

FROM THE PLANNING COMMISSION MINUTES OF FEBRUARY 26, 2015

Agenda Items

3. 14-1588 Hearing to consider a request to allow the construction of a wireless telecommunication facility [Special Use Permit S14-0009/AT&T Cell Tower Skyline Drive]* on property identified by Assessor's Parcel Number 081-102-01, consisting of 0.32 acre, in the South Lake Tahoe area, submitted by New Cingular Wireless, LLC/AT&T; and staff recommending the Planning Commission take the following actions:

- 1) Adopt the Negative Declaration based on the Initial Study prepared by staff; and
- 2) Approve Special Use Permit S14-0009 based on the Findings and subject to the Conditions of Approval as presented. (Supervisory District 5) (Cont. 01-22-15, Item 2)

Commissioner Pratt announced that although this is his first Planning Commission hearing in this term, he was on the Commission for 5 ½ years up until the end of September 2014 and he is confident that he can make a ruling on this and stated that he has read all of the documents and minutes on this item.

Joe Prutch summarized past hearings on this item and presented the new request to the Commission with a recommendation of approval. He provided a summary on the Telecommunications Act.

Roger Trout identified himself as not only the Development Services Division Director but also the Executive Secretary to the Planning Commission. He spoke on a public comment from the last hearing where there was concern that this could be a never-ending project. Mr. Trout stated that if the Commission chose not to accept staff's recommendation of approval, then he recommended they direct staff to draft an alternate conclusion and return later in the meeting.

In response to Commissioner Pratt's inquiries on National Forest lands and co-location of Crown Castle cell tower, Mr. Prutch stated that he had spoken to representatives for National Forest land regarding their future plans and that he is currently working on a 5-year review for the Crown Castle cell tower.

Chris Hatch, applicant's agent, made the following comments:

- They have been working diligently on the project to address issues;
- Trying to provide a project that the Commission can approve which is why they are proposing a stealth tree and a stealth shelter;
- This is a safe project and blends in with area as best as possible;
- FAA has approved of the proposed stealth tree;
- No HVAC unit;
- There will be construction traffic the first 2 months and they will follow the County rules;
- Maintenance will be 1-2 times a month and stressed that this project should not be compared to what is occurring at the adjacent antiquated cell tower site as this one will be state-of-the-art;

- Intent is for this project to encourage the carriers on the existing cell tower to move over to their cell tower;
- This is the least intrusive option;
- Analyzed many locations, which included the National Forest;
- This will fill a significant gap in area;
- RF tool was used to analyze coverage over tops of trees in that area and when they were in the southern part of the area, it dropped 60 feet in elevation and access would be an issue due to no existing road;
- Coverage was tested in the area of the water tank and it was not considered viable;
- Spoke on TRPA's impervious restrictions which include roads and the water tank in the formula;
- RF tool identified that all 4 sites needed approximately the same tower height due to the trees; and
- Spoke on coverage vs. capacity and the 80% coverage match in response to Chair Stewart's inquiries.

Lori London made the following comments:

- Identified herself as an attorney in South Lake Tahoe, providing services to the County and State;
- Spoke on the Telecom Act;
- Spoke on defining "significant gap of coverage", which is AT&T's claim;
- Spoke on analysis provided by consultant hired by AT&T;
- No information on the number of houses, number of customers, rural/urban area, expert testimony and field studies supporting the significant gap coverage area claim;
- New plan moves the site closer to her property;
- Alternative Site #1 is deemed incapable of filling significant gaps;
- Was informed by both Nancy Kerry, South Lake Tahoe City Manager, and the lessor of the project site, that AT&T owns the existing Crown Castle cell tower and that information has not been supplied to the Commission;
- This is a profit-making enterprise and is not done for providing services;
- The applicant's agents are salesmen and you can't believe them as they lied as to who owns the Crown Castle cell tower;
- TRPA approved an increase in the tower height for the Crown Castle cell tower; and
- Distributed Findings for Denial.

Lou Parrino made the following comments:

- Distributed photos of site;
- Spoke on the history of towers in the neighborhood;
- Spoke on TRPA's coverage rules;
- Challenged the CEQA findings and felt the project requires an Environmental Impact Report;
- The proposed tower would be 8 feet from his kitchen window;
- Spoke on the applicant's responses to testimony, which now can't be believed;
- Noise and aesthetics will impact the community;

- Existing and proposed cell tower locations have run-down homes located on the sites;
- There is no significant gap in coverage;
- These are salesmen; and
- Existing cell tower site is the least intrusive site when compared with the proposed site and the water tank.

Bruce Eisner made the following comments:

- Written documents state Forest Service is doing a Master Plan so time needs to be allowed for that to happen, which will occur in 3-5 years;
- News to everyone that AT&T owns the existing tower, so what is the hurry for the new tower;
- Inquired on Alternative Site #4; and
- There is a combination of alternate sites.

Jennifer Hamburg made the following comments:

- Even AT&T has admitted that no one wants a cell tower in their back yard;
- Cell tower can't be placed 1,000 feet from a school and doesn't see the difference in a residential neighborhood;
- Although Courts don't support the argument that property values decrease with this type of project, she can find evidence that supports otherwise; and
- Understands that a cell tower can't be denied for health reasons, but reminded Commission that society used to think it was fine to be around asbestos, lead paint, and to use radiation for acne treatment.

Mark Royer made the following comments:

- Has been a broker and resident of area for over 30 years and this project would affect home values;
- Not one neighbor is in favor of this project;
- His property abuts the water tank and the lot adjacent to it and disagreed with the significant gap argument;
- This appears to be a "big guy vs. little guy"; and
- Asked the Commission to do the right thing.

Richard Ganske made the following comments:

- Distributed petition and photos;
- Disagreed with AT&T's comment that there is a 60 foot elevation drop on the south side of the water tank;
- This is a congested area of homes;
- Activity on property indicates that they already have approval (i.e., fiber optic activity);
- Alternative Site #3 is a good choice;
- More antennas generate more heat;
- Cell towers have to be tested 1-2 times a month but why are they being compared to microwaves in relation to safety when microwaves don't need to be tested;
- With this proposed cell tower, there will be 7 commercial entities in the area;

- Owner of the proposed project site has stated that they will be renting out the house;
- Home values will decrease by 20% and AT&T should cover everyone's loss;
- Request that the next hearing be scheduled when school is out so parents can attend; and
- When he moved into the area, he was already concerned about the existing cell tower and now there are going to be two.

Chair Stewart closed public comment.

Mr. Hatch provided the following rebuttal comments:

- They are service providers, not salesmen, and they are trying to fill a gap in the coverage;
- Spoke on spotty coverage in area;
- Spoke on the ownership history of the Crown Castle cell tower and stated the AT&T doesn't and never has owned the cell tower and neither does any of its subsidiaries;
- They have been trying to fill the gap for the last 10 years;
- The statement on having to be 1,000 feet from a school is incorrect and, in fact, they are encouraged to locate at school sites since technology is used there frequently;
- They chose not to install 4-6 cell towers in area because each tower would have to be submitted under its own application, requiring multiple agencies' approvals, and if even one didn't get approved, it would affect the whole project;
- Spoke on population coverage;
- National Forest insists on co-location and requires that you identify a minimum of 3-4 carriers per application and the leases are very low since the National Forest is more interested in having infrastructure in place for emergency services;
- TRPA's oversight has been diverse and scattered and AT&T is working with them on a strategy;
- Explained that engineering staff showed the areas which had no service during peak times when 911 calls couldn't be placed and that determined the significant gap area;
- Other carriers are on a different frequency for 911 calls;
- Spoke on information regarding gap coverage, which is proprietary information but a federal obligation;
- They don't have the capacity for the users in the area and are currently at the maximum;
- AT&T provides telephone service through SBC Global, which uses AT&T badging on their trucks, and the existing cell tower site is upgrading telephone services (fiber optic cables);
- Spoke on microwave frequencies and radio frequencies; and
- Did approach existing cell tower, but there are significant challenges with the landowner.

Commissioner Pratt made the following comments:

- Doesn't like having 2 cell towers side by side;
- Not offended by the added height for just one tower;
- Still questions the argument that there is a gap;
- Telecom Act is clear;
- Difficult to believe TRPA and National Forest to create a plan;
- We are all part of the problem since most have cell phones and tablets;

- Plan is needed for the neighbors that would bring the two cell towers together, legally, and at whatever height would be needed; and
- Over-riding consideration needs to be reviewed as this is a unique area.

Commissioner Shinault made the following comments:

- Doesn't like a cell tower on a private property and would like them to explore other sites (i.e., fire station);
- Inquired how much of the 30% coverage that would be lost was National Forest land; and
- Can't support proposed location.

Commissioner Heflin made the following comments:

- Hasn't changed his opinion that this impacts the character of the neighborhood;
- This is creating a cell tower farm in the area;
- Questioned what was a significant gap; and
- Not in favor of the proposed location.

Commissioner Miller made the following comments:

- If the data is believable, then there is no other viable location; and
- Best alternative is to remove the existing cell tower and replace it with this one.

Chair Stewart made the following comments:

- Noise is no longer an issue;
- Structure would fit in even if it was brick;
- There will be a shield on the light;
- Applicant has done everything they could regarding the aesthetics;
- Can't dispute the coverage maps as he doesn't have the expertise;
- The two towers are his issue; and
- Leaning towards approving the project as-is.

There was no further discussion.

Motion #1

Motion: Commissioner Miller moved, seconded by Commissioner Stewart, and FAILED (2-3), to take the following actions: 1) Adopt the Negative Declaration based on the Initial Study prepared by staff; and 2) Approve Special Use Permit S14-0009 based on the Findings and subject to the Conditions of Approval as presented.

AYES: Stewart, Miller

NOES: Heflin, Pratt, Shinault

Commissioner Pratt made the following comments:

- Fine with one pole in one spot;
- Spoke on their options;
- Inclination was to continue this off-calendar so everyone could get their act together; and

- TRPA needs to weigh in on this too and it would be a safer route to have TRPA go first in the review process.

County Counsel David Livingston informed the Commission that there was a timeline for new cell towers and AT&T has agreed to extend the “shot clock” to April 14, 2015. If this item is continued, then AT&T would have to agree to another extension, otherwise they would have the right to go to Court against the County.

There was no further discussion.

Motion #2

Motion: Commissioner Pratt moved, seconded by Commissioner Heflin, and FAILED (2-3), to deny the project based on two side-by-side cell towers, gap analysis, and important to know TRPA’s determination of project.

AYES: Heflin, Pratt
NOES: Miller, Shinault, Stewart

County Counsel Livingston summarized Commissioner Shinault’s concerns and suggested expanded language to Commissioner Pratt’s motion for the Commission’s consideration. Commissioner Pratt concurred.

Motion #3

Motion: Commissioner Pratt moved, seconded by Commissioner Heflin, and carried (3-2), to deny the project based on issues with the land use compatibility in large part to the residential character of the neighborhood and the adjacent existing tower, there are feasible alternatives particularly Alternative Site #2, and important to know TRPA’s determination of project, and to trail item to the end of the meeting to allow staff to prepare Findings for Denial for consideration.

AYES: Shinault, Heflin, Pratt
NOES: Miller, Stewart

Mr. Trout announced that it was 5:45 p.m. and they were presenting the Findings for Denial to the Commission for their consideration. He spoke on the various Findings listed.

The Commission reviewed the Findings and discussed the removal of the last sentence of the last paragraph in Finding 2.2.

Motion #4

Motion: Commissioner Pratt moved, seconded by Commissioner Miller, and carried (4-1), to approve the Findings for Denial with the following amendment: (a) Delete the last sentence of the last paragraph in Finding 2.2.

AYES: Heflin, Shinault, Miller, Pratt
NOES: Stewart

This action can be appealed to the Board of Supervisors within 10 working days.