

MAR 19 2019

FCC Mailroom

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

2019 APR -2 PM 2:19

In re Application of)	
)	
K225DB (formerly K224FG))	BMPFT-20190311ABA
Elohim Group Corporation)	Facility ID: 148598
San Jose, California)	

Petition For Reconsideration

Center For Training and Careers, licensee of KCXU-LP of San Jose, California, files this petition for reconsideration on the above-captioned facility¹. Upon a closer review of the technical data vs the proposed location, several issues were found and brought to the attention of Commission. However, with the application granted as of 3/13/2019, the information is now submitted with exhibits as a petition. The application should be rescinded and dismissed.

This filing supersedes the original objection filed via CDBS, initially sent via email to Media Bureau staff shortly after the application was granted. Petitioner included a mapping of coordinates showing the site was positioned in the middle of a narrow county road, rather than on private property².

This updated filing now includes an email received from a Senior Planner with the Santa Clara County Planning Office in response to our query of whether any permits for FM broadcast or telecom facilities were filed or granted on roads or properties near APN # 659-24-006³. As confirmed by County staff⁴, no such permits were issued in the area. The matter has also been referred to county code enforcement.

On March 12, 2019, Application File # BMPFT-20190311ABA appeared in the FCC CDBS portal modifying its location to the location south east of San Jose proper on Channel 225. The AMSL for the antenna site elevation is entered as 217 meters, with the center of radiation at 9 meters above ground level. A directional antenna is specified as an SCA (presumed 'Scala') Model CL-FM.

The width and angle chosen for the aerial photo within the application would first appear as an unoccupied area on private property. However the direct overview of the coordinates shows the site placed directly on Chaboya Road, an extremely narrow stretch of road in an area under the jurisdiction of Santa Clara County, with no existing utility poles or structures along that route, and little or no room for new structures.

1 Application in CDBS: http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/prod/app_list.pl?Arn=20190311ABA

2 Location mapped as registered in BMPFT-20190311ABA (via <http://maps.google.com>; see Exhibit B1)

3 Mapping of APN # 659-24-006 via Santa Clara County Planning website (at Exhibit B2)

4 See email of Senior Planner at Santa Clara County Planning Office, March 13, 2019 (Exhibit C)

Given the extremely limited width of the road, it was unlikely that the county would actually grant a building permit or variance allowing a new structure that guarantees safe two-way clearance for passing vehicles without a hearing before the county planning commission, which would require submission of building plans made available in advance for public review, an evaluation process involving departmental review, and opportunity for public comment at open hearings.

Additionally, any such structures may be subject to assessment of fees required of utilities, telecom providers, and waste disposal companies whenever commercial entities use the right-of way.

Even if the county could waive the above requirements and a monopole somehow constructed in that time, the narrow width of the road leaves no room for any vehicles or containers housing equipment. There are also no roadside electrical facilities on that stretch.

Petitioner does note that a few utility structures exist in area south of the roadway, but lack capacity for an antenna and are within a wooded ravine area under the jurisdiction of a neighboring California state park, which must undergo a similar process of permitting, review, and public comment.

If the applicant actually intends to erect a safe structure onto the property to the north, a new set of issues would be introduced. Placing a safe antenna structure to another area on that property would result higher elevation. According to elevation profiles extracted via Google Earth, the nearest viable property jumps to 10 meters above the elevation listed in this application, thereby exceeding the provisions of 47 C.F.R. 73.1690⁵. Also, if the antenna were to be operated up on the property, the protections required by 74.1204(d) and acknowledged within the Engineering Statement could not be guaranteed in regards to KSJO, since the residential structures may be caused interference. Operating from that property under the technical parameters and directional antenna proposed in the instant application could not be covered under this authorization.

This afternoon on 3/13/18, the long-time owner and occupant of the property registered with the county at APN # 659-24-006 has stated that no prior permission was even given to any entity to erect an antenna of any type onto the property, whether temporary or permanent, and indicated that nearly all neighboring owners have also previously expressed opposition to the same. Since the coordinates specifically place the proposed structure on a road under County right-of-way jurisdiction, the name and declaration of the owner at the property will not be submitted at this time.

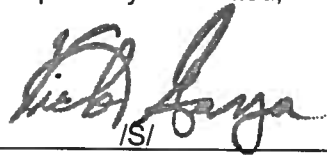
⁵ Placement of antenna up on property of APN # 659-24-006, an elevation approximately 10 meters higher than stated in the application, would exceed § 73.1690(c)(2) (*"The antenna must be mounted not more than 2 meters above or 4 meters below the authorized values."*)

For the reasons provided herein, application BMPFT-20190311ABA should be denied and dismissed.

Under penalty of perjury, the undersigned declare under the laws of the United States that the foregoing is true and correct.

Executed on this 14th day of March, 2019.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Victor Garza", is written over a horizontal line. Below the line, the letters "IS/" are printed.

Victor Garza, Director
Center For Training And Careers
749 Story Road - Suite 10
San Jose, California 95122

Cc: Santa Clara County Planning Department
Santa Clara Code Enforcement

Attachments:

- Declaration of Manuel J. Martinez
- Email from Santa Clara County Planning Office
- Google map – Coordinates site location on Chaboya Road
- Identification of Santa Clara County parcel # APN # 659-24-006
- Certificate of Service

Declaration Of Manual J. Martinez

I, Manual J. Martinez, serve as station manager and engineer of KCXU-LP of licensed to nonprofit agency Center for Careers and Training of San Jose, California.

On March 13, 2019, I telephoned the Santa Clara County Planning Office, and soon reached Colleen Tsuchimoto, a senior planner with the county.

I informed Ms. Tsuchimoto of FCC application BMPFT-20190311ABA filed by Elohim Group Corporation, listing coordinates placed right in the middle of Chaboya Road, identified as a county right-of-way located in an unincorporated county area in eastern Santa Clara County. The location of the adjoining property APN # 659-24-006, was also referenced.

During the call, it was confirmed that any such facilities proposing to use County properties, easements and right-of-ways must first apply for a Permit.

The senior planner searched her database, and informed me that no such permits at or near that location have been filed.

In a follow up email exchange, Ms. Tsuchimoto restated in writing: "There are no permit records for a FM broadcast facility at or near the subject APN number." The County Code Enforcement was also copied in her email. A true and correct copy of the email communication is attached as an Exhibit to the accompanying petition.

An Exhibits with mapping is also attached showing the area corresponding to the coordinates at Chaboya Road, and properties near parcel APN # 659-24-006. Links to the websites are provided to allow for direct and independent confirmation.

This declaration is based on facts within my personal knowledge and is sworn to under the penalties for perjury provided in the laws of the United States.

Executed on this 14th day of March, 2019.

Signed,



Manuel J. Martinez

Manuel J. Martinez
Station Manager, KCXU-LP
Center For Training And Careers
749 Story Road - Suite 10
San Jose, California 95122

EXHIBIT B 1

Location of proposed site – NAD 27 coordinates listed in Application# **BMPFT-20190311ABA**
http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/eng_fm.pl?Application_id=1800760

37 19 37 N, 121 45 34 W (NAD-27)
37 19 36.79 N, 121 45 37.82 W (NAD-83)

Screenshot and link via maps.google.com
<https://goo.gl/maps/SiaV2hfvxYQ2>

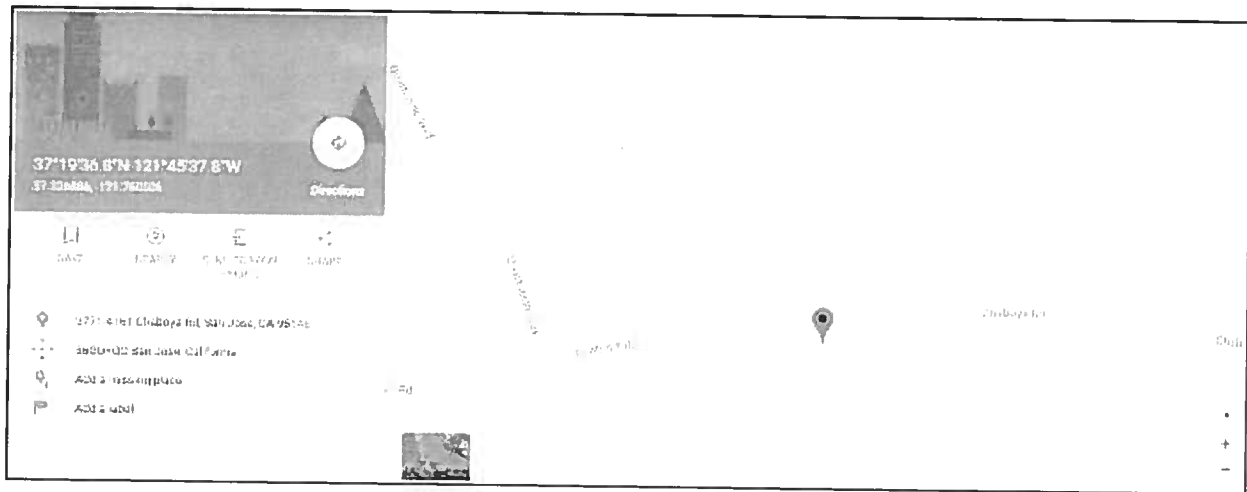
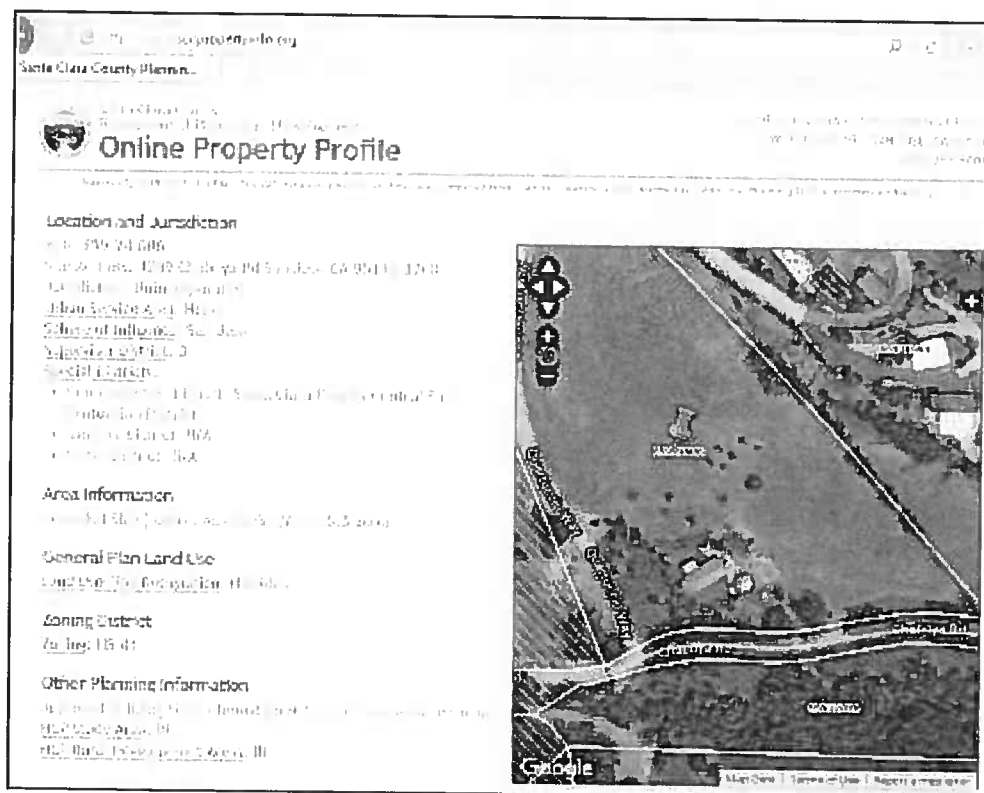


EXHIBIT B 2

Santa Clara County – Area near proposed location along Chaboya Road
via <http://www.sccpropertyinfo.org> - **APN# 659-24-006**



From: Tsuchimoto, Colleen

Sent: Wednesday, March 13, 2019 1:48 PM

To: kcxu92.7fm@gmail.com

Cc: Stephens01, James

Subject: FW: URGENT Follow up - RE: email confirmation of (no) permits for FM Broadcast facility APN # 659-24-006

Manu,

Please report your complaint in the Acella database as I have advised. There are no permit records for a FM broadcast facility at or near the subject APN number. I've ccd the Code Enforcement James Stephens on this email.

Thanks,

Colleen

Colleen A. Tsuchimoto
Senior Planner
Santa Clara County Planning Dept.

70 W. Hedding St., E. Wing, 7th Floor
San Jose, CA 95110
Phone: (408) 299-5797
Fax: (408) 288-9198
Email: Colleen.Tsuchimoto@pln.sccgov.org

here website

On December 18, 2018 the Department of Planning and Development launched InSite, our new digital permit system. What to expect: initiate request or apply for a permit online or on site; check the status of your project, submit digital documents, and make payments online or on site; get better customer service through smooth & efficient internal routing

CERTIFICATE OF SERVICE

I certify that on this 14th day of March 2019, I have caused copies of the foregoing Petition for Reconsideration, were served electronically and first class mail on the following:

Office of the Secretary &
Chief, Audio Division, Media Bureau
Federal Communications Commission
445 Twelfth Street S.W.
Washington D.C. 20554

Elohim Group Corporation
8330 LBJ Freeway
Suite B1152
Dallas, Texas 75243

Dan J. Alpert
2120 N. 21st Rd.
200 H Street
Arlington, VA 22201

Signed,



/S/

Manuel J. Martinez
Center For Training And Careers
749 Story Road - Suite 10
San Jose, California 95122