



Item #23  
ZAB Appeal  
2721 Shattuck Ave.  
Verizon.

Please refer to the October 23, 2007 Regular City Council Meeting, Item 32 for report materials.

This report is also on file and available for review at the City Clerk Department or can be accessed from the City Council Website.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
<http://www.ci.berkeley.ca.us/citycouncil/>

-----Original Message-----

**From:** Albuquerque, Manuela  
**Sent:** Monday, October 29, 2007 4:34 PM  
**To:** 'mbarglow@california.com'  
**Subject:** Nextel and Verizon suits and related appeals

Dear Mr. Barglow:

At the Council's public hearing on Tuesday October 23, 2007, you spoke on behalf of the opponents of the Nextel and Verizon projects, and asserted that the City was being misled about the applicable law by its City Attorney's office and the outside counsel handling a lawsuit filed against the City and that the City should consider the views of a lawyer who has been advising the neighborhood opponents.

At my suggestion, on Wednesday, October 24, 2007, , City Manager, Phil Kamlarz called you and left a message asking that you give us the name of this lawyer so we could speak to him or her and understand what were the legal points that s/he wished us to consider. By 4:00 p.m. when Mr. Kamlarz had not heard back from you I called to follow-up on his message and spoke to your wife. She said that you had not called back because you were trying to reach this lawyer in Los Angeles to check whether it was all right for you to give us his name. I learned that the lawyer in question was someone my office had independently considered retaining in an advisory capacity in June when this matter was remanded to the Zoning Adjustments Board. At that time the lawyer advised us that the neighborhood proponents had previously consulted him and that he would not be able to consult with the City because the neighbors would not waive any conflict. I also explained that this lawyer was not a litigator and thus would be unlikely to have any views about the pending litigation. We had considered retaining him before any suits were filed.

We heard nothing further from you or your wife until Thursday October 25 at 4:00 pm shortly before the Council's closed session at 5:00. You left a message with the City Manager's secretary which she reported as follows to Mr. Kamlarz : "The attorney that can help with cell antennae issue is Bill Martitorena and Jeff Milching of Ratan & Tucker. Did not leave a phone number but said you had dealt with them in the past."

As you noted to Mr. Kamlarz' office, Bill Marticorena and Jeff Melching of Rutan and Tucker do in fact have extensive expertise on telecommunication and have advised the City on cable and regulation of the public right of way, matters other than zoning. Zach Cowan in my office is expert on zoning issues involving telecommunications. I deliberately did not retain Rutan and Tucker to represent the City in the federal lawsuits so that we could get the expert advice of counsel with no prior connection to the City or this office. Mr. Kirk Trost who I did retain was recommended by the City Attorney of Walnut Creek, Paul Valle-Riestra who is a leader in this field and himself retained Mr. Trost to represent the City of Walnut Creek on telecommunications matters. Mr. Trost's advice has been based upon his own independent investigation and analysis of the facts and the law.

On Sunday October 28 you then sent an email to Councilmember Linda Maio stating that it was a rumor that you had recommended Bill Marticorena to Mr. Kamlarz that you do not recommend him because he advised Verizon ( this is untrue) and that you were trying to help the City because it was in a time bind. This statement is also incorrect. Mr. Kamlarz and I were merely following up on your public claims that you were working with an existing lawyer who had contradicted the City's lawyers. We were not trying to retain additional lawyers.

You also advised Ms. Maio that the neighbors were putting together a team to defend the City. You seem to completely misunderstand the neighbors' role. They and you are parties to a zoning appeal which is the subject of an adjudicatory proceeding in which the City Council is the decision maker advised by its City Attorney's office and outside counsel representing the City in a related lawsuit. The applicants are the opposing parties. No decision has yet been made and the matter is on for decision on November 6.

Please do not contact any individual Councilmembers or send them any emails because the hearing is now closed and the Council's decision must be based on the record before it.

Thank you.

Sincerely,

Manuela Albuquerque  
City Attorney

