

## **CELL TOWER ADVISORY COMMITTEE (C-TAC)**

### ***Meeting Minutes***

March 18, 2014

#### **I. Call to order**

Anthony-Paul (AP) Diaz (Chair), called to order the sixth regular meeting of the C-TAC at 7:30 p.m. on January 21, 2014 at the Crowell Public Library – City of San Marino (Barth Room) 1890 Huntington Drive, San Marino, CA 91008.

#### **II. Roll call**

The following members were present:

AP Diaz, Ann Eittinger, Strefan Fauble, Richard Grimes, Ming Jiang, Andrew Ko, Stacy Lewis, Peter Lichtman, Miriam Nakamura-Quan, Zillah Tobiano, Brinton Young, and Doug Wilson, Superintendent Loren Kleinrock and School Board Member Chris Norgaard.

Additional guests included: School Board Member Shelly Ryan, and District counsel, Dean Pappas of Goodwin Procter LLP.

#### **III. Minutes**

The meeting minutes from the last meeting on 1/21/2014 were approved with amended change(s).

#### **IV. District Updates**

Superintendent Loren Kleinrock updated the committee on actions by Verizon since the last meeting including a Verizon request to drill core samples in preparation to move the tower six feet from the current location.

#### **V. Outside Counsel Updates By Dean Pappas, Esq.**

Mr. Pappas updated the committee on the status of the Verizon and Global Tower (Now American Towers) carriers' defaults. Both carriers are working to remedy the defaults.

In January Mr. Pappas received a voicemail from Verizon's lawyer, Paul Albritton, concerning their tower in the maintenance yard. The lawyer mentioned the trouble with getting a conditional use permit (CUP) because they can't find the inspection reports or the person

who inspected the tower. He mentioned the possibility of rebuilding the tower. Mr. Pappas followed up with the lawyer requesting an update.

They have submitted the documents they could find to the city and are moving forward with the option to rebuild the tower in the maintenance yard. Verizon's lease is for an 1100 square foot area in the corner of the maintenance yard. If they move the tower outside the lease area to another part of the campus they would need Board approval and an amendment to the lease.

Mr. Pappas relayed the district's concerns about the location of the tower. The lawyer indicated Verizon would move the tower within the maintenance yard if they had the district's approval. Verizon is fully entitled to tear down and rebuild the tower within the leased area, per the current lease contract. They have scheduled to do borings at the new site during Spring break. The board should consider pushing the tower away from the classrooms to alleviate the concerns about the tower falling. Mr. Kleinrock noted that there isn't a spot within the maintenance yard that alleviates the fall zone issue. The tower could still fall on playground areas and the home plate of the Little League field.

Verizon already has a tower at the Huntington library and they claim the maintenance yard tower is needed to cover a possible gap in their coverage and help them with call volume. One of the elements they need to prove to the city is they need this tower and in this location. If the city denies the CUP this will help them sue the city. Since Verizon needs the District's consent to move the tower it could specify some of the parameters for a new tower. The DSA will only certify the cell tower after Verizon gets the CUP. Mr. Kleinrock mentioned they wouldn't have to move the power structure if they stay within the maintenance yard.

Miriam Nakamura-Quan brought up the fact that the current tower and the proposed new tower would share the same CUP number. They are filing two separate requests with the same number. This could pose a problem at the end of the lease when they are required to remove all of their equipment except for the footings. They should file a new CUP so there isn't confusion about what is built and what is left behind or whether you are talking about the old tower or the new tower.

Mr. Pappas believes the CUP would apply to the project, so they would be able to use the same number. Mrs. Nakamura-Quan believes we should remind them there are only fifteen years left on their lease and it's unlikely the district will renew it. She also mentioned a Los Angeles County survey which surveyed thirty-four districts and only three had towers and those leases were for substantially more than what the San Marino Unified School District earns. Other districts were earning \$2,000 to \$2,800 per month.

Mr. Litchman inquired about Verizon's council and what legal steps they might take. Verizon might not secure either CUP requests. It's going to be difficult for them to meet the standards

so they are likely working on plan B. They should have a better working relationship with the city and not be so adversarial with all parties.

Mr. Pappas noted one of their points is there are not many spaces to place the tower due to zoning laws.

Mr. Litchman discussed Verizon's positions and options. They wouldn't let us out of the lease if we had a problem. We should take a similar aggressive approach with them. We shouldn't give them a redo. They weren't willing to help us before and now they are behind the eight ball so they need our help. They can't move forward without our help. They should cooperate with us and get some good will. The community is presenting a resounding call to relocate the tower. From a public perspective the district should not compromise and stand firm.

A judge will look at the lease and see if the city did everything correctly and was there disregard by the city for how they worked with Verizon. The judge might think there is a way to resolve it by simply allowing the tower to be built in another location. Verizon made a mistake by not having a CUP and now can't establish that the tower was built correctly. They are arguing that they get a redo, but we should press hard and remind them they have not cured the defaults.

Chris Norgaard noted that whether the district allows them to build in a new location, we should not rule out Verizon winning at the city level due to coverage issues.

Andrew Ko stated he can't imagine them going forward with a worse lease. Who will have the legal liability? Who will pay for this? How much will the district spend on this?

Richard Grimes brought up several issues. From day one the terms of the lease weren't good, far below market value. The big picture is we don't want the tower where it is. The focus is to move the tower away from the school and address the issues with the lack of a cure. They are out of compliance. They should close the site and file a new proposal for a new tower. I don't see the tower getting approval from the city. We need to treat each item as a separate issue. You didn't cure the lease so you're gone. There isn't enough money to make a compelling case to keep the tower at the school.

In other communities with the same issues they are using modern small cell technologies instead of towers. Small cell nodes would be an easy sell in the city. From a technology standpoint this is what they should do.

Judge Litchman stated that he agrees with Rich and gives his proxy to Ming since he needs to depart before the meeting adjourns. We have a good shot at saying they can't maintain what they have now. They have to tear it down and rebuild it. The district's liability is minimized. Everyone is cooperating with them. The fight is with the city from Verizon's

standpoint. If they don't get the CUP they won't want to talk and instead file a writ of mandamus action.

Stacy Lewis added that Verizon should realize that a cure might take a long time if you move it close by. A site elsewhere could get approval quicker. We should have a candid conversation reminding them they are out of compliance and you'll gain time by working with us. We should think of ways we can sweeten the deal for Verizon.

Superintendent Kleinrock noted the city could approve it. The mayor was bombarded with requests for better coverage. The city might help Verizon find another location to maintain coverage.

The committee discussed the merits of allowing Verizon to proceed or wait for the city's response to the CUP request. Concerns were raised about undermining our position by assisting them now. Everyone seemed to agree that moving the tower anywhere within the maintenance yard wouldn't address the fall-zone safety issue. Verizon has been adversarial from the start of this process and unwilling to work with the District at all. In our negotiations with Verizon we should mention that it is unlikely the school board will renew the lease and even if they get the CUP they will need approval from the Division of the State Architect (DSA), which they are unlikely to get in the current location.

American Tower would consider moving their tower at the High School if we could find a new location within a half mile radius. The Huntington library has a tower on the North-end with Verizon transceivers. A tower on the South-end could be added which may work for Verizon.

Miriam Nakamura-Quan and her husband brought coverage maps submitted by Verizon, which clearly showed the school was a poor location to build a tower. Based on Verizon's maps, showing coverage and capacity needs, the tower should be located next to the Colonial Kitchen. It was also noted that seven of the eleven cell sites in San Marino are in the commercial district. There are plenty of locations not near elementary schools where they could place a tower or small cell site.

The city should use their coverage maps to deny the CUP. The existing Verizon cell tower is clearly not near the center of their coverage gap.

A Carver parent was in attendance and asked about the tower located at the Masonic lodge adjacent to Carver Elementary. Because the tower is located on property subject to the regulation of Los Angeles County and not the district, the issue has not been addressed.

## **VI. Discussion of Next Steps**

The committee discussed various suggestions for what are the next steps in the process.

1. The district can diligently pressure Verizon to respond and cure their default advising them that Verizon is not responding quickly enough.
2. Motion submitted by Strefan Fauble and seconded by Richard Grimes to not agree to allow them to move the tower to a new location on district property.
3. Invite the city manager and a city councilmen to the next meeting.

## **VII. Committee Recommendations**

- a. The committee unanimously voted to request the district to not negotiate with Verizon.
- b. The committee unanimously voted to request that the city manager and a city councilmen be invited to the next meeting.

## **VII. Adjournment**

The meeting was adjourned at approximately 9:30 p.m. The next meeting is scheduled on Tuesday, April 15<sup>th</sup>, 2014.

Minutes submitted by: Doug Wilson

Minutes approved by: C-TAC Committee on \_\_\_\_\_