

Soo, Sheila

From: Mackenzie & Albritton LLP [reception@mallp.com]
Sent: Monday, May 14, 2007 1:01 PM
To: Clerk
Cc: Paul Albritton
Subject: Item for City Council Meeting of May 22, 2007



Berkeley Šter
5-22-07.pdf

Please add the attached letter to the 5/22 City Council Packet re: Use
Permit No. 05-10000033 (Verizon)

Thank you,

Mackenzie & Albritton

MACKENZIE & ALBRITTON LLP

ONE POST STREET, SUITE 500
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010
SENDER'S EMAIL: PALBRITTON@MALLP.COM

May 14, 2007

HAND DELIVERED

Hon. Tom Bates, Mayor
Honorable Members of the City Council
c/o City Clerk, City of Berkeley
2180 Milvia Street, First Floor
Berkeley, CA 94704

Re: Appeal of Zoning Adjustments Board denial of Use Permit No. 05-10000033 (Verizon Wireless Facility, 2721 Shattuck Avenue) filed February 20, 2007

Dear Mayor Bates and Council Members:

When we wrote to you on April 30, 2007, to ask that you schedule a public hearing to review the findings of the Zoning Adjustment Board ("ZAB"), we hoped that you would do so expeditiously. We are thus disappointed that rather than schedule a public hearing, you have continued the preliminary hearing to even decide whether to do so until May 22nd. We are also concerned about the proposal to schedule any public hearing as late as September, as requested by project opponents.

To put our concerns in context, please recall that our client Verizon Wireless filed its application over two years ago, on March 8, 2005, and the ZAB approved it on May 25, 2006. During the intervening year, as opponents appealed the approval, and we appealed the subsequent denial, neither the City nor the opponents have come up with a single valid reason, based on substantial evidence, to deny the application. This is apparent from your own staff reports, as well as the opinion of the independent engineer that the City hired to review the need for the facility (which he confirmed).

As we have stated previously, without minimizing the other serious legal issues raised, this is a rather clear-cut case of unreasonable delay in violation of 47 U.S.C. § 332(c)(7)(B)(ii). While reserving all rights with respect to the extraordinary delay that has already occurred, our client must respectfully request that you schedule any public hearing at the earliest possible date, such as one of the three Council sessions currently scheduled for June. Please be advised that Verizon Wireless will consider any public hearing scheduled later than July 10, 2007, the date proposed by your staff, to be tantamount to denial, and respond with appropriate legal action.

Very truly yours,



Paul B. Albritton

cc (via email only):

Ed McGah, Esq.
Peter Maushardt
James Singleton