

Questions from PC meeting

In utility undergrounding districts, are applicants required to underground all equipment with the exception of the antennas?

Response: The ordinance is written to require undergrounding “where possible.” There is no specific reference to underground districts in the current draft. Antennas cannot be required to be placed underground because they will not function properly. Depending on the site, some radios may also need to be aboveground to function properly with the antennas. The FCC has stated that undergrounding requirements, like other aesthetic requirements, must be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.

Can the Town restrict WCF to utility undergrounding districts?

Response: Our research indicates the six utility undergrounding districts are, in essence, the commercial areas in downtown and along SFD (see attached maps). Please note that the Town would have to be able to articulate an aesthetic purpose for restricting WCFs to utility undergrounding districts. In other words, if the Town were to exclude wireless deployments from areas where the Town allows other aboveground utilities, the Town needs to have a solid rationale.

Can we require some type of public notice for eligible facility request? For example, can applicants be required to send out notice to properties within 300 ft, that it has submitted such a request?

Response: Nothing in the FCC order says that public noticing is not permitted. Presumably, the Town can do this and can have applicants submit evidence that they gave the required notice with their applications. The Town would still have to comply with the shot clocks which are quite short (60--90 days).

Can the Town require a carrier to provide/maintain a certain level of service such as during emergencies or require better service for “dead” zones?

Response: The Town cannot regulate their business operations – so cannot prioritize operations in the Town.

Can we require new technology replacement or upgrades?

Response: Section 19.04.100 A.2. addresses that requirement with “Where feasible, as new technology becomes available, the permittee shall...” In general, however, local governments cannot regulate or mandate that certain technologies be used.

Can the Town reduce the minimum number of years for the permit (reduce from 10 years to a lower amount)?

Response: Cal. Gov. Code Section 65964(b) says the Town cannot “unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10

years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site.

Please explain how the ordinance can better address ADA EMF disabilities?

Response: The ADA does not identify particular conditions as covered. Instead, it defines disability as any physical impairment affecting a major life activity.

Title II of the ADA requires public agencies to make all their services, programs, and activities ADA accessible. The ADA is a discrimination statute, not a prohibition on matters impacting health. Unless there is some sort of discrimination (i.e., persons with disabilities are prevented from some activity), there is no ADA claim. To the extent a person may claim that 5G or other small cell installations will prevent access to public facilities, such as streets and sidewalks where deployed, there are no regulations on point. The DOJ's website (www.ada.gov) has nothing indicating any DOJ application of the ADA to RF sensitivity/sickness. The DOJ has never regulated this issue, although it does regulate things like sidewalk width, amount of slope, etc.

Under the proposed ordinance, the Town is not providing a service, program, or activity and instead would merely be considering the merits of a wireless application.

The Access Board is a federal organization that provides architectural "guidelines". It does not implement the ADA. Only the DOJ can actually enforce the ADA and adopt enforceable regulations. The DOJ must consider the Access Board's guidelines when adopting regulations, but the Access Board has no ability to make law.

The Access Board item that was provided appears to be part of an Access Board study, in which the Access Board recommends going through the process to adopt guidelines for indoor chemical/electromagnetic sensitivity. So basically, this is a preliminary step to adopting guidelines that are not rules and do not have the force of law. The Access Board's report references studies relating to electromagnetic sensitivity, but the Access Board is an architectural, not medical, board. The Access Board does not make findings as to the types of conditions that qualify as "disabilities" under the ADA. It's also worth noting that the recommendations related to accommodating affected individuals on a case-by-case basis, rather than prohibitions on specific communications facilities.

As we have previously stated, federal communications law prohibits local governments from regulating communications facilities based on RF emissions if the facility complies with the FCC standards. Thus, there is not really a conflict in federal laws – the Town is bound by the FCC limits on its ability to regulate communications facilities. The decisions under the ordinance have to be made within those limits. This is not to say that the Town would not consider case-by-case reasonable accommodations – say, meeting with concerned citizens in a facility that is not as close to wireless infrastructure.

EXHIBIT "A"

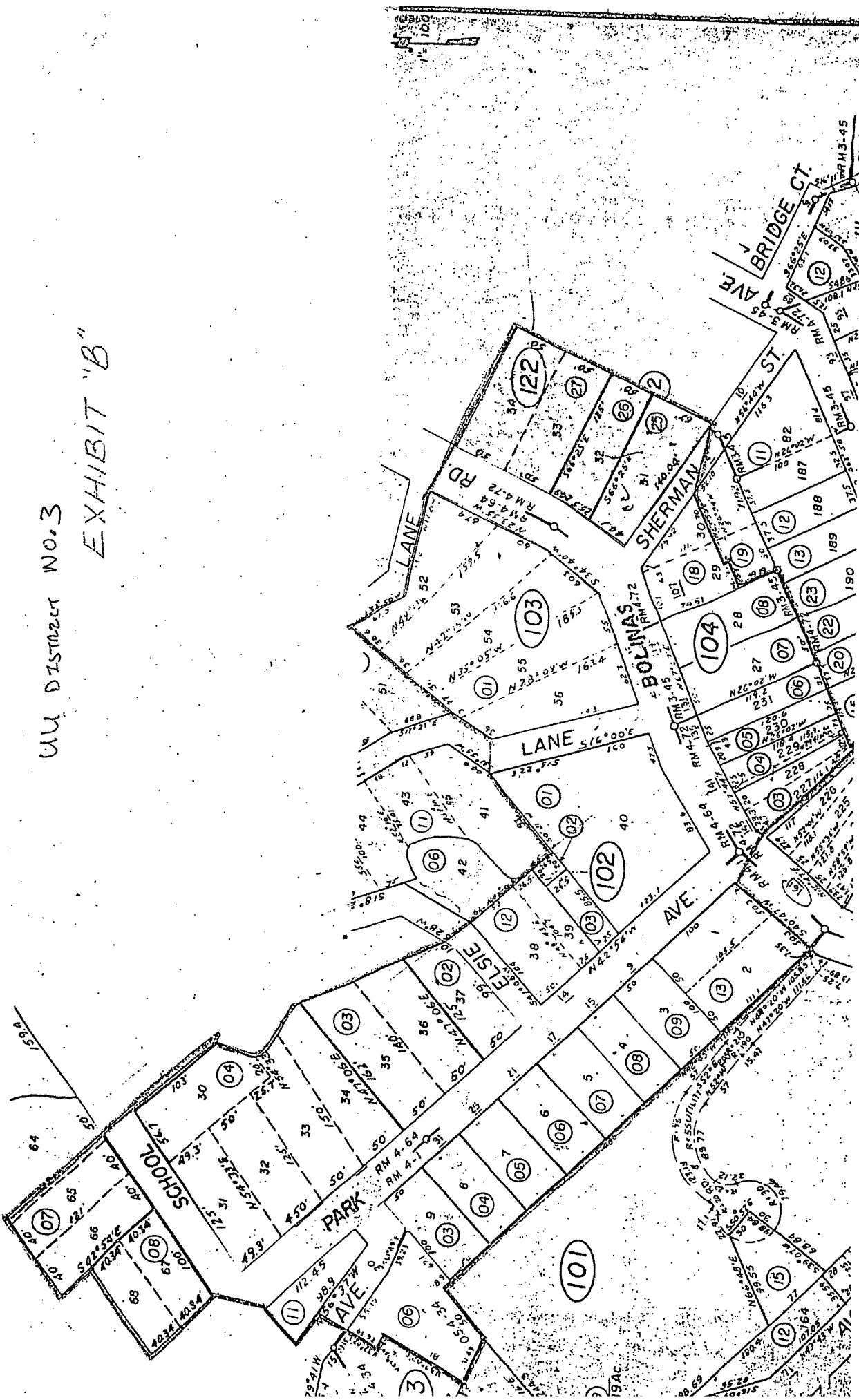
All that certain real property in the Town of Fairfax described as follows:

<u>LOT NO.</u>	<u>ASSESSOR'S PARCEL NO.</u>	<u>OWNER</u>
<u>PACHECO TRACT</u>		
A (Ptn.)	2-121-01	Ann C. & James L. Wheeler, 1 Bolinas Road, Fairfax
A (Ptn.)	2-121-02	Ann C. & James L. Wheeler, 1 Bolinas Road, Fairfax
46 (Ptn.)	2-122-01	Harold W. White, et al., 29 Bolinas Rd., Fairfax
45 & 44	2-122-37	John M. & Claire T. McNaboe, 55 Alder Ave., San Anselmo
43 & 42	2-122-34	Elsie L. Frustuck, 300 Bolinas Rd., Fairfax
41	2-122-33	Lester & Pauline McCaullic, 1555 Vallejo St., San Francisco
40 & 39	2-122-32	Elmer W. & Odella Snyder, et al., 6 Redwood Ave., Corte Madera
38	2-122-31	Charles & Rosetta Peri, 8 Cypress Dr., Fairfax
37	2-122-30	Lester & Pauline McCaullic, 1555 Vallejo St., San Francisco
36	2-122-29	Albert G. Messec, 69 Bolinas Rd., Fairfax
35	2-122-28	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
34 & 33	2-122-27	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
32	2-122-26	Elsie Louise Frustuck, 300 Bolinas Rd., Fairfax
31	2-122-25	James H. & Angela Dismuke, 101 Bolinas Rd., Fairfax
<u>FRUSTUCK-WREDEN TRACT</u>		
17A	2-115-07	Frank & Catherine Healion, 176 Fairhills Drive, San Rafael
17 (Ptn.)	2-115-20	Tom C. Fong, 14 Bolinas Rd., Fairfax
17 (Ptn.)	2-115-09	Louis Pietronave, et al., P. O. Box 257, Fairfax
17 (Ptn.)	2-115-10	Elmer M. & Esther L. Beasley, 127 Butterfield Rd., San Anselmo
1	2-115-11	City of Fairfax
2	2-115-12	City of Fairfax
3	2-115-13	Harry H. & Ethel T. Fong, 52 Bolinas Rd., Fairfax
4	2-115-14	Harry H. & Ethel T. Fong, 52 Bolinas Rd., Fairfax
5 & 6	2-115-15	Harry Jung, 52 Bolinas Rd., Fairfax
7 & 8	2-115-16	Jean & Anna C. Lestanguet, P. O. Box 7, Fairfax
9	2-115-17	Jeanne Marie Fanlo et al., P. O. Box 7, Fairfax

ALSO, all those certain portions of Broadway, Bolinas Road, and other public streets and thoroughfares which are contiguous to the above-described properties, and within the periphery of said properties.

CU DISTRICT NO. 3

EXHIBIT "B"



UU District No. 5

