarding the undergrounding of equipment and Mr. Cox's statements regarding exploration of alternative technology. Mr. Preiser determined that the applicant's noise analysis was adequate in its assumptions and methodology. She stated Staff had included a Condition of Approval to provide for onsite testing once the equipment was installed to demonstrate compliance with the City's noise ordinance and the predicted values prior to operation of the site; and such compliance would be verified by Mr. Preiser. She noted Staff had consulted a landscape architect from the firm RHAA to review tree foliage screening of each location and to evaluate the potential for additional plantings.

Mr. Williams indicated the focus had been on the design review aspect of the project. He stated Staff was planning a workshop for the Council in late February or early March to discuss evaluation of substation sites as potential locations for pole erection, and to review the current ordinance and guidelines for possible updating. He said Staff would not be proposing a "wireless plan" or specifics. He noted the Resource Impact section of the report regarding fees charged by the City for facilities and installations was incorrect.

Heather Young, Architectural Review Board Chairperson, reported AT&T initially presented an option with two transmitters atop the pole. She stated the ARB requested AT&T reduce that to one projection, and AT&T did so. She indicated the ARB and AT&T discussed ways to reduce the number of pieces of equipment on the poles and to orient them in a way to minimize the visual or physical intrusion on the local environment. She noted AT&T made modifications based on the ARB's comments. She indicated AT&T also reviewed alternate designs that might shroud the equipment; however, those designs were not feasible because they increased the size of the equipment. She stated AT&T provided color options for the equipment, and the ARB recommended either a tan or brown to blend with the color of the poles. She reported AT&T also located poles in locations with existing evergreen trees, which would help equipment blend with the environment. She said in locations without trees, AT&T proposed to add trees. She noted

public speakers expressed the importance of service during an emergency. She stated the purpose of the recommendations was to minimize the equipment's intrusion on the aesthetic environment.

Vice Mayor Scharff called for questions from the Council.

Council Member Burt asked if applicant would pay for the tree plantings.

Ms. French answered yes.

Council Member Burt inquired if trees would disrupt transmission once they grew to the height of the antenna.

Ms. French asked if he was referring to an alternate location.

Council Member Burt asked for clarification of trees blocking transmission.

Ms. French said given that there is an existing tree and looking at the interference that tree might cause loss of transmission.

Council Member Burt asked if his assumption that an existing, mature tree would block the antenna, whereas the new trees would block the box rather than the antenna, was correct.

Ms. French answered yes.

Council Member Burt inquired if the Council granted approval on this issue, would it also enable any additional pole installation which would not be subject to ARB review in the future.

Mr. Williams indicated there was still a process, but it would not be subject to the full ARB review.

Council Member Burt asked if the Council could limit approval to the proposed 20 installations only in order to review subsequent alternatives in design, equipment and locations.

Ms. French answered yes, as the application before the Council concerned only the 20 installations.

Council Member Burt inquired if the statement that noise was not an issue was relative to compliance with the noise ordinance or was a subjective statement indicating the noise was insignificant.

Planner, Clare Cambell indicated the statement was relative to compliance with the noise ordinance.

Council Member Burt asked if there was a subjective description of the noise level as residents had indicated it was a significant background noise.

Mr. Williams stated Staff had requested a mock up at a site to allow Staff to experience the noise level prior to the installation becoming operational; however, the applicant had not been able to comply with that request prior to the hearing.

Council Member Burt noted Staff had recommended the elimination of the battery backup system while ARB recommended including it. He inquired why Architectural Review would add equipment, and why did Staff oppose the battery backup.

Mr. Williams indicated Staff opposed the battery backup due to its visibility, but realized the lack of battery backup was a detriment to coverage in emergency situations. He said ARB felt it wasn't visually intrusive enough to remove it from the pole, while it served a desirable purpose.

Council Member Burt asked if there was another color choice that would make the equipment less visible.

Ms. Young stated a green tone was the color of Palo Alto. She noted AT&T prepared renderings using a green and a brown tone. She indicated the ARB felt the green tone would blend in with a nearby evergreen tree; however, in this situation a green tone would be prominent. Concerning the battery backup system, she said the ARB felt having a second unit nearby in the same color was a reasonable trade-off for the benefit of having cell service during emergency situations.

Council Member Burt asked what type of batteries were being used, and whether more compact batteries were a feasible alternative that would reduce the size of the box.

Ms. Young stated Staff did not know the size; however, the Conditions of Approval specifically required the applicant to install smaller cabinets as technology improved.

Council Member Burt questioned the type of battery technology in use and whether a compact battery technology was an alternative now.

Council Member Holman asked why this design was being placed on existing poles rather than faux trees or an artistic pole design.

Ms. French indicated the applicant didn't have a menu of options. She noted ARB had discussed different means of camouflage, and the faux tree concept had been proposed for use with multiple antennas rather than a single antenna.

Council Member Holman inquired as to the results of the IDEO meeting.

Mr. Williams said the large size of the boxes required a large solution, and IDEO would need a substantial amount of time to design a solution for that size. He indicated IDEO had several ideas for designs if the size were smaller. He indicated the structures were more obtrusive than the proposed structure.

Council Member Holman asked if the ARB saw any of the IDEO concepts.

Ms. French answered yes, and noted there was a series of concept sketches from IDEO.

Ms. Young indicated the ARB saw two different versions. She stated the concept of combining all pieces into one large unit was not successful. She said residents' concerns about a single tower proposal led to its withdrawal and submission of the current proposal.

Council Member Holman thought a darker brown color would be more consistent with the color of the pole.

Ms. Young stated there was a Condition of Approval requiring review of the color closer to installation. She noted the color of poles varied depending on sun exposure.

Council Member Holman did not recall a Condition of Approval regarding color.

Ms. French answered there wasn't one. She stated Condition 7 of the Approval noted an example color, but did not require that color be used.

She stated if Staff determined the color did not match the pole, they could require it match.

Council Member Holman noted the variety of dates on the plan pages and the references to dual antennas. She referenced the Record of Land Use Action statement that AT&T did not update the dates on the plans which were revised from September. She asked what they were referring to going forward.

Ms. French explained the date stamped on the plan at the time of submission was the date on the ROLUA, and AT&T neglected to revise the dates on their plans.

Council Member Holman suggested that should be clarified. She asked if Staff considered adding a condition requiring the applicant to remove damaged or abandoned equipment prior to issuance of new permits.

Ms. French thought it could be a part of the Master License Agreement, and if it wasn't, it could be added to the Conditions of Approval.

Council Member Holman recalled information regarding taller antennas being placed on City-owned infrastructure; however, AT&T stated that would not satisfy their needs. She inquired whether Staff had an update on that issue.

Mr. Williams answered Staff would have to determine if that was viable, and Staff had informed AT&T about this issue. He indicated AT&T's response was that there were constraints that prevented use of taller antennas, but it would continue to evaluate this issue as it moved forward with the program. He did not feel it was an alternative for the proposed 20 antennas especially given the timeframe.

Council Member Holman asked if some of the fans operated continuously.

Ms. French indicated their impression was that fans would operate as needed to prevent overheating.

Council Member Shepherd inquired if the utility poles were owned jointly by the Palo Alto Utilities and AT&T.

Ms. French answered yes.

Council Member Shepherd asked if the two-pole concept would have allowed AT&T to use one pole and another carrier to use the second.

Ms. French stated she was correct. She explained the equipment located below the two antennas was designed to handle more than one carrier. She further explained that in a scenario with only one antenna, if another carrier wished to co-locate on the pole after AT&T, then another antenna would need to be added.

Council Member Shepherd asked if that scenario would require use of the goal-post shaped antenna if Council approved it.

Ms. French indicated there would have to be another application.

Council Member Shepherd inquired if another carrier would be required to go through the same process if it wanted to install DAS units on other poles.

Ms. French indicated the new carrier would follow the same process.

Council Member Shepherd asked whether another carrier would pay the City or AT&T for use of a cell tower.

Mr. Williams stated AT&T would derive some funds from that, but the City would receive funds from a license agreement with the other carrier.

Council Member Shepherd asked if the noise from the equipment was equivalent to the noise she heard from the green utility boxes in her neighborhood.

Ms. French reported the dBa mentioned in the noise report was between a refrigerator humming and conversation.

Council Member Shepherd wanted to know if the two noises were similar.

Mr. Williams asked if Council Member Shepherd would like the consultant to answer her question.

Dieter Preiser, RCC Consultants, stated RCC had performed a peer review of the noise study limited to the computational aspects in relation to the municipal ordinance. He did not know the noise she was referring to and could not provide a comparison.

Council Member Shepherd stated neighborhoods with underground utilities would not have access to a DAS system; however, she understood completion of underground utilities would take multiple decades. She felt an explanation would help the Community understand the relationship between this project and the undergrounding project.

Tomm Marshall, Assistant Director Utilities, explained the licensing agreement contained a provision allowing antennas to be placed on street light poles. He stated the DAS antennas would be placed on street light poles in neighborhoods with underground utilities.

Council Member Shepherd asked if some neighborhoods would have underground utilities soon.

Mr. Marshall indicated Staff was working through that issue.

Council Member Shepherd felt undergrounding utilities was an Enterprise Fund project rather than a General Fund project. She asked if there would be a boost in coverage with use of the DAS antennas.

Mr. Williams stated that was a question for AT&T, but he noted AT&T's coverage map indicated there was better coverage.

Council Member Shepherd inquired if AT&T could respond now.

Ms. French noted the map in the Council Packet indicated the locations of the antennas.

Council Member Espinosa noted the Council could not mandate the use of shared towers on public facilities or public land. He asked if approval of the current proposal would raise issues in future discussions of a Master Plan or shared use.

Mr. Williams stated the discussion would include incentives to make approval automatic, and possibly financial incentives. He indicated Staff would put together a package of incentives as well as outlining pole locations.

Council Member Espinosa inquired whether Staff thought the Council was missing an opportunity to have AT&T be a part of the Master Plan for the Community.

Mr. Williams answered he was not concerned about that. He thought AT&T was willing to have that discussion and would welcome an opportunity to minimize the review process.

Council Member Schmid found it difficult to focus on this application when the Council was counting on a strategic discussion regarding policies for the City as a whole. He stated the proposal was for 20 antennas, but the Council was setting a precedent for 80 antennas and perhaps 250 antennas without having that strategic discussion. He asked if the ARB considered the possibility of increasing the number of such elements when it asked AT&T to use one tower rather than two towers for aesthetic reasons.

Ms. Young stated the ARB felt the paired antennas were less desirable than the single antennas even if there were more single elements.

Council Member Schmid asked if the ARB considered three times the number of elements as aesthetically desirable.

Ms. Young didn't know about the ratio, but felt in general an extension of the existing poles was preferable.

Council Member Schmid asked if it was preferable even though the boxes were the most obtrusive element which were closer to eye level.

Ms. Young didn't disagree. She stated the ARB attempted to put the boxes into perspective with backflow preventers, fire hydrants, cable boxes, and telephone boxes, which the ARB asked the applicant to integrate into the local design or to screen them with landscape.

Council Member Schmid indicated trees could not be planted under power lines, yet they were used to screen antennas. He asked if deciduous trees would be replaced with evergreen trees because of this emerging compromise to camouflage antennas.

Ms. French noted the ARB's study session had a menu of guidelines for locating antennas, such as the preference for locations near evergreen trees. She stated there had not been a suggestion of replacing healthy, mature deciduous trees with evergreens.

Council Member Schmid noted the growing number of utilities located in backyards, and asked whether backyards would be considered for locating antennas.

Ms. French explained the Master License Agreement concerned trees within the street rights of way. She did not know of any reason to encourage installations in backyards.

Council Member Schmid asked if the ARB's purview included making decisions for emergencies.

Ms. French thought Staff tried to determine the minimum equipment that needed to be on the pole and tried to add value to the recommendation by requesting removal of the battery box. She stated the ARB heard the applicant's reasoning and considered the City's goal for emergency services, both of which outweighed the aesthetic component.

Council Member Schmid asked if legally the ARB was to consider aesthetics only.

Ms. French indicated that was the thrust of the Architectural Review.

Council Member Schmid mentioned one statement that the State determined the fee the City could charge for using the utility pole and another statement that the City could create fees and incentives. He asked if the Council had the discretion to set fees or costs of applications.

Assistant City Attorney, Don Larkin, referenced the new law limiting the Council's discretion on the fees for pole attachments. He stated the City had less discretion regarding the fees on pole attachments, but more discretion regarding fees for poles on City substation sites.

Council Member Schmid asked if the City could charge application and hearing fees.

Mr. Williams answered yes. He thought the application review fees stood on their own, and applicants had to pay the cost of that service; however, the cost to rent a pole for a pole attachment was different.

Council Member Schmid inquired whether the earlier comment regarding incentives fit into the fact that the City could charge fees.

Mr. Williams agreed it would fit into that or, as Mr. Larkin indicated, the pole was on City sites.

Council Member Price asked whether subsequent applications by this applicant would be subject to Staff review only if the Council approved the process.

Ms. French said that was correct with the caveat that it was appealable to the City Council.

Council Member Price felt there would be a growing demand for these kinds of services. She inquired if Staff had reviewed the practices in other communities.

Mr. Williams stated Staff was familiar with a number of communities, many of which had requirements for Conditional Use Permits (CUP) and stand-alone poles. He said DAS installations were not widespread, so Staff was not sure how other cities handled them. He thought the dictates of federal and state legislation required cities to handle them administratively with perhaps an appeal process.

Council Member Price asked if other communities were addressing the policy implications and formulating wireless communication plans in order to address these issues.

Mr. Williams indicated Staff was surveying other communities to provide information at the Council's workshop. He said the communities were reviewing their regulations, but Staff had not found cities who were preparing wireless plans. He felt Palo Alto was unique in that it owned its owned utility.

Council Member Price thanked the Community, Staff and applicant for providing information.

Council Member Klein provided background information on undergrounding utilities. He recalled the City began the undergrounding program in the early 1970s; the program had been financed by the Utilities Department to a certain degree; and approximately 40 percent of the City had been undergrounded. He stated there were two reasons the City had not undergrounded more area: 1) the City only co-owned the utility poles and had to seek AT&T approval for an undergrounding district; and 2) all completed undergrounding had been performed on the basis that City Utilities paid for the undergrounding to the road and the landowner paid for the remaining distance. He reported several districts had ceased undergrounding efforts once they learned the costs.

Mr. Marshall estimated the current cost of undergrounding for the landowner was between \$3,000 and \$5,000.

Council Member Klein indicated these were the reasons for lack of widespread undergrounding.

Public Hearing opened at 8:48 P.M.

Paula Rantz (Appellant) stated she was an AT&T customer, and she wanted better coverage. She felt the Community wanted better coverage. She filed her appeal because she thought the City had some right to self-determination, to consider alternative technologies; however, in reviewing the packet she found she did not have many rights. She said the State had taken away the Community's power to determine the character of the Community. She referenced the limitations listed in state and federal laws. She filed her appeal asking the City Council to deny the application until it developed a Master Plan. She hoped Citizens united to create a Master Plan and to discuss alternate technologies.

Stacey Bishop (Appellant) admitted she made a mistake in her original appeal by mentioning the long-term health effects of an antenna less than 20 feet from her family's home. She stated AT&T attempted to dismiss the substance of her arguments by focusing solely on health concerns and ignoring her core arguments against placing the antenna. She repeated the reasons stated in her appeal. She advocated relocating the antenna to 1920 Park Boulevard.

Richard Maltzman (Appellant) stated the consultant's noise report was a joke in that the consultant only reviewed AT&T's noise report and did not perform an independent test. He suggested AT&T request citizens volunteer their property for location of the poles.

Jan Sumida-Riker (Appellant) indicated her block did not have a coverage problem and was not in a dead zone. She agreed with other appellants that AT&T should place antennas where they were needed and wanted. She felt the pole selection was based on aesthetics rather than safety. She listed reasons for rejecting the pole on her block. She asked the City to consider placing antennas on City-owned property.

Tench Coxe, Cooley LLP, felt creation of a Master Plan would increase efficiency in the process. He thought the battery backup would be more intrusive and wanted a better understanding of the battery used. He noted AT&T did not support voice calls over WiFi. He listed some fallacies

concerning WiFi usage. He indicated he appealed in order to raise the level of the discussion. He appreciated Director Williams' efforts.

Paul Albritton, Mackenzie & Albritton, LLP, discussed three topics: the scope of review, the steps AT&T followed to receive ARB approval, and the appeals. He referenced the laws regarding placement of telephone equipment. He said AT&T took Architectural Review seriously and had withdrawn their first application because of aesthetics. He stated AT&T had achieved lower noise levels in order to comply with the Municipal Code. He described AT&T's efforts regarding Community outreach, equipment placement and design, and selection of battery. With regard to appeals, he indicated state and federal laws limited the ability to reject AT&T's proposals in favor of WiFi or macro cells. Regarding the Bishop appeal, he stated AT&T worked with Staff and the ARB in deciding to move the antenna from 1920 Park to 1880 Park for aesthetic reasons. He was confident this location would not have acoustic or health impacts. Regarding the Sumida-Riker appeal, he indicated the appellant's concerns were CUP issues, not design issues and not within the scope of review of the City Council. He stated DAS was the Cadillac solution, cost more than macro solutions, was robust, provided in-building service around the node, and was the best method to provide wireless service.

Council Member Burt asked if the lead acid battery was the smallest battery available that would fit inside the box.

Mr. Albritton indicated the battery decision was based on a combination of heat, powering the battery, life of the battery and ability to service the battery. He stated AT&T was constantly searching for alternative battery solutions.

Council Member Burt asked what were the other battery technologies that were more compact that could work in this situation. He inquired if lithium ion batteries were feasible.

Mr. Albritton could not answer that question. He said he had seen lithium ion battery units in LTE cabinet equipment.

Council Member Burt inquired if Mr. Albritton had seen lithium ion used.

Mr. Albritton indicated he had seen them incorporated in large cabinetry with large cooling devices in a macro cell facility.

Council Member Burt also questioned the heat produced. He asked if there was a single expert who could answer his question.

Mr. Albritton explained the batteries were gel to prevent leakage in the event of damage.

Council Member Burt focused his question on the size of the battery and the enclosure required in order to use a more compact battery.

Mr. Albritton stated AT&T was investigating smaller battery designs and hoped they would be available sooner rather than later. He indicated the Condition of Approval that obligated AT&T to use new technology.

Council Member Burt asked if that meant retrofitting.

Mr. Albritton answered yes. He said it was a cost-benefit situation for AT&T.

Council Member Burt reiterated the Condition of Approval required retrofitting of new technology, but AT&T determined if the technology was cost effective. He asked how that benefited the Community.

Mr. Albritton thought that scenario put the Community in the driver's seat. He explained the Community determined if the reduction in size was warranted with respect to the backup protection.

Council Member Burt asked if the Community would have to choose between battery protection in an emergency and a compact battery box, if there was a cost trade-off to AT&T. He also asked if AT&T was the sole decision maker in determining whether to install a more compact battery.

Mr. Albritton felt the question was hypothetical. He said AT&T would expend the resources and funds to include battery backup in its Palo Alto facilities, because AT&T felt the backup service is important to the Community. He expected AT&T would have the same motivations tomorrow as today to include the battery backup for the Community. He expressed concerns about replacing batteries every year with smaller batteries and confirming the batteries were actually smaller.

Council Member Klein asked for the dimensions and weight of the batteries.

Mr. Albritton replied 22 by 27 by 18. He stated this battery box was similar to boxes being used by other utilities. He indicated he would provide the weight of the battery.

John Williams expressed concern over a possible reduction in property value in that people wouldn't choose to buy a home with a view of the antenna. He stated the antenna was ugly and extended the height of the telephone pole. He suggested the blue color for the antenna so it would blend with the sky. He expressed another concern of bearing the burden of the antennas without receiving a benefit. He thought Staff should have conducted more outreach and analysis of the potential impact on the City as a whole.

Kristen McMichael objected to the location of the antenna across the street from her home and believed it would affect property values. She stated it was just ugly. She expressed concern about AT&T noticing only 20 antennas when it knew there would be 80 antennas.

Gerald Lucha felt the improved coverage was needed now and asked the Council to approve the plan.

Russell Tory commented that cell phone towers were good for health. He stated that adequate cell phone transmitting towers allowed a cell phone to remain within the government safety limits and was not hazardous to the brain.

Robert Smith felt Palo Alto did not have adequate cell phone coverage because demand was outstripping the ability to obtain permits for new installations. He noted the principle objection to the antennas was appearance. He didn't think the proposed antennas would be noticeable. He recommended the Council move forward with the proposal.

Nancy Peters did not understand why the antennas had to be located on the telephone poles. She thought the answer was the federal ruling stating utilities trumped the cities, and the threat of a lawsuit. She expressed concern that AT&T had the power to overrule the City's procedures.

Kevin Lortie thought technology was moving forward and connectivity was part of the future.

Richard Brand noted his background with Nortel Networks and experience with the proposed equipment. He said there was a difference between cellular and WiFi. He stated wire line was a monopoly; however, cellular was a different matter. He indicated the project would require more cables on

the poles and power lines to charge the batteries. He encouraged the Council to delay approving the proposal.

John Monroe supported the Director's Architectural Review approval of AT&T's proposal. He stated the project would provide much-needed improvement of cell phone coverage. He encouraged Staff to work with AT&T to install equipment as quickly as possible.

Marc Bishop stated the pole at 1880 Park Boulevard was in the direct line of sight from his kitchen, upstairs bedrooms and living room. He was confused by the aesthetic shielding provided by evergreen trees and by the trees blocking the signal. He suggested trimming the tree or moving the pole away from the tree.

Neva Yarkin suggested technical volunteers review future plans of antennas in Palo Alto prior to installation of the antennas. She expressed concerns regarding the natural beauty of Palo Alto streets, health impacts and noise. She thought the Council should formulate a Master Plan with outside technology experts.

Vanessa Leighton commented that antennas would affect property values. She was concerned about the effect of antennas on the resale value of her home. She did not understand how the City could not have a plan when the first AT&T proposal was submitted in March 2010. She suggested the Council provide clear and specific written guidelines with enforceable commission oversight.

Kevin Curry spoke regarding 1880 Park Boulevard and provided a much different photo of the same pole featured in the presentation. He had attempted to talk with AT&T about the pole location and felt their basic information was incomplete.

Shelton Ehrlich commented on aesthetics with regard to a television antenna, portable toilet and solar panels. He commented on the vast usage of cell phones and the lack of evidence regarding health effects.

Kent Mather did not doubt the need for improvement of cell phone service. He suggested a majority of people did not notice utility poles. He felt the pole aesthetics was acceptable and supported approving the application.

Herb Borock stated the application required a Conditional Use Permit and was subject to the California Environmental Quality Act (CEQA). He provided information to the Council concerning the legislative history of

wireless installations. He believed this information was substantial evidence for a successful lawsuit under the California Environmental Quality Act. He commented on appellants who could file such a lawsuit.

Jan Reimer commented on poor cell phone service and supported approval of the proposal.

Leon Beauchman supported the process of the ARB and Staff and appreciated its thoroughness. He stated the Wireless Communications Initiative was focused on making the Silicon Valley the first 4G region; however, only one city had 4G coverage.

Ken Allen felt alternatives to cell phone coverage were needed in terms of capacity and competition. He indicated all carriers were needed to prevent overloaded capacities. He supported moving the pole location from 1880 Park Boulevard.

Stephany Munoz agreed with the previous speaker regarding federal and state governments pre-empting individual rights. She commented on required contracts with cell phone carriers. She did not support granting a Conditional Use Permit.

Jean Wilcox was concerned about the possible noise from the equipment. She did not want AT&T installing noisy equipment on a pole located in her backyard. She asked that the Council not grant AT&T permission to install equipment on residents' property in neighborhoods unless AT&T removed the noisy fans.

Lynn Brown indicated the Community's role was to protect itself from being exploited from AT&T's profits. She said all poles were ugly, but the discussion concerned which pole was less offensive. She felt the City was moving backwards by locating antennas on the poles.

Ms. Rantz suggested residents form a group to possibly assist the City should it become involved in a lawsuit and to research cell tower technology.

Mr. Maltzman felt AT&T had been disingenuous throughout the project. He said AT&T's notices did not explain the project and its implications. He suggested the City should condition its approval of antennas on AT&T agreeing to allow undergrounding of utilities. He again suggested AT&T take volunteers for placement of the antennas.

Ms. Sumida-Riker agreed with Mr. Maltzman's comments. She again questioned AT&T's choice of pole locations based on aesthetics rather than safety.

Mr. Albritton thanked the Council for its time and efforts. He felt the plan was comprehensive. He stated the weight of the batteries was 300 pounds, the weight of the box was approximately 50 pounds, for a total of 350 pounds. He said AT&T used only lead acid batteries on its poles. He reiterated Staff's recommendation of no battery backup and ARB's recommendation of a battery backup. He corrected the Staff Report regarding the antenna height above power lines. He noted AT&T agreed to plant trees where antennas could not be placed adjacent to trees. He explained the variation of color in the photos. He stated AT&T had been trying to improve its service in Palo Alto for seven years. He indicated AT&T would defer to Staff in locating an antenna at either 1880 Park or 1920 Park.

Public Hearing closed at 10:15 P.M.

Council Member Burt asked if the Council had the prerogative to require batteries and place constraints on the box size.

Mr. Williams thought that, within reasonable cost parameters, the Council could require the smallest battery installation possible. He indicated the consulting firm could help the Council with those issues.

Mr. Larkin stated the Council could require the applicant to use best practices as long as the Council did not create a barrier to entry into the market.

Council Member Burt asked if there two aspects to best practices: 1) the most compact battery; and 2) Council requirement of a battery system.

Mr. Larkin thought AT&T stated it would provide the batteries.

Council Member Burt indicated AT&T stated it would provide the batteries if the technology was not cost prohibitive. He questioned if the Council could require a battery system even though AT&T felt it was cost prohibitive.

Mr. Larkin felt the Council could require AT&T to maintain batteries provided they were not cost prohibitive.

Council Member Burt asked whether AT&T could refuse to install batteries on new poles if the Council required new technology batteries.

Mr. Larkin thought the Council could set a policy to require new batteries. He felt it would become an issue if the Council's requirements were not feasible.

Council Member Burt noted the concern of setting a precedence with regard to the Master Plan and the prospect of 80 additional poles.

Mr. Williams indicated it was 60 additional poles for a total of 80.

Council Member Burt inquired if approval of the design could be worded such that it wouldn't set a precedence.

Mr. Larkin stated the proposal tonight was for 20 poles only. He indicated it was a minor Architectural Review and as such the Director could ask for a full ARB hearing. He thought the Council could express a wish for a full ARB hearing for every application.

Council Member Burt stated the Council did not want a full ARB hearing for every application; yet the Council needed to push this forward through either a Master Plan or progress the design or the technology without being constrained by tonight's decision.

Mr. Williams did not feel the Council would be constrained by that. He suggested it was a separate application and could be viewed relative to the situation at that time.

Council Member Burt asked whether significant trimming of the tree at 1960 Park was a feasible alternative to cutting it down.

Ms. French said the tree appeared to be growing on the park and there was a concern about cutting trees in the park.

Council Member Burt reminded her his question concerned trimming not removal.

Ms. French mentioned consulting with arborists.

Council Member Burt asked if that was an alternative.

Ms. French said they hadn't consulted with an arborist.

Council Member Holman referenced the third finding on Packet Page 224 regarding selection of poles adjacent to evergreen trees. She thought it was a deciduous tree at the 1880 Park property, which would not satisfy the requirement. She also referenced the noise ordinance regarding a maximum increase of 15 dBa 25 feet away. She questioned the property being subjected to a greater impact because it was only 20 feet away, and perhaps creating discrimination.

Ms. French suggested the consultant could provide that information.

Mr. Preiser stated the firm had reviewed the applicant's noise study and concluded it was within the City's policy.

Council Member Holman asked if the Council was being less careful in this location with the combination of the house being closer to the pole and the deciduous tree.

Mr. Preiser indicated any kind of vegetation would tend to attenuate the acoustical emissions, but this was difficult to assess. He said the best approach would be to test the specific location in the given environment after installation.

Council Member Holman said the tree question was intended for Staff.

Mr. Williams replied that was a guideline, and that not every location had an evergreen tree, but an evergreen was better than a deciduous tree. He stated the noise issue related to compliance with the noise ordinance.

Council Member Holman asked Staff to respond to Mr. Borock's questions regarding CUP and CEQA and segmenting projects.

Mr. Larkin was not aware of any published cases, but he had found unpublished cases addressing this issue. He determined that multiple utility sites for a project does not remove it from the exemption for small projects. Regarding the CUP, he stated the City's utility poles were co-locations of utilities because there were existing utilities there. He said discussions in 2006 referred to stand-alone wireless facilities, not co-locating on utility poles.

Council Member Holman indicated one of the functions of CEQA was to address cumulative impacts. She asked how the Council should determine if small projects would have a large impact.

Mr. Larkin indicated courts have said there was not a cumulative impact when there were distinct small projects. He said the proposal was not small interconnected projects to form one massive project. He explained the case law on this issue.

Council Member Holman inquired if the City undergrounded utilities would AT&T be required to relocate their equipment at its expense.

Mr. Larkin stated that was a provision in the Master Lease Agreement.

Mr. Williams recalled that was a specific question that evening.

Council Member Holman asked if Staff was confident the requirement to remove damaged or abandoned equipment was also in the Master Lease.

Mr. Larkin indicated it was in the Ordinance and the Master License Agreement.

Council Member Holman asked whether Staff could provide an assurance that there would be Code enforcement and penalty assessment regarding noise issues.

Mr. Williams said Staff would review it as a Code enforcement issue, and thought there had been success with enforcing noise issues. He indicated this was more clear cut than other cases since there were Conditions of Approval regarding compliance. He felt the City had a technique with the battery box of instructing AT&T to turn it off until it could be made to comply with the ordinance.

Council Member Holman referenced Packet Page 430 regarding IDEO's concepts not being reviewed, and asked when were the concepts prepared and had there been adequate time to make those determinations. She was interested in obtaining better designs for the equipment going forward.

Ms. French thought AT&T considered the IDEO concepts and determined the concepts would require time.

Council Member Holman asked what was a long time and how long had it been since the concepts were presented.

Ms. French indicated the ARB discussion was held on December 8, 2011.

Council Member Holman wanted to know when the concepts were presented.

Mr. Williams stated the initial ARB review was in August 2011. He guessed it was four months since the concepts were presented.

MOTION: Council Member Price moved, seconded by Council Member Shepherd to uphold the Director of Planning & Community Environment's decision to approve the Architectural Review application for 20 wireless communication facility (WCF) installations, based upon the findings and conditions of approval described in the Record of Land Use Action.

Council Member Price thought approving the application and the process would provide enhanced technology and wireless capacity. She stated approval would better serve the residents, businesses, and emergency services. She believed the locations, design and operations issues were sufficient. She supported upgrading of the wireless network. She believed communication and data needs were significant and felt improvements would support the economic development strategies.

Council Member Shepherd felt this issue needed to be brought before the Council. She thought it was critical to keep residents without land lines connected to emergency services, family and businesses. She stated completing coverage in Palo Alto was important to her as a Council Member. She hoped schools would also have better coverage. She had reviewed the prototype for the antenna, was surprised by its minimal appearance, and felt it would blend into the current utility structure.

Council Member Klein agreed with the comments of Council Member Price and Council Member Shepherd. He also agreed with Ms. Rantz's comments regarding limited authority. He was not in favor of a lawsuit as one speaker stated. He did not feel the Council should waste taxpayer funds on a lawsuit the City was sure to lose. He agreed with the comment that the public did not notice telephone poles, particularly above eye level. He thought this proposal would not detract from the Community or cause the Community to be less desirable. He questioned the 1880 Park Boulevard location and favored excluding that site from the Motion. He also suggested Staff and ARB consider the merits of 1880 Park versus 1920 Park as the applicant would consider either site.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to exclude 1880 Park Boulevard and direct Staff and Architectural Review Board to consider 1920 Park Boulevard instead.

Ms. French indicated 1880 was AT&T's proposed site and 1920 was the alternate that was considered feasible.

MOTION: Council Member Schmid moved, seconded by Council Member XXXX to accept the original Staff recommendation to not include the battery backup box.

MOTION FAILED FOR LACK OF A SECOND

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to amend the language in the Record of Land Use Action, Section 6-Conditions of Approval, No. 7, that the antenna cabinet boxes and pole extension shall be painted a matte color matching the existing color and finish of the utility pole..., with the remainder of No. 7 to remain the same.

Council Member Holman asked if the FCC rules were different for cellular and WiFi, as indicated by Mr. Brand.

Mr. Larkin asked for more information.

Council Member Holman asked if the Council was bound by constraints presented because this was cellular and not WiFi.

Mr. Larkin stated wireless telecommunications were considered under the Telecommunications Act to have the same status as common carriers. He indicated the U.S. Supreme Court had said that wireless telecommunication carriers were to be treated the same as wired telecommunication carriers. He said the constraints would apply since the proposal involved cellular service. He explained the Telecommunications Act provisions and California laws with regard to utility poles and cellular service.

AMENDMENT: Council Member Holman moved, seconded by Council Member Burt to exclude 1880 Park Boulevard from the approval and to direct Staff to investigate alternate locations to meet the service needs of that cell area.

Council Member Shepherd asked if Staff would have to follow the noticing process again.

Mr. Williams answered yes.

Council Member Shepherd indicated the appeal process would return to the Council.

Vice Mayor Scharff asked Council Member Klein if his original amendment was correct to exclude 1880 Park or did he wish to give Staff discretion to decide between 1880 Park and 1920 Park.

Council Member Klein said it should be "and Staff consider."

Vice Mayor Scharff asked if Council Member Klein was giving Staff the authority to continue with 1880 if it chose, or was he excluding it and going to 1920 or nothing.

Council Member Klein expressed his concern that the residents of 1920 had not had a chance to speak to the issue.

Vice Mayor Scharff asked if he was allowing Staff the discretion to decide 1880.

Council Member Klein answered yes.

Council Member Holman stated the purpose of the Amendment was to give Staff and AT&T flexibility and latitude in determining a different location. She indicated the Incorporation accepted by the maker and seconder proscribed a second location.

Vice Mayor Scharff indicated it didn't; that it was either 1880 or 1920. He asked if Council Member Holman's Amendment would exclude 1880.

Council Member Holman answered 1880 would be excluded, and other alternatives would be considered.

Council Member Burt asked if she was excluding 1880 from approval tonight or from future consideration.

Council Member Holman said her intention was to exclude 1880 from approval tonight and to look at alternate locations.

Council Member Burt asked if alternate locations included 1880.

Council Member Holman replied no.

Vice Mayor Scharff asked if the language should be "consider excluding 1880."

Council Member Burt stated he was excluding 1880 tonight and directing Staff to consider alternative locations, which language did not preclude Staff from concluding 1880 was the best location.

Council Member Shepherd asked how that language was different from the original Motion.

Council Member Burt explained the original Motion limited Staff to one alternative location, 1920.

Vice Mayor Scharff inquired if makers and seconders were giving Staff the discretion to make the determination, with an appeal from that determination, under both scenarios.

Council Member Klein thought asking Staff to review other locations exceeded the Council's authority in that the Council did not select all the sites. He recalled that both the 1880 and 1920 sites were acceptable to AT&T.

Council Member Holman did not feel the Council was overstepping. She added the basis for the denial of 1880 tonight was based on the visual impacts and the effect on that property. She noted Staff had not considered the park setting, 1960.

Council Member Burt suggested the language should be "alternative locations that would meet the services needs of that cell area."

Vice Mayor Scharff asked if Council Member Burt would like to speak further to his second.

Council Member Burt did not know if 1920 was the better alternative. He thought there were some open questions. He indicated this was a Staff decision, but the Council was asking for re-examination. He stated the decision was appealable if there were not better options.

AMENDMENT PASSED: 7-1 Shepherd no, Yeh not participating

Council Member Burt spoke to the subsequent applications being compliant with the Council's future Wireless Master Plan.

Ms. Stump noted that items related to future planning efforts or future applications were not on the Agenda. She stated the Council was reviewing an appeal of a specific application. She thought the Council should focus on that in terms of the actions it took tonight.

Council Member Burt inquired about the best means to ensure the next 60 applications would have designs approved tonight.

Ms. Stump indicated the Council this evening was not considering 60 or 80 applications; the Council was considering an application for 20. She stated any future consideration would have to be based on the application that was made, the nature of the application, the circumstances in the law at the time, and the facts. She thought the Council was not in a position to fully anticipate those issues.

Council Member Burt asked if the battery packs were permitted or required under the current conditions.

Mr. Williams referenced Conditions 4 and 5 and suggested adding language that battery packs were required unless the Council approved otherwise.

Council Member Burt noted Condition 5 stated the size of the battery cabinet shall be reduced as technology improves. He recalled AT&T indicated that decision was within its discretion. He suggested changing Condition 4 to require backup battery systems and retaining Condition 5, then asked if that language would move the discretion from AT&T to the Council.

Mr. Williams thought it did, but suggested the Council had to be careful with regard to the City Attorney's comments.

Council Member Burt suggested "subordinate to FCC guidelines" be placed in the Motion.

Ms. Stump indicated Staff had not fully researched the FCC rules relating to batteries. She expressed concerns about creating a new requirement without the opportunity to fully understand it.

Council Member Burt explained that changing Condition 4 to require the battery and including "subject to FCC guidelines or requirements" was not saying the Council would do something against that.

Ms. Stump thought Staff could draft language indicating the Council's interest in that subject to any legal requirements and regulations.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to amend the language in the Record of Land Use Action, Section 6-Conditions of Approval, No. 4, to indicate that backup batteries are a requirement subject to FCC and other applicable rules and guidelines.

Council Member Holman asked Council Member Burt if he was saying that the battery cabinet would be a requirement.

Council Member Burt answered yes, that it would be become a requirement subject to FCC and other legal guidelines. He indicated Condition 5 remained the same.

Council Member Espinosa stated the Council was moving forward with a comprehensive plan for wireless across the City. He noted the Council could not mandate because it was restricted by federal laws. He felt progress had been made since the beginning of this project. He was excited that coverage would meet the expectations of residents. He thanked AT&T for being diligent throughout the process.

Council Member Schmid was troubled by the lack of opportunity to perform a strategic review, but sensitive to the need to move forward. He expressed concern that the Council's only discretion was aesthetics. He felt a strategic discussion could include emergency needs and an exploration of fiber optic options.

Council Member Holman noted the lack of discretion and lack of a Master Plan was frustrating. She appreciated the appellants bringing up these issues. She requested the public refrain from harsh judgments and name calling in emails to the Council. She requested AT&T aggressively seek more creative and more aesthetically pleasing solutions to providing cell service in the Community.

MOTION AS AMENDED PASSED: 7-1 Schmid no, Yeh absent

Council Member Questions, Comments and Announcements

Council Member Klein reported on meetings of the Bay Area Water Supply and Conservation Agency (BAWSCA). He stated it had been a very dry winter, but water storage facilities were in great shape prior to the winter. He indicated a continued lack of rainfall would affect the water situation in a year. He reported the Water Supply Improvement Program operated by San

Francisco was about half complete; and the tunnel project from Fremont to Menlo Park had completed construction across three earthquake zones.

Council Member Holman noted review of the Master Plan for wireless distribution was scheduled for February 21, 2012, and two Council Members would be absent on that date. She asked if there was an alternate date for this review, as she felt all Council Members should be present for that discussion.

City Attorney, Molly Stump, responded based on earlier discussions with Mr. Williams, she did not feel there was an intention to present a Master Plan on that date. She thought February 21 was a follow-up to the study session.

Council Member Holman expressed interest in providing input on the topic.

ADJOURNMENT: The meeting was adjourned at 11:18 P.M.