

(Related: S17-0016, site #4)

File Number: CUP-C 18-0007

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Date Received: 8-9-2018

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APPEAL FORM

(For more information, see Section 130.52.090 of the Zoning Ordinance)

Appeals must be submitted to the Planning Department with appropriate appeal fee. Please see fee schedule or contact the Planning Department for appeal fee information.

APPELLANT Ken R. Greenwood

ADDRESS 6400 Kristin Lee Way, Placerville, CA 95667

DAYTIME TELEPHONE 530-306-6390

A letter from the Appellant authorizing the Agent to act in his/her behalf must be submitted with the appeal.

AGENT NA

ADDRESS _____

DAYTIME TELEPHONE _____

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APPEAL BEING MADE TO: Board of Supervisors Planning Commission

ACTION BEING APPEALED (Please specify the action being appealed, i.e., approval of an application, denial of an application, conditions of approval, etc., and specific reasons for appeal. If appealing conditions of approval, please attach copy of conditions and specify appeal.) *ART*

I appeal the decisions by the Planning Commission on July 26, 2018 to deny Site 1 of S17-0016 and the Approval of Sites 2-7 of S17-0016. Agenda Item 3. 18-1015 *ART*

Reasons for Appeal: See attached and include the entire record of S17-0016, Sites 1-7, specifically 4

Relief sought: Denial of all Sites of S17-0016 and direct Staff to review the Wireless Ordinance to allow a County-wide and systematic review of existing and approved wireless projects to determine the factual need for any additional sites. Review should include all other sources of internet connectivity to serve El Dorado County residents.

See Attached for "Reasons" and additional "Relief" sought.

DATE OF ACTION BEING APPEALED July 26, 2018 Item 3. 18-1015

Ken R. Greenwood
Signature

08/09/18
Date

Attachment to Appeal of S17-0016 Requested by Ken R. Greenwood 08-09-18

Dear Board of Supervisors,

KRL 4

I appeal the Actions taken (~~Denial Site 1, Approval Sites 2-7~~) of Conditional Use Permit Application S17-0016 Sites 1 through 7 (Agenda Item # 3, 18-1015) by the Planning Commission on July 26, 2018 and request the Board of Supervisor Deny Application S17-0016 IN TOTAL as Relief.

Relief sought: Denial of all Sites of S17-0016 and direct Staff to review the Wireless Ordinance referenced below to allow a County-wide and systematic review of existing and approved wireless projects to determine the factual and actual need for any additional sites. Review should include all other sources of internet connectivity to serve El Dorado County residents. This effort should ultimately be funded via wireless service applicants. Additionally, the effort should review alternatives, potential environmental impacts, costs and perhaps the best vehicle is a Program EIR as defined under CEQA.

I Appeal these actions for the following specific reasons:

1. Based on testimony and evidence in the record (incorporated by reference throughout this Appeal), "the Actions" on Agenda Item 3 (herein referring to above definition) are inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021. C. 2.): "The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood;" Based on testimony and evidence in the record I believe it is Injurious to the neighborhood as it will be constantly and forever visible from Residential Parcels and are therefore an Aesthetic intrusion into the owners lives and for the rest of their lives, or until they sell their homes. There are viable alternative locations nearby that were not meaningfully analyzed.

2. Based on testimony and evidence in the record, the Actions are inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021. B.) that a project is supported with CEQA policy and requirements regarding "Alternative Analysis and that there are no significant environmental impacts; (130.52.021. B.): "The approval of a Conditional Use Permit is a discretionary project and is subject to the requirements and procedures of CEQA".

This approval is similarly inconsistent with the intent of the "Wireless Ordinance" as cited below. I believe the CEQA analysis is severely flawed and there was considerable testimony at three hearings and staff did not respond to these concerns via any meaningful responses "suggested" by CEQA Process.

I believe the CEQA analysis of Alternatives was virtually non-existent and only (poorly) conducted by the applicant to point ONLY to their 'contracted' site. I believe that this lack of MEANINGFUL Alternative Location and Co-Location is inconsistent with the INTENT of CEQA to consider such analysis.

Similarly, we believe the current process is flawed and a COUNTY-WIDE approach to antenna location MUST be undertaken through an overlay mapping program to identify current and approved locations, their coverage via ALL PROVIDERS, including "Hardline Providers" (Comcast, ATT, etc) as well as other over the air providers to clearly identify "Coverage Needs" County-wide. A Program EIR is needed to achieve this goal, and then we can go about providing service to our rural community as envisioned by CAF technology and Federal desires (NOT MANDATES!) to provide such service.

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3. Based on testimony and evidence in the record the Actions are not consistent with the Wireless Ordinance: (130.40.130. A.): "The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare."

We believe the proposed location and the "System" proposed by ATT (and others) is not consistent with this "Finding" the BOS used to adopt the Wireless Ordinance.

4. Based on testimony and evidence in the record the Actions not consistent with just plain common sense of who bears the price of these facilities without compensation. We will have to suffer all the impacts of these towers and if we are served by this or that provider, we might gain better internet connection. But at what cost? Is there an alternative? Yes, but that has not been clearly analyzed and illustrated to our satisfaction. This is seen as a "takings" issue that is unresolved with current County Policies and must be resolved prior to approval of any additional facilities.

5. Based on testimony and evidence in the record the Actions are inconsistent with established hearing procedure and "fair play" if you will. The Planning Commission advertised and heard this Project as "One Application" originally on the February 8, 2018 Agenda and decided to separate them into seven (7) projects for approval as it appeared some sites were generating more comments and opposition than others. As the hearing progressed, each item was voted on for approval, but it was a 2:2 "Split Vote" (as there was not a "Full Commission of 5, but a "Quorum" of at least 3) that by Rule is equal to a Denial.

The majority of those in the audience were confused by this process, but were thrilled by the explanation that such a vote functioned as a denial. Aesthetic, Access and Alternative Analysis issues were cited by the Commissioners as primary reasons for Denial. The Planning Commission then directed staff to "Craft" Findings for Denial that were consistent with El Dorado County Policies and Procedures, CEQA and Planning Law, and return February 22 with these "Crafted" Findings. The majority of the Public in attendance February 8 did not foresee the possible results of the February 22 hearing as they were under the impression that the Project was to be Denied with the "Crafted Findings" and therefore did not attend as they have jobs and other obligations. To the surprise of many, ATT submitted a letter on February 21, 2018 to staff proposing some modifications to the project and asking for a continuance of the project for one stated purpose: "Public outreach" to answer questions from concerned neighbors. Two meeting occurred on July 11 & 12 and then Staff scheduled a hearing for July 26, 2018. Indeed it was "advertised" per County policy and State Law, but some, given the actions of February 8, were confused and may have not attended.

The point here is the "Project" was "modified" by lowering the towers 20-30 feet (presented in a July 24, 2018 Memo from Planner Evan Mattes to the Commission entitled: "S17-0016/AT&T CAF 4; Revised Project Description and New Conditions) During the hearing there were "Visual Simulations" that were at first claimed to be representing "Reduced Height" but were in fact the same as before. Additionally, the memo didn't allow the Public (or the Commission or Fire and other reviewers) much time to consider the "Revisions" to the project. Again, it felt as if the "Project" was now this 'moving target' that was a guess to all involved, including the Commissioners. The Vote on Site #1 was 2-1 for Approval that once again meant "Denial" due to procedural Rules.

To most in attendance, It just felt a little disingenuous, and while not a 'violation' of Law or Ordinance, it appeared dishonest.

As the Commission considered additional sites, there was a mention by the Chairman that there were 36 comments supporting "the project" and many were "Form Letter" comments (perhaps 10) and some other 'more original' e-mails; but all praised the overall concept of "Wireless Internet" to El

Dorado County IN GENERAL with NO reference to S17-0016. Lofty, but not applicable to the project in question. The "10 in Support" were focused on one or more of the specific locations under consideration. Another disingenuous situation that swayed one Commissioner to vote to Approve the rest of the 6 locations. Pretty thin reason to support such a project that impact and be "injurious" to the neighborhood.

We understand that we all want "better internet connection" but when it comes to putting it in YOUR backyard, with no compensation, it feels wrong and may amount to a "takings" especially regarding setbacks that do not protect neighbors from "Tower Failure" damage.

6. Based on testimony and evidence in the record the Actions are inconsistent with the meaning and function of "Setbacks" to achieve balance in the activities on one parcel or Zone from those of another, as well as "Public Health Safety and Welfare" provisions in State Law and County Ordinance. In the case of a 100 to 160 foot tower, meaningful setbacks are not provided if a tower were to "Fall over" for or by whatever means. This concept also applies to "Shading" and "Visual" impacts on surrounding Residential parcels. The Sites in most of S17-0016 are subject to a maximum 30 foot setback and tower height is or exceeds 100 feet. I would not like the liability of such a situation if I were a neighbor, OR a wireless provider. Providers have far more insurance than any Residential owner could possibly afford, so they willing to risk it, whereas a Resident would not want to risk it given the CHOICE to do so.

Sadly, this reality is a takings without compensation for adjacent landowners. A revised "Wireless Ordinance" must include REQUIRED setbacks to eliminate this takings and threat to Public Health, safety and welfare.

7. Based on testimony and evidence in the record the Actions are inconsistent with the "Access Road Construction damage" that always results from construction of these sites. The conditions requiring before and after photos are meaningless to truly mitigate the damage and once again counter the SUP Finding of "Not Injurious" to the neighborhood. Road damage is a reality that cannot be avoided and is BEST mitigated by a CASH BOND to be only released upon agreement by the effected parties upon completion of the work. The County uses similar conditions on road construction and erosion control measures, why not here?

8. Based on testimony and evidence in the record the Actions are inconsistent the purpose and intent of Wireless Ordinance itself. This indicates that the "Wireless Ordinance" is out of date as 4G LTE (and soon "5 G") needed density of towers (1 to 2 miles/tower 4G LTE vs 5-12 miles for phones) was not part of the discussion in the crafting of it. Therefore, the Ordinance is outdated AND as above, the Actions are inconsistent with the Ordinance.

Therefore, the Relief requested is: The El Dorado County Board of Supervisors DENY S17-0016 in total and direct Staff to address the above issues and suggestions to develop a systematic approach to providing "Wireless Internet" from all providers (and other sources) to the residents of El Dorado County. A Program (or some other) EIR should be the tool to provide a firm base for our decision makers. Then re-evaluate all future "Wireless" Applications under the revise program approach.

Thank you for your consideration of my Appeal.

Ken R Greenwood

