

## FINDINGS FOR DENIAL

Special Use Permit S14-0009/AT&T Cellular Tower Skyline Drive  
Planning Commission/February 26, 2015

PC 2/26/15  
#3  
Distributed by  
Staff during  
hearing

### 1.0 CEQA Findings

- 1.1 The Planning Commission finds that there was substantial evidence presented at the hearing on this application to support a fair argument that the cellular tower facility as proposed would cause significant impacts to the environment as a result of impacts relating to aesthetics and land use/planning. Therefore, a mitigated negative declaration or environmental impact report would be required before the project could appropriately be considered as proposed. The factual basis for this conclusion is set forth in Findings 1 through 6 below.
- 1.2 The Planning Commission finds that the project as proposed cannot be approved for the reasons set forth in the Findings below. Section 15270 of the CEQA Guidelines state that CEQA does not apply to a project that the agency rejects or disapproves. This action denying the project is hereby found to be statutorily exempt from CEQA pursuant to Section 15270(a).

### 2.0 Land Use Compatibility Findings

- 2.1 Policy 2.2.5.21 (compatibility with surroundings) of the General Plan requires that development projects shall be located and designed in a manner that avoids incompatibility with adjoining land uses that are permitted by the polices in effect at the time the development project is proposed. Development projects that are potentially incompatible with existing adjoining uses shall be designed in a manner that avoids any incompatibility or shall be located on a different site.

Finding 1: The Commission finds that there is substantial evidence that installation of a cellular tower facility would not be compatible with existing development because:

- a. The project site is located on a relatively small residential lot (0.32 acre) within an established residential neighborhood. Surrounding lots are similar in size and adjacent residents are in close proximity to one another. Neighboring residents are approximately 39 feet to the west, 94 feet to the east and 149 feet to the south of the proposed cellular tower. Another surrounding structure includes a 55 foot tall, 320,000 gallon water tank, located approximately 119 feet to the southwest of the proposed cellular tower.
- b. A 99 foot monopole with two carrier's antennas, candy striping, and a beacon light is located just 97 feet southwest of the proposed cellular tower. The Planning Commission finds that two towers in such close proximity to one another is incompatible with the residential character of the neighborhood and would prefer only one pole that could accommodate all carriers' antennas.
- c. There is opposition from adjacent and neighboring property owners in the vicinity of the project site presented at the December 11, 2014 and February 26, 2015 Planning Commission meetings. The testifiers were strongly opposed to the cellular tower facility and provided written evidence and oral testimony

concerning the project's impacts. Their concerns included the closeness to surrounding homes, another cellular tower facility and water tank already on adjacent property, traffic associated with ongoing maintenance of the water tank and existing and proposed cellular towers, all utilizing the same access easement, and the commercial/industrial appearance of the cellular tower within a residential neighborhood, resulting in the decline of property values.

- 2.2 Policy 2.10.1.1 states that the County shall apply the standards of the Regional Plan for the Tahoe Basin and the Code of Ordinances and other land use regulations adopted by the Tahoe Regional Planning Agency in acting on applications for proposed land uses in the Tahoe Basin.

Finding 2: The Commission finds that there is substantial evidence that installation of a cellular tower facility would not be compatible with various standards of the Regional Plan for the Tahoe Basin and the Code of Ordinances because:

- a. According to the Plan Area Statement 120, Tahoe Paradise Meadowvale, a transmission and receiving facility is a permitted use under the provisions for a special use. Under Chapter 21.2.2 Special Uses of the Code of Ordinances, a special use may be determined to be an appropriate use of the specified area if the following findings can be made:
  1. The project to which the use pertains is of such a nature, scale, density, intensity, and type to be an appropriate use of the parcel and surrounding area in which it will be located;
  2. The project to which the use pertains will not be injurious or disturbing to the health, safety, enjoyment of property, or general welfare of persons or property in the neighborhood, or general welfare of the region, and the applicant has taken reasonable steps to protect against any such injury and to protect the land, water, and air resources of both the applicant's property and that of surrounding property owners; and
  3. The project to which the use pertains will not change the character of the neighborhood, or detrimentally affect or alter the purpose of the applicable planning area statement, community plan, and specific or master plan, as the case may be.
- b. According to Chapter 36.6.1, Screening Elements, of the Code of Ordinances, the architectural design of a project shall include elements that screen from public view all external mechanical equipment, including communication equipment and utility hardware on roofs, buildings, or on the ground.
- c. According to Chapter 37.6.2, Additional Height for Certain Structures, of the Code of Ordinances, the maximum height specified in subsection 37.6.1 (26 feet) may be increased for communication towers and other similar projects up to the minimum height necessary to feasibly implement such projects. This additional height may be approved if the following findings can be made:

1. The function of the structure requires a greater maximum height that otherwise provided for in Chapter 37; and
2. The additional building height is the minimum necessary to feasibly implement the project and there are no feasible alternatives requiring less additional height.

The Planning Commission concludes that the cellular tower facility is inconsistent with the above standards of the Regional Plan for the Tahoe Basin and the Code of Ordinances. The Planning Commission wanted the TRPA to review and approve the cellular tower permits prior to the project coming to the Planning Commission.

### **3.0 Zoning Findings**

3.1 The County's Wireless Communication Facilities Ordinance (Section 130.14.210) sets forth the standards for development of wireless communication facilities within the County. As set forth below, the proposed project does not satisfy the visual requirements and development standards, nor meet the intent of the Wireless Communication Facilities Ordinance as determined by the Planning Commission. Therefore this Special Use Permit cannot be approved.

3.1.1 Section 130.14.210.B (Statement of Intent) of the County Code states "that it is in the interest of the public health, safety and welfare of the citizens of El Dorado County...(to) place facilities in areas where the adverse impact is minimal, thereby reducing the visual and potential visual intrusion of such facilities on the surrounding area."

Finding 3. Although the applicant verbally represented that the existing monopole on the adjacent property was not adequate for additional carrier antennas, the Planning Commission finds that another tower with an FAA-required light on top adjacent to an existing tower also with an FAA-required light on top would be excessive for an established residential area and would not meet the character of the neighborhood. Thus, the proposed project does not meet the intent of the County's Wireless Communications Ordinance.

### **4.0 Additional Findings**

4.1 Finding 4. The record provides no basis to suggest that the Commission's decision to deny the proposed project has unreasonably discriminated against the applicant in favor of providers of functionally equivalent services.

4.2 Finding 5. The record provides insufficient evidence to suggest that the Commission's decision to deny the proposed project has prohibited access to wireless communication services in the geographic area of the proposed project site, or prevents the filling of a significant gap in the wireless service provided by AT&T. The applicant represented that there is a need for improved cellular service in the area and identified four purported gap locations. Area residents, however, presented evidence challenging the significance of

those gaps. Additionally, though the applicant represented that the proposed location is its preferred site for the project, the alternative site analysis provided does show that some of the alternative sites or combinations of the sites could provide coverage to those identified gap areas. Accordingly, the applicant failed to make a prima facie showing that denial would have the effect of prohibiting the provision of wireless services.

- 4.3 Finding 6: The Planning Commission reviewed the information regarding purported coverage gaps and the alternative sites, including two multi-tower alternatives, and finds that there are potentially available and technically feasible alternatives. The information presented by the applicant was determined to be lacking in specificity and clarity in a number of areas. The alternative sites and gap analysis only considered areas of land and not populations served. The South Lake Tahoe area is very unique with significant topographical variations, significant forest vegetation, and significant snow in winter. The land use development patterns are dis-contiguous, and separated by significant open space and other features due to historical development activities and current development limitations by the TRPA. These factors necessitate additional alternative sites and gap analysis specific to the area. The information available to the Planning Commission did not demonstrate that the proposed site is the only alternative for service coverage.

The Planning Commission preference is to locate cellular tower facilities in less densely populated areas, such as the multi-site alternative 1 that provided a 70 percent geographic coverage match to the proposed project. The Planning Commission finds that some variation of that alternative should logically be able to provide the necessary coverage that the proposed project would otherwise provide while minimizing the computability issues previously discussed. Similarly, alternatives located on Federal lands, such as those owned by the USFS, which are very numerous in the South Lake Tahoe area, should be explored. The land in the South Lake Tahoe area is predominantly owned by state, federal, or conservancy organizations and should provide less impactful options for location of necessary cellular facilities. The Planning Commission does not intend to specify any particular alternative, only that the information provided for this project was not conclusive to demonstrate that it is the only site that would provide significant gap coverage. The Planning Commission's findings regarding land use compatibility demonstrate that location of the proposed cellular tower in a residential neighborhood is a significant concern and would be mitigated by the location of a tower (or a multi-tower alternative) in another location that would not be in close proximity to existing residences.

The Planning Commission finds that consideration of what constitutes a "significant gap" is an extremely fact-specific inquiry and that the proposed location is only one of many sites that could be developed with a cellular facility to provide service coverage. The Planning Commission also finds that the technical studies presented by the applicant to the Commission are inconclusive. The Commission desires that a comprehensive plan for cellular coverage for this region of South Lake Tahoe would be appropriate prior to approval of this project. The Planning Commission would prefer that the TRPA, in conjunction with federal agencies such as the USFS, resolve a plan for cellular facilities in the South Lake Tahoe area, since the federal laws on telecommunications facilities have burdened local jurisdictions with limited discretionary authority for new cellular towers.

## **5.0 Summary of Findings and Conclusions**

Pursuant to County Ordinance Code Section 130.22.540, denial of a special use permit requires the approving authority to specify the grounds for the denial. As set forth more fully herein, S14-0009 has been found by the Planning Commission to be inconsistent with the General Plan and required zoning standards and detrimental to the public welfare and injurious to the neighborhood, requiring denial in accordance with Ordinance Code Section 130.22.540. The Planning Commission additionally finds that denial does not discriminate against the applicant, prohibit access to wireless service in the area, or prevent the filling of a significant gap in coverage.

The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the Development Services Department - Planning Services at 2850 Fairlane Court, Placerville, CA 95667.

## **6.0 Appeal Procedure**

In accordance with County Ordinance Code Section 130.22.220, the Planning Commission's decision can be appealed to the Board of Supervisors within ten working days from the date of this decision. Contact Planning Services at (530) 621-5355 for required application form and fees.

## **7.0 Final Statement**

An amended County Code became effective on December 17, 2014. The purpose of the amendment was to arrange the County Code in an order indicative of the subject matter to which it pertains. Essentially, Chapter 17, known as the Zoning Ordinance, has now become Chapter 130, known as the Planned Development Ordinance. The context of the Chapter has not changed, only the name and numbering of the Chapter has changed.