

FINDINGS FOR DENIAL

Conditional Use Permit CUP20-0006/Oak Ridge High School Verizon Cell Tower Planning Commission/March 11, 2021

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 and project as proposed and analyzed may cause significant impacts to the environment as a result of impacts relating to aesthetics, light glare and light pollution, noise, and land use/planning. The Planning Commission further finds that the project lacks an accurate, stable, and finite project description because attributes of the project described by the applicant at the hearing were inconsistent with the project submitted to and analyzed by Planning staff. The Planning Commission also finds a lack of analysis in the record from which to conclude that the modifications to the lighting and speakers are minor modifications. Therefore, a mitigated negative declaration or environmental impact report would be required before the project could appropriately be considered as currently proposed and analyzed. The factual basis for this conclusion is set forth in Findings 1 through 8 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 2.8.1.1 (Lighting Standards) of the General Plan requires that development shall limit excess nighttime light and glare from parking area lighting, signage, and buildings and requires that consideration is given to design features, including directional shielding for sport field lighting, that could reduce effects from nighttime lighting. In addition, consideration is given to the use of automatic shutoffs or motion sensors for lighting features in rural areas to further reduce excess nighttime light.

Finding 1: The Commission finds that there is substantial evidence that raising the field lights by 36 and 40 feet on the new light standards installed for the proposed project may have impacts to nighttime light and glare that were not analyzed or mitigated.

- a. The project site is located at a high school football field surrounded by residential uses and two neighboring schools. The project proposes to replace two existing 55-foot stadium light standards with two 80-foot stadium light standards. The new light standards will be approximately 30 feet higher given the 25-foot increase in pole height and an additional 5 feet of new light standard mounts. While the existing conditions include field lighting, the project proposes to raise the lights to accommodate the wireless facilities. The existing lights are currently

at 40 feet and will be raised to 76 feet and 80 feet. The Planning Commission finds that doubling the height of the existing lights by raising them 36 and 40 feet to accommodate this project would likely increase the glare and light pollution to surrounding properties and there was no analysis done to quantify or mitigate this impact. The project did not consider design features under Policy 2.8.1.1, such as directional shielding, to minimize lighting impacts to surrounding residences. Nor did the project analyze the aesthetic impact from the raised lighting that would occur and the increase in the number of surrounding residences that would now be able to view the nighttime lighting from their homes.

Finding 2. The Commission finds, based on substantial evidence, that the project lacks an accurate, stable, and finite project description with respect to lighting and visual impacts.

- a. The Project Description as proposed states the “currently existing light arrays, each containing five lights, will be installed on the two new light standards at a height of approximately 76 feet and 80 feet.” However, at the hearing, the applicant indicated that the project will provide the high school with new, potentially improved lights. The elevation plans also show nine lights on each pole, not five. Not only is this information inconsistent with the project as described and conditioned, there was no information about the new lights and whether any new lights would improve or worsen impacts to lighting as compared to existing conditions. The applicant was also unable to answer questions at the hearing as to why the visual simulations showed the pole heights extending beyond the light fixtures and whether this additional height was necessary for the project design.

- 2.2 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 3. The Commission finds that there is substantial evidence that raising the lighting and speakers to accommodate the cellular facilities on the new light standards may be incompatible with the existing residential development.

- a. The project site is located on a high school football field within 500 feet of Single-Family Residential (R1) zoned properties.
- b. The project proposes to replace existing field lighting with taller light standards that will double the height of the lighting and raise the height of the speakers for the field. The Planning Commission finds that raising lighting will likely increase the light pollution to surrounding residences and there was no analysis in the

record as to the extent of the increased impacts to lighting. The Planning Commission also finds that raising speakers will likely increase the travel of sound to surrounding residences and there was no analysis in the record as to the extent of the increased impacts to noise.

- c. The visual simulations in the applicant's Alternative Site Analysis show that the new light standards installed for the project will result in the light standards being visible from both locations depicted on Silva Valley Parkway, which is adjacent to the project. The existing visual simulations show that the existing light standards are not visible from either location depicted on Silva Valley Parkway. The "Shot Point Map" provided by the applicant in the Alternative Site Analysis shows that numerous homes abut Silva Valley Parkway and, because the existing light standards are not visible from Silva Parkway and the new light standards for the project will be visible, substantial evidence supports the conclusion that the existing light standards are not visible from the homes abutting Silva Valley Parkway and the new light standards for the project will be visible. Moreover, the project proposes to raise the lighting on the east side of the football field, which is the side adjacent to Silva Valley Parkway and closer to residential parcels. This information is further substantial evidence that the raised lights on these light standards will further impact and conflict with these surrounding residential uses.

- 2.2 Policy 6.5.1.2 provides, "Where proposed non-residential land uses are likely to produce noise levels exceeding the performance standards of Table 6-2 at existing or planned noise-sensitive uses, an acoustical analysis shall be required as part of the environmental review process so that noise mitigation may be included in the project design." Policy 6.5.1.3 provides, "Where noise mitigation measures are required to achieve the standards of Tables 6-1 and 6-2, the emphasis of such measures shall be placed upon site planning and project design. The use of noise barriers shall be considered a means of achieving the noise standards only after all other practical design-related noise mitigation measures have been integrated into the project and the noise barriers are not incompatible with the surroundings."

Finding 4. The Commission finds that there was no analysis regarding the impact to noise levels from raising the speakers to accommodate the project and that raised speakers may have significant impacts to noise on surrounding sensitive uses, which include two additional schools and many residences.

- a. As detailed in Finding 3, raising speakers will likely increase the travel of sound to the surrounding schools and residences and there was no analysis in the record as to the extent of the increased impacts to noise or any consideration of any mitigation to reduce that impact.

3.0 Zoning Findings

The County's Wireless Communication Facilities Ordinance (Section 130.40.30) sets forth the standards for development of wireless communication facilities within the County. As set forth below, the proposed project does not satisfy the co-location requirements and development standards, nor meet the intent of the Wireless Communication Facilities Ordinance as determined by the Planning Commission. Therefore, this Conditional Use Permit cannot be approved.

Section 130.40.130(A) (Applicability) of the County Code states:

“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.

1. Communication service providers shall:
 - a. Employ all reasonable measures to site their antennas on existing structures as facade mounts, roof mounts, or co-location on existing towers prior to applying for new towers or poles.”

Finding 5. The Planning Commission finds that co-location on an existing pole is feasible and, thus, the proposed project does not meet the intent of the County's Wireless Communications Ordinance. Although the applicant verbally speculated that the existing light standards with facilities were not adequate for additional carrier antennas, this statement directly conflicts the statements in the applicant's Alternative Site Analysis and the prior analysis of the capacity of the existing light standards.

- a. At the project site, Special Use Permit S05-0045 is already approved, which allowed the removal of two 60-foot stadium light standards and replaced them with 80-foot light standards to accommodate up to three carriers. In approving that project, the County found, “The proposed cellular facility will be a multi-carrier facility which will enable an additional two wireless carriers to locate on the light standard once constructed.” (S05-0045, Finding 3.1 (Dec. 14, 2006).) At this time, S05-0045 has been revised to allow for the addition of one new wireless carrier, thus only two wireless carriers have located on the light standards. (S05-0045-R (Dec. 16, 2009).) Substantial evidence thus supports the determination that there is available space for one additional carrier.
- b. The applicant's Alternative Site Analysis states, “After conducting a thorough research and evaluation of existing buildings and structures in the area that would accommodate a collocation, Verizon Wireless determined that collocating on the existing light standards would adequately meet the coverage and capacity goals.”

Therefore, there is substantial evidence in the record establishing that collocation will meet the coverage and capacity goals of the project.

- c. When presented with this information at the hearing, the applicant did not rebut the statements with any evidence or analysis refuting that collocation is possible and will meet the coverage and capacity goals. While the applicant speculated that the addition of its facilities would be too heavy for the existing light standards, the applicant did not have any analysis to support this speculative opinion and it directly contradicted the finding made when SUP S05-0045 was approved.
- d. The applicant also argued that by locating the project on the football field where other facilities are already located could be considered “collocation.” This is inconsistent with the ordinance that expressly requires collocation “on existing structures as facade mounts, roof mounts, or co-location on existing towers prior to applying for new towers or poles.” Here, the applicant is not collocating on any of the four existing light standards and instead seeks to remove two existing light standards and replace them with light standards that are 30 feet taller.

4.0 Additional Findings

- 4.1 Finding 6. 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. The Commission considered whether the inadequacies of this proposed project could be addressed through new conditions and determined that the nature of the deficiencies in the project description and analysis and substantial evidence that collocation was feasible precluded approval of the project and could not be cured with new conditions. The Commission also sought agreement from the applicant to continue the item to address all of the deficiencies and potentially revise the proposed project, but an agent with authority to agree to a continuance and waive any rights under the Telecommunications Act and related federal and state laws and regulations did not attend the hearing, and the applicant’s agent was unable to obtain any such agreement even after the Chair trailed the item to provide additional time. Before determining that it could not approve the project, the Commission exhausted all avenues to facilitate a path forward for the project.
- 4.2 Finding 7. 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 Verizon. The applicant represented that there is a need for improved cellular service in the area and identified the gap in coverage. While the Commission concurs a gap in coverage exists, the applicant failed to show that the manner it proposes to fill that gap is the least intrusive. First, as stated above, substantial evidence shows that collocation is feasible and will fill the gap in coverage. Second, as expressed by a Commissioner and public commenter, the

Alternative Site Analysis was conclusory and lacked support for the conclusion that this site is preferred. 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 8. The Planning Commission reviewed the information regarding the possibility to collocate as described above. The speculative statements presented by the applicant were lacking in specificity and clarity in a number of areas, including why collocation was not feasible. The information available to the Planning Commission did not demonstrate that the proposed site is the only alternative for service coverage. The evidence further showed that the increased height of the lighting and speakers will have increased impacts to the surrounding residences and the impacts were not analyzed or mitigated as described above. Not only is collocation required under Section 130.40.130(A)(1)(a), collocation would avoid the increased impacts to aesthetics, lighting, and noise caused by this project.

5.0 Summary of Findings and Conclusions

Pursuant to County Ordinance Code Section 130.52.021, a conditional use permit cannot be approved unless the review authority finds that the use is consistent with the General Plan and would not be detrimental to public health, safety, and welfare, or injurious to the neighborhood. For all of the reasons stated herein and in support of each specific finding, the Planning Commission cannot make these findings and therefore cannot approve the project. As set forth more fully herein, CUP20-0006 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 130.52.021. 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 Planning and Building Department at 2850 Fairlane Court, Placerville, CA 95667.

6.0 Appeal Procedure

In accordance with County Ordinance Code Section 130.52.090, the Planning Commission's decision can be appealed to the Board of Supervisors within ten working days from March 11, 2021. Contact Planning Services at (530) 621-5355 for required application form and fees.