PC 7-26-18
#3
2 Pages

Planning Department <planning@edcgov.us>

At&T Communication Tower site #3

1 message

[redacted] Sun, Jul 22, 2018 at 3:05 PM
To: planning@edcgov.us

PLEASE DO NOT SHOW MY NAME OR E-MAIL ADDRESS ON THE COUNTY WEBSITE! Thank you.

I'm responding in Opposition to the planned communication tower site #3 Pleasant Valley. My family and I live and shop in the area, and do not want to be exposed to the constant radiation that this tower will emit. I had the unfortunate experience of living next to an AT&T cell tower in the Bay Area, and it is because of this we decided to move to a more rural location. My family and I have suffered serious adverse health effects, that I believe are a direct result of living next to the tower. Within a years time, I developed headaches, ringing in the ears, insomnia, and skin burning. My autistic 10 year old's symptoms got worse, and my 2 year old developed Petit Mal seizures.
We have gotten better sense moving, but not completely.
I believe the Telecommunications companies are not being completely honest when it comes to the safety of their towers, and might be suppressing information for their own monetary gain.
I am not against technology, in fact I love it, but we need to make sure it is safe. From the research I have done and the symptoms I have experienced, I don't believe it is safe to live or work anywhere near a cell tower.
I ask the Planning Commission to use caution in approving locations for communications towers.

Respectfully,
A Concerned El Dorado Resident

Biomed Pharmacother. 2008 Feb;62(2):104-9. doi: 10.1016/j.biopha.2007.12.004. Epub 2007 Dec 31.

Biological effects from electromagnetic field exposure and public exposure standards.

Hardell L1, Sage C.

Author information

Abstract

During recent years there has been increasing public concern on potential health risks from power-frequency fields (extremely low frequency electromagnetic fields; ELF) and from radio frequency

/microwave radiation emissions (RF) from wireless communications. Non-thermal (low-intensity) biological effects have not been considered for regulation of microwave exposure, although numerous scientific reports indicate such effects. The BioInitiative Report is based on an international research and public policy initiative to give an overview of what is known of biological effects that occur at low-intensity electromagnetic fields (EMFs) exposure. Health endpoints reported to be associated with ELF and/or RF include childhood leukemia, brain tumors, genotoxic effects, neurological effects and neurodegenerative diseases, immune system deregulation, allergic and inflammatory responses, breast cancer, miscarriage and some cardiovascular effects. The BioInitiative Report concluded that a reasonable suspicion of risk exists based on clear evidence of bioeffects at environmentally relevant levels, which, with prolonged exposures may reasonably be presumed to result in health impacts. Regarding ELF a new lower public safety limit for habitable space adjacent to all new or upgraded power lines and for all other new constructions should be applied. A new lower limit should also be used for existing habitable space for children and/or women who are pregnant. A precautionary limit should be adopted for outdoor, cumulative RF exposure and for cumulative indoor RF fields with considerably lower limits than existing guidelines, see the BioInitiative Report. The current guidelines for the US and European microwave exposure from mobile phones, for the brain are 1.6 W/Kg and 2 W/Kg, respectively. Since use of mobile phones is associated with an increased risk for brain tumor after 10 years, a new biologically based guideline is

warranted. Other health impacts associated with exposure to electromagnetic fields not summarized here may be found in the BioInitiative Report at www.bioinitiative.org.

PMID: 18242044 DOI: 10.1016/j.biopha.2007.12.004

Electromagn Biol Med. 2010 Jun;29(1-2):31-5. doi: 10.3109/15368371003685363.

Mobile phone mast effects on common frog (Rana temporaria) tadpoles: the city turned into a laboratory.

Balmori A1.

Author information

Abstract

An experiment has been made exposing eggs and tadpoles of the common frog (Rana temporaria) to electromagnetic radiation from several mobile (cell) phone antennae located at a distance of 140 meters. The experiment lasted two months, from the egg phase until an advanced phase of tadpole prior to metamorphosis. Measurements of electric field intensity (radio frequencies and microwaves) in V/m obtained with three different devices were 1.8 to 3.5 V/m. In the exposed group (n = 70), low coordination of movements, an asynchronous growth, resulting in both big and small tadpoles, and a high mortality (90%) was observed. Regarding the control group (n = 70) under the same conditions but inside a Faraday cage, the coordination of movements was normal, the development was synchronous, and a mortality of 4.2% was obtained. These results indicate that radiation emitted by phone masts in a real situation may affect the development and may cause an increase in mortality of exposed tadpoles. This research may have huge implications for the natural world, which is now exposed to high microwave radiation levels from a multitude of phone masts.

PMID: 20560769 DOI: 10.3109/15368371003685363

[Indexed for MEDLINE]

www.bioinitiative.org.

https://www.youtube.com/watch?v=4TA_rB3qC4M

 PC 7-26-18 #3 4 Pages

Planning Department <planning@edcgov.us>

More Correspondence in Opposition to Application of AT&T Mobility

Colleen Bullock <cnbullock@droecalaw.com> Mon, Jul 23, 2018 at 11:53 AM
To: planning@edcgov.us

Please see the attached correspondence from Mr. Schaffer and Mr. Good. Please add to the file referenced below.

Colleen Bullock

Law Offices of Douglas R. Roeca

From: Colleen Bullock <cnbullock@droecalaw.com>
Sent: Thursday, July 19, 2018 2:39 PM
To: 'planning@edcgov.us' <planning@edcgov.us>
Subject: Opposition to Application of AT&T Mobility

Please see attached Memo of Opposition and Exhibits to Memo. This is opposition to the Application of AT&T Mobility; Project S 17-0016 AT&T CAF4 for a Conditional Use Permit. The Planning Commission Hearing is set for Thursday, July 26, 2018.

Please call or email me if you have any questions or problems opening these documents.

Thank you

Colleen Bullock
Legal Assistant
Douglas R. Roeca
3062 Cedar Ravine
Placerville, CA 95667
Telephone: (530) 626-2511
Facsimile: (530) 626-2514

2 attachments

Frank Schaffer Ltr.pdf

35K

Jeff Good Ltr.pdf
69K

May 19, 2018

El Dorado County Planning Commission
Planning and Building Department
County of El Dorado
2850 Fairlane Court
Placerville CA 95667

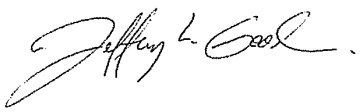
RE: 860 Gate Lane, Pilot Hill, CA

Dear members of the El Dorado Planning Commission:

I am writing on behalf of Bruce and Marji Crawford with regards to the proposed cell tower to be located immediately adjacent to their property and home. I strongly urge you to deny approval of the proposed tower and associated road and service equipment necessary to operate the tower. Earlier this year I had the privilege to be a house guest of the Crawford's and experienced the natural beauty, serenity and peacefulness of the mountaintop they now call home. Its really quite extraordinary. The magic of the place has to do with the sensitive way the surrounding countryside has been developed, primarily emphasizing unobstructed views and the preserving of the natural setting. It reminds me of Italian countrysides I have experienced. I know each of you take great pride in your community and the natural beauty that attracts so many to your locale. We all have a responsibility to be **good stewards of the resources** within our control. This includes being cautious about allowing development such as the proposed tower. I have been a practicing architect for 40 years, focused on the aesthetics of merging the built environment with nature. Recently I walked the Crawford's property and observed the location of the proposed tower , equipment and access road. The tower design and location will most certainly adversely affect the Crawford's as well as other nearby residents. Much of the feel and atmosphere that makes this location so special will be compromised if the installation is allowed to move forward.

Your commission has an important and strategic role in influencing the future aesthetics of your county. We ask
that you preserve the special beauty of this place and request that alternate sites be considered.

Respectfully yours,



Jeffrey L. Good

July 22, 2018

Dear El Dorado County Planning Commissioners,

My name is Frank Schaffer. I oppose the building of the proposed site 6 Zee Estate cell tower on Gate Lane in Pilot Hill, which is planned to be built a few hundred feet from my house and property. Six years ago my wife and I purchased 5621 Salmon Falls Rd. for the peace and the incredible quiet, far from any industry.

This tower will be in full view from at least 50% of my property. Our real estate values will be impacted as potential buyers of our country property would see that they would have to suffer this eyesore as a near neighbor. Local realtors say we would have to drop our price 20 – 30 percent to compensate, in order to get prospective buyers to even look at it, all because of having a cell tower so close to our home.

I live in an extreme fire danger zone. This tower could conceivably fall and start a fire.

Please deny this application.

Thank you,

Frank Schaffer
5621 Salmon Falls Rd.
Pilot Hill, CA 95664
alinoceanside@att.net
760.525.2129

PC 7-26-18
#3
2 Pages

Planning Department <planning@edcgov.us>

High speed internet meeting July 26 in the planning hearing room

1 message

Robin K Cleveland <rkcleveland@ucanr.edu> Mon, Jul 23, 2018 at 12:46 PM
To: "planning@edcgov.us" <planning@edcgov.us>

Please vote for this or what ever it is you do to put something into action. In this day and age we should all have access to the same benefits of high speed internet. And please include Camino in this plan. People on one side of a main road through Camino have access to Cable but the other side is SOL and forced to use dial up (at a stand-still pace), satellite (not much better and very limited if you have children in school) or cellular and none of these work well 100% of the time. I have experienced all three and am currently using a Verizon hot spot – but even that slows down and is spotty depending on how many bars you can get. We are a large county. We have been told for 10 years now that ATT High Speed internet access is coming, that we only need one more piece in the picture and that was for fiber optics to be put placed in place about a mile from the house – supposedly if you were within 2 or 3 miles you could get high speed. Well I believe the fiber optics were put in but to this day we are not eligible for high speed.

Please do what ever you can do to get this going.

Thank you,

Robin Cleveland, Assistant II
UC Cooperative Extension, Central Sierra

Serving Amador, Calaveras, El Dorado and Tuolumne counties
311 Fair Lane, Placerville, California 95667
Phone: 530-621-5528 Fax: 888-764-9669
rkcleveland@ucanr.edu <http://cecentralsierra.ucanr.edu>

University of California
Agriculture and Natural Resources

UC CE **UC Cooperative Extension Central Sierra** on Facebook

Like

PC 7-26-18
#3
52 Pages

Planning Department <planning@edcgov.us>

Fwd: FW: Memo in Opposition

Evan Mattes <evan.mattes@edcgov.us> Mon, Jul 23, 2018 at 4:19 PM
To: Planning Department <planning@edcgov.us>, Serena Carter <serena.carter@edcgov.us>

---------- Forwarded message ----------
From: **Bob Craft** <bob@scorpionridgeranch.com>
Date: Mon, Jul 23, 2018 at 4:17 PM
Subject: FW: Memo in Opposition
To: "evan.mattes@edcgov.us" <evan.mattes@edcgov.us>

Sent from Mail for Windows 10

From: Carole O'Shea
Sent: Monday, July 23, 2018 2:04 PM
To: bob@scorpionridgeranch.com
Cc: ajc@campanellipc.com
Subject: Memo in Opposition

Mr. Craft:

Attached is the Memo in Opposition that Mr. Campanelli

has prepared concerning the Cell Tower proposed for Site #5

located at 7160 Dragon Point Road, Shingle Springs, CA.

I am sending it to you in word and in pdf formats.

Please review and contact our office if you have any questions

or comments.

I am sending the Exhibits in Opposition to you in a separate email.

Please confirm that you receive both documents.

Thank you,

Carole-Ann O'Shea

Office Manager

Campanelli & Associates, P.C.

1757 Merrick Avenue, Suite 204

Merrick, New York 11566

(516) 746-1600

--

Evan Mattes
Assistant Planner

County of El Dorado
Planning and Building Department
2850 Fairlane Court
Placerville, CA 95667
Office: (530) 621-5994 Fax: (530) 642-0508
evan.mattes@edcgov.com

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4 attachments

A cover page.docx
15K

B Table of Contents.docx
17K

C Body of Memo.docx
59K

Craft Memo in Opp.pdf
2937K

COUNTY OF EL DORADO
STATE OF CALIFORNIA
----------X

In the Matter of the Application of

AT & T Mobility **Site # 5 – Latrobe**
Project S 17 –0016 AT&T CAF4

Conditional Use
Permit Application

MEMORANDUM
IN OPPOSITION

Premises: Site #5
7160 Dragon Point Road
Shingle Springs, CA 95682
Parcel ID# 087-181-10-100

----------X

MEMORANDUM IN OPPOSITION

Respectfully Submitted,

Robert L. Craft
8600 Lost Horizon Road
Shingle Springs, CA 95682

Table of Contents

Preliminary Statement

Under Project S 17 0017 CAF4, AT&T Mobility (hereinafter *"AT&T"*) seeks a reconsideration of the denial of an application for a Conditional Use Permit to install seven (7) large "mono pine" cell towers throughout El Dorado County.

One of the cell towers being proposed within that application is a one hundred forty (140) foot tower being proposed for real property situated at 7160 Dragon Point Road, Shingle Springs, CA 95682, which is identified in *AT&T*'s application as "Site # 5," the "Latrobe" parcel.

This memorandum is being submitted by Robert L. Craft, a homeowner whose property is situated only **thirty (30) feet** from where the base of a fourteen (14) story tower would stand if *AT&T's* application were to be approved.

After a public hearing was conducted on February 22, 2018, the Planning Commission effectively denied *AT&T's* application by rendering a 2-2 vote upon same.

Thereafter, the Planning Staff completed a statement of findings of the Planning Commission, wherein the Staff recorded the Commission's findings.

With respect to Site #5, the Commission's findings were that: (a) *AT&T* did not adequately analyze potential co-locations within the vicinity, and failed to establish a prima facie case to support its claim that there are no feasible alternative sites, (b) the proposed tower would "unavoidably impact" the aesthetics of the surrounding neighborhood", and (c) adequate access does not exist for the site.

A true copy of the Planning Staff's Statement of Findings for the Commission's denial is submitted herewith as Exhibit "A."

By e-mail and letter dated February 21, 2018, the applicant requested that the Commission "reconsider" its denial, citing the provisions of the Federal Telecommunications Act of 1996 (herein after referred to as the "TCA"). A copy of the applicant's e-mail and accompanying letter are collectively annexed hereto as Exhibit "B."

Within such letter, the applicant essentially suggests that the TCA all but *requires* that the Commission grant *AT&T's* application to "satisfy" the TCA. *See* Exhibit "B" at page 5.

Consistent with the Planning Commission's previous determinations, and as further supported by the evidence submitted herewith, *AT&T's* application for reconsideration of its previous application should be denied because: (a) the proposed tower, which is the subject of this memorandum, is not necessary for *AT&T* to provide wireless services within the County, (b) *AT&T* has wholly failed to established that it suffers from a "significant gap" in its 4G LTE personal wireless services, or that the proposed tower is the least intrusive means of remedying any such non-existent gap, (c) the proposed installation would unnecessarily inflict dramatic adverse aesthetic impacts upon the nearby homes, and (d) would reduce the values of the nearby homes, (e) the proposed installation lacks a sufficient fall zone and (f) the proposed installation does not comply with the requirements of the El Dorado Zoning Ordinance.

Simply stated, the installation of a fourteen (14) story tower in a residential area at Site # 5 would not merely "*stick out like sore a thumb*," it would inflict upon my home, the other homes nearby, and the community, the precise adverse impacts which the relevant provisions of the El Dorado Zoning Ordinance were specifically enacted to prevent.

As such, I respectfully submit that *AT&T*'s application for reconsideration should be denied while ensuring that such denial is performed in a manner that does not violate the Telecommunications Act of 1996.

While violations of the Telecommunications Act of 1996 **do not** enable applicants, such as *AT&T,* to recover any money damages or attorneys fees against municipalities who violate the TCA, if the County were to deny *AT&T's* application *in a manner* which violated the TCA, *AT&T* would be able to seek a Court order directing the County to grant an approval for the Conditional Use Permit it seeks.[1]

[1] The United States Supreme Court has explicitly ruled that applicants filing lawsuits claiming violations of the Telecommunications Act of 1996, cannot recover damages under 42 U.S.C. §1983, nor attorneys fees under 42 U.S.C. §1988. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005), *See also* Sprint Telephony PCS LP v. County of San Diego, 543 F3d.571 (9th Circuit 2008).

POINT I

It is Beyond Dispute That the 140 Foot Cell Tower Which *AT&T* Seeks to Construct at Site # 5 is Not Necessary For *AT&T* to Provide Personal Wireless Services Within the County

As is reflected within *AT&T's* own submissions, *AT&T* does not "need" the 140 foot tower it has proposed at Site #5 to provide wireless services within the areas in and surrounding the site.

As such, contrary to what *AT&T* suggests within its February 21, 2018 letter requesting "reconsideration" of the previous denial of its Conditional Use Permit application, the TCA does *not compel* the County to reconsider or grant its application.

Under the Telecommunications Act of 1996, a local government cannot deny an application for the installation of a cell tower, if the denial of such an application would "***prohibit***" the applicant from providing personal wireless service in the area where it proposes to install the new tower.[2]

To establish that a denial would "prohibit" it from providing wireless services, an applicant, such as *AT&T*, must prove both parts of a two (2) part test.

First, it must prove that it suffers from "a significant gap" in its personal wireless services. Second, it must establish that the proposed installation is the "least intrusive means" of remedying such gap, meaning that there are no less intrusive alternative locations. *See* T-Mobile Central LLC v. Charter Township of West Bloomfield, 691 F3d 794 (6th Cir 2012).[3]

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[2] *See* 47 U.S.C.A. §332(c)(7)(B)(i)(II).

[3] New York SMSA Limited Partnership v. Town of Oyster Bay Zoning Board of Appeal, 2010 WL 3937277 (E.D.N.Y. 2010) provides that "a coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists, customers cannot receiv[e] and send [ ] signals, and when customers pass through a coverage gap their calls are disconnected. [A] 'coverage gap' exists or a 'need' for a proposed site is found to be substantial by the Courts where, *inter alia,* the coverage needed by a carrier is not limited to a small number of houses in a rural area or merely the interior of buildings in a sparsely populated area."

A review of *AT&T*'s application reveals that *AT&T* does not claim that it suffers from any specific significant gap in its personal wireless services.

To the contrary, as is clearly disclosed within its supporting documentation, *AT&T* seeks to install its proposed tower at Site # 5 for *enhanced* cellular coverage and *future capacity* needs. *See* Exhibit "C" annexed hereto - a true copy of Attachment 3 for Site #5 Latrobe, wherein *AT&T* states that the purpose of the proposed 140 foot tower at Site #5 is to provide "*enhanced* cellular coverage and *capacity* to the Latrobe community." [italics added]

While failing to claim, much less *prove,* that *AT&T* suffers from any specific geographic gaps in its personal wireless services which would be "remedied" by constructing a massive 140 foot tower at the Latrobe Site, *AT&T* submits within its February 21, 2018 letter that:

> *"AT&T's proposed facilities would bring wireless services, including 4G LTE . . . . to as many people as possible in this rural portion of El Dorado County.*
>
> *See* Exhibit "B" at page 1.

AT&T has wholly failed to proffer to the Commission a modicum of evidence to establish that it currently suffers from any actual gap in its wireless services in these areas.

Instead, as is typically done in those cases where an applicant's desire to build a new large

cell tower is driven by financial desire[4] as opposed to any actual "*need*" for such a tower, *AT&T* submits unsupported "propagation maps" that are not merely hollow, but do not, and cannot, satisfy *AT&T's* burden of establishing that, in reality, there is a significant gap in coverage. *AT&T* is required to establish the presence of this significant gap in coverage before it can argue that the TCA requires the County to grant its current application for a Conditional Use Permit.

When a wireless provider suffers from *an actual* gap in its wireless service, providing evidence of such gap is both simple, and inexpensive.

Typically, the wireless provider will produce evidence of its gap by either performing a simple drive test or by simply providing a dropped call log.

A drive test is remarkably simple.

The tester takes an ordinary cell phone and attaches a recording device that records the wireless signal strength that the phone is receiving.

The paired devices are then temporarily attached to the dashboard of a car, which then drives through the area within which the provider believes a gap to exist. Since the recording device records the signal strength every few milliseconds or so, on a one hour drive the device can record as many as several hundred thousand readings, which provides a crystal clear picture of whether or not a gap in service exists, as well as the actual location of any such gap.

There is nothing estimated, surmised, or projected in this test.

Only the actual, real, existing signal strengths are recorded, and only ***actual gaps*** in wireless service are shown.

---

[4] *AT&T's* financial motivation to build new towers derives from its desire to take advantage of the federal "Connect America Fund" (CAF) through which the federal government is virtually "throwing money at *AT&T*" to build as many towers as possible. Notwithstanding same, *AT&T's* "financial desire" to reap the benefit of those monies offered by the federal government does not create a gap in *AT&T's* wireless services. Nor does it constitute a "*need*" for the towers which would trigger any requirement by the TCA that local governments grant approvals for these currently superfluous towers.

Even less burdensome, is the printing-out of a dropped call log.

Modern wireless carriers' computer systems maintain continuous records of dropped calls on their systems. With the input of a few keystrokes, providers can print out actual call logs which show the exact number of dropped calls in any location or area, for any chosen period of time.

Not surprisingly, given the ease and lack of expense involved in producing such proof to local zoning authorities, applicants seeking permission to install a new tower to alleviate an actual gap in their wireless service, these are the two types of evidence they will typically provide.

As the record clearly reflects, *AT&T* has produced no such proof in connection with its current application and proffers no excuse for having failed to do so.

By contrast, where an applicant does *not* suffer from any *actual gap* in service, but seeks construction of a new facility to meet *future capacity needs*, or to derive the financial benefit from leasing space upon such facility to its competitors, it will create the specter of a non-existent gap by engaging in a charade called "computer modeling."

In conducting computer modeling, the provider employs computer modeling software, and "introduces variables" to obtain a pre-desired resultant report.

"Introducing variables," means that the provider enters wholly arbitrary numbers and/or data into the software, to cause the software to print out a "coverage map" depicting anything the provider wants it to depict, irrespective of what the provider's *actual* coverage is, in the area depicted in the map.

Despite its submission of such "computer modeling" in support of its current application, *AT&T* has not established that it suffers from any actual gaps in its coverage which mandates that it

construct the proposed tower at Site #5, as the "least intrusive means" of remedying (i.e., closing such non-existent gaps in wireless service)

The Applicant has Wholly Failed to Establish That
There Are No Less Intrusive Alternative Sites Available

As set forth herein below, the proposed tower for Site #5 would inflict substantial adverse impacts on the homes nearby, and would, in fact, irresponsibly place my real property well within the fall zone of the proposed tower.

As such, *AT&T's* application for reconsideration should be denied because it would violate both the letter and the spirit of Ordinance Sections 130.40.130 and 130.52.021(C)(2).

Point II

AT&T's Application Must be Denied, Because the Proposed Tower Would Inflict Adverse Impacts Which the Relevant Provisions of the El Dorado Zoning Ordinance Were Specifically Enacted to Prevent

As the El Dorado County Zoning Ordinance makes quite clear, the intent behind the provision pertaining to Communication Facilities, and the reason why the County implemented a Conditional Use Permit requirement for same, was to protect the County against the adverse impacts which irresponsibly placed cell towers would inflict upon its communities and homes.

Consistent with such intent, Section 130.52.021(C)(2) of the Ordinance explicitly provides that a Conditional Use Permit Application cannot be granted unless, and until, the reviewing authority affirmatively determines that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood."

As set forth below, *AT&T's* application should be denied, because the construction of a fourteen (14) story tower in a residential neighborhood would inflict upon my home the specific types of adverse impacts which the Ordinance and Conditional Use Permit requirements were specifically enacted to prevent.

A. The Proposed Installation Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area

As logic would dictate, the construction of a fourteen (14) story cell tower in a residential area where no other structures exceed two (2) stories in height would not merely *"stick out like a sore thumb,"* but would dominate the skyline, be wholly inconsistent with the residential character of the neighborhood and would inflict severe adverse aesthetic impacts upon virtually all of the homes in close proximity.

Recognizing the likely negative impact which an irresponsibly placed cell tower would inflict upon homes and residential communities, the County of El Dorado enacted Ordinance Section 130.40.130 which provides that "the county will seek to minimize the visual impacts of wireless facilities" and/or will consider smaller facilities that are "less visually obtrusive or otherwise in the public interest" 130.40.130(A)(2).

Of even greater import, to enable the reviewing authority to accurately assess the extent of the adverse aesthetic impacts that a proposed cell tower would inflict upon nearby homes, the County enacted Section 130.40.130(C), which requires applicants seeking Conditional Use Permits for wireless communications facilities to provide visual simulations of the proposed wireless communication facilities, which can consist of "either a physical mock-up of the facility, balloon simulation, computer simulation or other means" of providing a visual image of the proposed installation. *See* Ordinance Section 130.40.130(C).

AT&T's Photo-Simulations are Inherently
Defective and Should be Disregarded Entirely

In an entirely hollow effort to comply with Section 130.40.130(C), *AT&T* has submitted photo-simulations pertaining to the site that are the subject of this Memorandum.
(Latrobe Site #5).

AT&T's set of photo-simulations includes four (4) photographic images of the site taken from four (4) different perspectives, along with duplicate copies of those same four (4) images, except that the duplicates are depicted below the original images, and the duplicates contain an image of a monopine cell tower, which has been super-imposed on each of the four (4) images.

True copies of *AT&T's* "photo-simulations" for the Latrobe Site # 2 are annexed hereto as Exhibit "D."

As set forth herein below, the photographic images submitted by *AT&T* are wholly defective and should be rejected in their entirety because, as *AT&T* is undoubtedly aware, they do not fulfill the function for which Ordinance Section 130.40.130 was enacted.

As common sense would dictate, the whole purpose for which local governments require photo-simulations such as those required under Section 130.40.130(C), is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation is likely to inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by ***deliberately omitting*** from the photo-simulations, any images taken from the perspective of those nearby homes which would sustain the most severe adverse aesthetic impacts.

Such is precisely the case here.

Not a single one of the photo-simulations submitted by *AT&T* depict images taken from the perspective of my home, which will sustain the most severe adverse aesthetic impact from the installation of a fourteen (14) story cell tower only thirty (30) feet from my property.

In Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), a federal court explicitly ruled that where, as here, a proponent of a cell tower presents visual impact depictions or studies wherein they "omit" any images from the perspectives of homeowners whose homes are in close proximity to the proposed installation, such presentations are inherently defective, and should be properly disregarded by the respective government entity that received it.

As was explicitly stated by the federal court, "the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows" *Id.*

The images presented by *AT&T* do not include ***any*** images taken from vantage points showing the most severe adverse aesthetic impacts on my home.

As such, in accord with the federal court's holding in Omnipoint, *AT&T's* photo-simulations should be disregarded in its entirety.

Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Installation Would Inflict Upon the Residential Areas

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts that an irresponsibly placed cell tower would inflict upon homes in close proximity to the tower, are the homeowners and their families.

Consistent with same, federal Courts have ruled that when a local government is entertaining a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed cell tower would inflict upon nearby homes, statements and letters from the actual homeowners, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g.* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005). Moreover, Federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed telecommunications towers. *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005).

Annexed hereto as Exhibit "E" is a letter wherein I explain the severe adverse aesthetic impact which the proposed fourteen (14) story cell tower would inflict upon my home.

As my letter states, I will have a full, unobstructed view, of the fourteen (14) story tower which will completely dominate my view from my home.

Moreover, as further set forth herein below, the severe adverse aesthetic impacts that the proposed cell tower would inflict upon my home is entirely unnecessary, because *AT&T* does not need the respective one hundred forty (140) foot tower to provide wireless services within the County.

B. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the area at issue, the construction of such a massive tower at the proposed location would contemporaneously inflict an adverse impact upon the actual value of my home.

Across the entire United States, both real estate appraisers[5] and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.[6]

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.[7]

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[5] *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a tower in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

[6] In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a cell tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced the price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*
The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*
The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

[7] Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho me--172366931.html.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, as direct evidence of the reduction of property values which an irresponsibly tower would inflict upon nearby homes, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed cell tower *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed tower would have upon the value of my home and property, which would be a mere thirty (30) feet from the base of the tower at the Latrobe parcel, Site #5, annexed hereto as Exhibit "F" is a letter setting forth the professional opinion of licensed real estate professional, Gary McErney.

Within such letter, Mr. McErney, who has been a Licensed Real Estate professional in California for nearly thirty (30) years, submits his professional opinion that the proposed installation will reduce the value of my home by anywhere from 25% to 50%; *See* Exhibit "F."

Given the severe reduction in the property value which my home would sustain, the granting of *AT&T's* application would inflict upon my home the very type of injurious impacts which the Zoning Ordinance was specifically intended to prevent. Accordingly, *AT&T's* application should be denied.

Point III

AT&T's Application Should be Denied, Because
Its Proposed Installation at Site #5
Does Not Provide a Sufficient Fallzone

As local governments across the entire United States have recognized, it is critical to maintain sufficient setbacks and safe zones around large cell towers, in order to protect the public from the potential dangers that irresponsibly placed cell towers present.

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.[8]

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[8] *See e.g. City of Murray, KY* Ordinance 2005-1375 Section 156 "Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower."; *City of Harrah, OK* Ordinance 2010-10 - "For cell towers ranging in height from one hundred thirty-one (131) feet up to one hundred eighty (180) feet, including antenna, the cell tower, buildings and power equipment, including the perimeter fence, must be located a distance of five hundred (500) feet minimum from any abutting property line and no closer than three hundred (300) feet to a residence or structure."

Orlando, FL Ordinance 58.840 Setbacks, Required "All uses in R-1AA, R-1A, R-1, R-1N, R-2A, R-2B and H, and single-family uses in R-3A. 200 feet or 300% height of tower, whichever is greater."

Town of Limington, ME Zoning Ordinance 8.19 "New Personal wireless service facilities shall be set back: 1. at least one (1) times the height, plus 50 feet from all boundaries of the site on which the facility is located and 2. at least 750 feet horizontally from any existing dwelling units."

Caldwell County, NC Section 90G.20 "Fall zones, setback and buffers" "The minimum setback measured from the property line shall be equal to 100% of the telecommunication tower height."

Town of Edgewood, NM Ordinance 2003-11 "All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater."

As set forth below, *AT&T's* application for reconsideration should be denied because, if the 140 foot cell tower is built where *AT&T* has proposed, my property would be well within the fall zone and danger zone of this massive tower.

There are four (4) physical dangers that have induced local governments to adopt specific setback and/or safezone requirements for cell towers, and which serve as the reason why the required setback distances for cell towers are invariable tied directly to the height of respective towers.

These well-known dangers are structural failures, fire, ice fall, and debris fall.

Structural Failures & Fires

The multiple dangers of structural failures of all types of cell towers, from lattice structures to monopoles, are well-documented. A component of an installation fails, causing an element or part of the structure to hurdle to the ground, or in some cases, the entire tower to collapse or to burst into flames and fall over.

Annexed hereto as Exhibit "G" are images depicting a typical cell tower failure, wherein a virtually "brand new" monopole collapsed in a matter of seconds, crushing a Fire Chief's vehicle in the process.[9]

Some of the most common elements and areas of failure which result in the collapse of cell towers are baseplates,[10] flanges, joints, bolts and guy wires.[11]

With respect to monopoles and fires, while a layperson might fight it hard to believe, roughly once per month a cell tower somewhere in the United States bursts into flames, and

[9] To obtain details about the monopole cell tower which collapsed at the Oswego fire house, crushing the Fire Chief's vehicle, go to www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle, or go to *Google* and search for "Oswego cell tower collapse."

[10] To see images of monopole baseplate failures, go to http://residentsact.blogspot.com/2007/11/just-how-safe-are-monopole-cell-towers.html.

[11] To see multiple images of telecommunications towers which have collapsed, go to *Google*, type in a search for "radio tower collapse", and then choose "images" from the search results.

occasionally collapses in a flaming heap that can ignite anything within a broad area surrounding the base upon which it had been erected.[12]

Remarkably, as proposed by *AT&T*, its tower at Site #5 would be irresponsibly placed so that my property would all be well within the fall zone of the Tower, as well as the danger zones for fire, ice fall, and debris fall.

Ice Fall

A natural, but well-known danger associated with communications towers is ice, and the very real risk that can come during the winter-early spring when ice, which has formed upon an installation, begins to melt, comes loose and hurdles to the ground. In this case, such ice chunks, which would fall from a height as high as 160 feet, would reach speeds well over 60 mph by the time they hit the ground.[13]

Annexed hereto as Exhibit "H" is an engineering analysis which establishes that ice falling from a 150 foot tower would reach a speed of 67 mph by the time it reached the ground and that the ice chunks could easily reach the ground at such a speed at distances as great as 100 feet from the tower.

As proposed by *AT&T*, the proposed tower for Site #5 would place my property well within the ice fall zone of the tower.

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[12] To see videos of modern towers bursting into flames and/or burning to the ground, go to http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1 or http://www.youtube.com/watch?v=y NKVWrazg, or simply go to *Google*, and search for "cell tower burns."

[13] To see dramatic video footage of chunks of ice falling from a communications tower causing severe damage to automobiles in a parking lot below, go to www.youtube.com/watch?v=pfBp2QYOIbc www.youtube.com/watch?v=YWqiSHRwmk8 or search on YouTube for "ice falls from tower". While such video depicts ice falling from a tower higher than that being proposed, experts have calculated that ice falling from a 150-foot tower would reach the speed of 67-70 mph by the time it hit the ground (*See e.g.* Exhibit "N" - a true copy of a physicist's report dated April 16, 2013 which calculates the speed of ice falling from a 150-foot cell tower).

As logic would dictate, if chunks of ice fell from a height of 140 feet, they could easily seriously injure or kill anyone struck by them. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, any person under it would receive no warning before being struck by same.

Debris Fall

Finally, there is the danger of falling debris, and more specifically, items dropped or caused to fall during routine maintenance activities that must be performed upon such towers on a regular basis.[14]

To afford adequate protections against these very real dangers, local governments have imposed setback requirements to afford sufficiently sized buffer/safety areas to ensure the safety of both their citizens and the public at large.

These buffer or safety zones consist of an area surrounding a tower which is restricted from public or personal access, and which is large enough to ensure that if a tower were to fail or collapse, or ice were to hurdle downward from the top of it, nobody would be close enough to be injured or killed by same.

A sample of a typical local government zoning regulation that actually describes such concerns is the Town of Huntington, NY Code Section §113, which provides as follows:

[14] Annexed hereto as Exhibit "I" is a page from a study completed by a consultant hired by the City of Brookfield, Wisconsin, which depicts a lump hammer that had been dropped from a cell tower during routine maintenance and crashed through the roof of a nearby structure.

> "It shall be demonstrated to the satisfaction of the Town Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties."
>
> Huntington Town Code §113-58.1(F)

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.

As such, *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit cannot be granted, because the Commission cannot reasonably make an affirmative finding that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood" as is explicitly required under Section 130.52.021(C)(2) of the El Dorado Zoning Ordinance.

POINT IV

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow *AT&T* to Increase the Size of the Proposed Cell Tower Without Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the tower were built at fourteen (14) stories, the fact is that once the tower is built, *AT&T* would thereafter be permitted to increase the height of the tower by an additional twenty-eight (28) feet, and the City would be legally prohibited from stopping *AT&T*, due to the constraints of the Middle Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides that "notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." *See* 47 U.S.C. § 1455(a).

Under the FCCs reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to cell towers unless the modification will "substantially change" the physical dimensions of the tower.

The FCC defines "substantial change" to include any modification that would increase the height of the tower by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas are usually eight (8) feet tall, so this provision would allow an increase in the proposed cell tower's height by approximately twenty-eight (28) feet, and this height increase could not be challenged or prevented by the City.

Simply stated, under the FCC's regulation, if the tower proposed for Site #5 were to be built, *AT&T,* at any time thereafter, could unilaterally increase the height of the tower by as much as an additional twenty-eight (28) feet, and there would be no way for the County to prevent such an occurrence.

Considering the even more extreme adverse impacts which increasing the height of the tower would inflict upon my home and the surrounding community, *AT&T's* application should be denied, especially since, as set forth above, *AT&T* doesn't actually *need* the proposed tower in the first place.

Point V

To Comply With the TCA, *AT&T*'s Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a cell tower: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

(i) The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial that is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See e.g.* MetroPCS v. City and County of San Francisco, 400 F.3d 715(2005).

(ii) The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations. *See e.g.* American Towers, Inc. v. Wilson County, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *AT&T's* application in a separate written decision, wherein the Board cites the evidence based upon which it made its determination.

Conclusion

In view of the forgoing, it is respectfully submitted that *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit should be denied in its entirety.

Respectfully Submitted,

Robert L. Craft

COUNTY OF EL DORADO
STATE OF CALIFORNIA
----------X

In the Matter of the Application of

AT & T Mobility **Site # 5 – Latrobe**
Project S 17 –0016 AT&T CAF4

Conditional Use
Permit Application

MEMORANDUM
IN OPPOSITION

Premises: Site #5
7160 Dragon Point Road
Shingle Springs, CA 95682
Parcel ID# 087-181-10-100

----------X

MEMORANDUM IN OPPOSITION

Respectfully Submitted,

Robert L. Craft
8600 Lost Horizon Road
Shingle Springs, CA 95682

Table of Contents

Preliminary Statement

Under Project S 17 0017 CAF4, AT&T Mobility (hereinafter *"AT&T"*) seeks a reconsideration of the denial of an application for a Conditional Use Permit to install seven (7) large "mono pine" cell towers throughout El Dorado County.

One of the cell towers being proposed within that application is a one hundred forty (140) foot tower being proposed for real property situated at 7160 Dragon Point Road, Shingle Springs, CA 95682, which is identified in *AT&T*'s application as "Site # 5," the "Latrobe" parcel.

This memorandum is being submitted by Robert L. Craft, a homeowner whose property is situated only **thirty (30) feet** from where the base of a fourteen (14) story tower would stand if *AT&T's* application were to be approved.

After a public hearing was conducted on February 22, 2018, the Planning Commission effectively denied *AT&T's* application by rendering a 2-2 vote upon same.

Thereafter, the Planning Staff completed a statement of findings of the Planning Commission, wherein the Staff recorded the Commission's findings.

With respect to Site #5, the Commission's findings were that: (a) *AT&T* did not adequately analyze potential co-locations within the vicinity, and failed to establish a prima facie case to support its claim that there are no feasible alternative sites, (b) the proposed tower would "unavoidably impact" the aesthetics of the surrounding neighborhood", and (c) adequate access does not exist for the site.

A true copy of the Planning Staff's Statement of Findings for the Commission's denial is submitted herewith as Exhibit "A."

By e-mail and letter dated February 21, 2018, the applicant requested that the Commission "reconsider" its denial, citing the provisions of the Federal Telecommunications Act of 1996 (herein after referred to as the "TCA"). A copy of the applicant's e-mail and accompanying letter are collectively annexed hereto as Exhibit "B."

Within such letter, the applicant essentially suggests that the TCA all but *requires* that the Commission grant *AT&T's* application to "satisfy" the TCA. *See* Exhibit "B" at page 5.

Consistent with the Planning Commission's previous determinations, and as further supported by the evidence submitted herewith, *AT&T's* application for reconsideration of its previous application should be denied because: (a) the proposed tower, which is the subject of this memorandum, is not necessary for *AT&T* to provide wireless services within the County, (b) *AT&T* has wholly failed to established that it suffers from a "significant gap" in its 4G LTE personal wireless services, or that the proposed tower is the least intrusive means of remedying any such non-existent gap, (c) the proposed installation would unnecessarily inflict dramatic adverse aesthetic impacts upon the nearby homes, and (d) would reduce the values of the nearby homes, (e) the proposed installation lacks a sufficient fall zone and (f) the proposed installation does not comply with the requirements of the El Dorado Zoning Ordinance.

Simply stated, the installation of a fourteen (14) story tower in a residential area at Site # 5 would not merely "*stick out like sore a thumb*," it would inflict upon my home, the other homes nearby, and the community, the precise adverse impacts which the relevant provisions of the El Dorado Zoning Ordinance were specifically enacted to prevent.

As such, I respectfully submit that *AT&T*'s application for reconsideration should be denied while ensuring that such denial is performed in a manner that does not violate the Telecommunications Act of 1996.

While violations of the Telecommunications Act of 1996 **do not** enable applicants, such as *AT&T,* to recover any money damages or attorneys fees against municipalities who violate the TCA, if the County were to deny *AT&T's* application *in a manner* which violated the TCA, *AT&T* would be able to seek a Court order directing the County to grant an approval for the Conditional Use Permit it seeks.[1]

[1] The United States Supreme Court has explicitly ruled that applicants filing lawsuits claiming violations of the Telecommunications Act of 1996, cannot recover damages under 42 U.S.C. §1983, nor attorneys fees under 42 U.S.C. §1988. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113 (2005), *See also* Sprint Telephony PCS LP v. County of San Diego, 543 F3d.571 (9th Circuit 2008).

POINT I

It is Beyond Dispute That the 140 Foot Cell Tower Which *AT&T* Seeks to Construct at Site # 5 is Not Necessary For *AT&T* to Provide Personal Wireless Services Within the County

As is reflected within *AT&T's* own submissions, *AT&T* does not "need" the 140 foot tower it has proposed at Site #5 to provide wireless services within the areas in and surrounding the site.

As such, contrary to what *AT&T* suggests within its February 21, 2018 letter requesting "reconsideration" of the previous denial of its Conditional Use Permit application, the TCA does *not compel* the County to reconsider or grant its application.

Under the Telecommunications Act of 1996, a local government cannot deny an application for the installation of a cell tower, if the denial of such an application would "***prohibit***" the applicant from providing personal wireless service in the area where it proposes to install the new tower.[2]

To establish that a denial would "prohibit" it from providing wireless services, an applicant, such as *AT&T*, must prove both parts of a two (2) part test.

First, it must prove that it suffers from "a significant gap" in its personal wireless services. Second, it must establish that the proposed installation is the "least intrusive means" of remedying such gap, meaning that there are no less intrusive alternative locations. *See* T-Mobile Central LLC v. Charter Township of West Bloomfield, 691 F3d 794 (6th Cir 2012).[3]

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[2] *See* 47 U.S.C.A. §332(c)(7)(B)(i)(II).

[3] New York SMSA Limited Partnership v. Town of Oyster Bay Zoning Board of Appeal, 2010 WL 3937277 (E.D.N.Y. 2010) provides that "a coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. When a coverage gap exists, customers cannot receiv[e] and send [ ] signals, and when customers pass through a coverage gap their calls are disconnected. [A] 'coverage gap' exists or a 'need' for a proposed site is found to be substantial by the Courts where, *inter alia*, the coverage needed by a carrier is not limited to a small number of houses in a rural area or merely the interior of buildings in a sparsely populated area."

A review of *AT&T*'s application reveals that *AT&T* does not claim that it suffers from any specific significant gap in its personal wireless services.

To the contrary, as is clearly disclosed within its supporting documentation, *AT&T* seeks to install its proposed tower at Site # 5 for *enhanced* cellular coverage and *future capacity* needs. *See* Exhibit "C" annexed hereto - a true copy of Attachment 3 for Site #5 Latrobe, wherein *AT&T* states that the purpose of the proposed 140 foot tower at Site #5 is to provide "*enhanced* cellular coverage and *capacity* to the Latrobe community." [italics added]

While failing to claim, much less *prove*, that *AT&T* suffers from any specific geographic gaps in its personal wireless services which would be "remedied" by constructing a massive 140 foot tower at the Latrobe Site, *AT&T* submits within its February 21, 2018 letter that:

> *"AT&T's proposed facilities would bring wireless services, including 4G LTE . . . . to as many people as possible in this rural portion of El Dorado County.*
>
> *See* Exhibit "B" at page 1.

AT&T has wholly failed to proffer to the Commission a modicum of evidence to establish that it currently suffers from any actual gap in its wireless services in these areas.

Instead, as is typically done in those cases where an applicant's desire to build a new large cell tower is driven by financial desire[4] as opposed to any actual "*need*" for such a tower, *AT&T* submits unsupported "propagation maps" that are not merely hollow, but do not, and cannot, satisfy *AT&T's* burden of establishing that, in reality, there is a significant gap in coverage. *AT&T* is required to establish the presence of this significant gap in coverage before it can argue that the TCA requires the County to grant its current application for a Conditional Use Permit.

When a wireless provider suffers from *an actual* gap in its wireless service, providing evidence of such gap is both simple, and inexpensive.

Typically, the wireless provider will produce evidence of its gap by either performing a simple drive test or by simply providing a dropped call log.

A drive test is remarkably simple.

The tester takes an ordinary cell phone and attaches a recording device that records the wireless signal strength that the phone is receiving.

The paired devices are then temporarily attached to the dashboard of a car, which then drives through the area within which the provider believes a gap to exist. Since the recording device records the signal strength every few milliseconds or so, on a one hour drive the device can record as many as several hundred thousand readings, which provides a crystal clear picture of whether or not a gap in service exists, as well as the actual location of any such gap.

There is nothing estimated, surmised, or projected in this test.

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[4] *AT&T's* financial motivation to build new towers derives from its desire to take advantage of the federal "Connect America Fund" (CAF) through which the federal government is virtually "throwing money at *AT&T*" to build as many towers as possible. Notwithstanding same, *AT&T's* "financial desire" to reap the benefit of those monies offered by the federal government does not create a gap in *AT&T's* wireless services. Nor does it constitute a "*need*" for the towers which would trigger any requirement by the TCA that local governments grant approvals for these currently superfluous towers.

Only the actual, real, existing signal strengths are recorded, and only ***actual gaps*** in wireless service are shown.

Even less burdensome, is the printing-out of a dropped call log.

Modern wireless carriers' computer systems maintain continuous records of dropped calls on their systems. With the input of a few keystrokes, providers can print out actual call logs which show the exact number of dropped calls in any location or area, for any chosen period of time.

Not surprisingly, given the ease and lack of expense involved in producing such proof to local zoning authorities, applicants seeking permission to install a new tower to alleviate an actual gap in their wireless service, these are the two types of evidence they will typically provide.

As the record clearly reflects, *AT&T* has produced no such proof in connection with its current application and proffers no excuse for having failed to do so.

By contrast, where an applicant does *not* suffer from any *actual gap* in service, but seeks construction of a new facility to meet *future capacity needs*, or to derive the financial benefit from leasing space upon such facility to its competitors, it will create the specter of a non-existent gap by engaging in a charade called "computer modeling."

In conducting computer modeling, the provider employs computer modeling software, and "introduces variables" to obtain a pre-desired resultant report.

"Introducing variables," means that the provider enters wholly arbitrary numbers and/or data into the software, to cause the software to print out a "coverage map" depicting anything the provider wants it to depict, irrespective of what the provider's *actual* coverage is, in the area depicted in the map.

Despite its submission of such "computer modeling" in support of its current application, *AT&T* has not established that it suffers from any actual gaps in its coverage which mandates that it construct the proposed tower at Site #5, as the "least intrusive means" of remedying (i.e., closing such non-existent gaps in wireless service)

The Applicant has Wholly Failed to Establish That
There Are No Less Intrusive Alternative Sites Available

As set forth herein below, the proposed tower for Site #5 would inflict substantial adverse impacts on the homes nearby, and would, in fact, irresponsibly place my real property well within the fall zone of the proposed tower.

As such, *AT&T's* application for reconsideration should be denied because it would violate both the letter and the spirit of Ordinance Sections 130.40.130 and 130.52.021(C)(2).

Point II

AT&T's Application Must be Denied, Because the Proposed Tower Would Inflict Adverse Impacts Which the Relevant Provisions of the El Dorado Zoning Ordinance Were Specifically Enacted to Prevent

As the El Dorado County Zoning Ordinance makes quite clear, the intent behind the provision pertaining to Communication Facilities, and the reason why the County implemented a Conditional Use Permit requirement for same, was to protect the County against the adverse impacts which irresponsibly placed cell towers would inflict upon its communities and homes.

Consistent with such intent, Section 130.52.021(C)(2) of the Ordinance explicitly provides that a Conditional Use Permit Application cannot be granted unless, and until, the reviewing authority affirmatively determines that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood."

As set forth below, *AT&T's* application should be denied, because the construction of a fourteen (14) story tower in a residential neighborhood would inflict upon my home the specific types of adverse impacts which the Ordinance and Conditional Use Permit requirements were specifically enacted to prevent.

A. The Proposed Installation Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Area

As logic would dictate, the construction of a fourteen (14) story cell tower in a residential area where no other structures exceed two (2) stories in height would not merely *"stick out like a sore thumb,"* but would dominate the skyline, be wholly inconsistent with the residential character of the neighborhood and would inflict severe adverse aesthetic impacts upon virtually all of the homes in close proximity.

Recognizing the likely negative impact which an irresponsibly placed cell tower would inflict upon homes and residential communities, the County of El Dorado enacted Ordinance Section 130.40.130 which provides that "the county will seek to minimize the visual impacts of wireless facilities" and/or will consider smaller facilities that are "less visually obtrusive or otherwise in the public interest" 130.40.130(A)(2).

Of even greater import, to enable the reviewing authority to accurately assess the extent of the adverse aesthetic impacts that a proposed cell tower would inflict upon nearby homes, the County enacted Section 130.40.130(C), which requires applicants seeking Conditional Use Permits for wireless communications facilities to provide visual simulations of the proposed wireless communication facilities, which can consist of "either a physical mock-up of the facility, balloon simulation, computer simulation or other means" of providing a visual image of the proposed installation. *See* Ordinance Section 130.40.130(C).

AT&T's Photo-Simulations are Inherently
Defective and Should be Disregarded Entirely

In an entirely hollow effort to comply with Section 130.40.130(C), *AT&T* has submitted photo-simulations pertaining to the site that are the subject of this Memorandum.
(Latrobe Site #5).

AT&T's set of photo-simulations includes four (4) photographic images of the site taken from four (4) different perspectives, along with duplicate copies of those same four (4) images, except that the duplicates are depicted below the original images, and the duplicates contain an image of a monopine cell tower, which has been super-imposed on each of the four (4) images.

True copies of *AT&T's* "photo-simulations" for the Latrobe Site # 2 are annexed hereto as Exhibit "D."

As set forth herein below, the photographic images submitted by *AT&T* are wholly defective and should be rejected in their entirety because, as *AT&T* is undoubtedly aware, they do not fulfill the function for which Ordinance Section 130.40.130 was enacted.

As common sense would dictate, the whole purpose for which local governments require photo-simulations such as those required under Section 130.40.130(C), is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation is likely to inflict upon the nearby homes and residential community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by ***deliberately omitting*** from the photo-simulations, any images taken from the perspective of those nearby homes which would sustain the most severe adverse aesthetic impacts.

Such is precisely the case here.

Not a single one of the photo-simulations submitted by *AT&T* depict images taken from the perspective of my home, which will sustain the most severe adverse aesthetic impact from the installation of a fourteen (14) story cell tower only thirty (30) feet from my property.

In Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), a federal court explicitly ruled that where, as here, a proponent of a cell tower presents visual impact depictions or studies wherein they "omit" any images from the perspectives of homeowners whose homes are in close proximity to the proposed installation, such presentations are inherently defective, and should be properly disregarded by the respective government entity that received it.

As was explicitly stated by the federal court, "the Board was free to discount Omnipoint's study because it was conducted in a defective manner. . . the observation points were limited to locations accessible to the public roads, and no observations were made from the residents' backyards much less from their second story windows" *Id.*

The images presented by *AT&T* do not include ***any*** images taken from vantage points showing the most severe adverse aesthetic impacts on my home.

As such, in accord with the federal court's holding in Omnipoint, *AT&T's* photo-simulations should be disregarded in its entirety.

Evidence of the Actual Adverse Aesthetic Impacts Which
the Proposed Installation Would Inflict Upon the Residential Areas

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts that an irresponsibly placed cell tower would inflict upon homes in close proximity to the tower, are the homeowners and their families.

Consistent with same, federal Courts have ruled that when a local government is entertaining a cell tower application, it should accept, as direct evidence of the adverse aesthetic impacts which a proposed cell tower would inflict upon nearby homes, statements and letters from the actual homeowners, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g.* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005). Moreover, Federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed telecommunications towers. *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005).

Annexed hereto as Exhibit "E" is a letter wherein I explain the severe adverse aesthetic impact which the proposed fourteen (14) story cell tower would inflict upon my home.

As my letter states, I will have a full, unobstructed view, of the fourteen (14) story tower which will completely dominate my view from my home.

Moreover, as further set forth herein below, the severe adverse aesthetic impacts that the proposed cell tower would inflict upon my home is entirely unnecessary, because *AT&T* does not need the respective one hundred forty (140) foot tower to provide wireless services within the County.

B. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the area at issue, the construction of such a massive tower at the proposed location would contemporaneously inflict an adverse impact upon the actual value of my home.

Across the entire United States, both real estate appraisers[5] and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When large cell towers are installed unnecessarily close to residential homes, such homes suffer material losses in value which typically range anywhere from 5% to 20%.[6]

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.[7]

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[5] *See e.g.* a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a tower in close proximity to a home had reduced the value of the home by more than 10%, go to http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values

[6] In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a cell tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced the price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*
The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*
The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

[7] Under FHA regulations, no FHA (federally guaranteed) loan can be approved for the purchase of any home which is situated within the fall zone of a cell tower. *See* HUD FHA HOC Reference Guide Chapter 1 - hazards and nuisances. As a result, there are cases across the country within which: (a) a homeowner purchased a home, (b) a cell tower was thereafter built in close proximity to it, and (c) as a result of same, the homeowners could not sell their home, because any buyer who sought to buy it could not obtain an FHA guaranteed loan. *See, e.g.* October 2, 2012 Article ". . .Cell Tower is Real Estate Roadblock" at http://www.wfaa.com/news/consumer/Ellis-County-Couple--Cell-tower-making-it-impossible-to-sell-ho me--172366931.html.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, as direct evidence of the reduction of property values which an irresponsibly tower would inflict upon nearby homes, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional opinions as to the adverse impact upon property values that would be caused by the installation of the proposed cell tower *See* Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed tower would have upon the value of my home and property, which would be a mere thirty (30) feet from the base of the tower at the Latrobe parcel, Site #5, annexed hereto as Exhibit "F" is a letter setting forth the professional opinion of licensed real estate professional, Gary McErney.

Within such letter, Mr. McErney, who has been a Licensed Real Estate professional in California for nearly thirty (30) years, submits his professional opinion that the proposed installation will reduce the value of my home by anywhere from 25% to 50%; *See* Exhibit "F."

Given the severe reduction in the property value which my home would sustain, the granting of *AT&T's* application would inflict upon my home the very type of injurious impacts which the Zoning Ordinance was specifically intended to prevent. Accordingly, *AT&T's* application should be denied.

Point III

AT&T's Application Should be Denied, Because
Its Proposed Installation at Site #5
Does Not Provide a Sufficient Fallzone

As local governments across the entire United States have recognized, it is critical to maintain sufficient setbacks and safe zones around large cell towers, in order to protect the public from the potential dangers that irresponsibly placed cell towers present.

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.[8]

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[8] *See e.g. City of Murray, KY* Ordinance 2005-1375 Section 156 "Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower."; *City of Harrah, OK* Ordinance 2010-10 - "For cell towers ranging in height from one hundred thirty-one (131) feet up to one hundred eighty (180) feet, including antenna, the cell tower, buildings and power equipment, including the perimeter fence, must be located a distance of five hundred (500) feet minimum from any abutting property line and no closer than three hundred (300) feet to a residence or structure."

Orlando, FL Ordinance 58.840 Setbacks, Required "All uses in R-1AA, R-1A, R-1, R-1N, R-2A, R-2B and H, and single-family uses in R-3A. 200 feet or 300% height of tower, whichever is greater."

Town of Limington, ME Zoning Ordinance 8.19 "New Personal wireless service facilities shall be set back: 1. at least one (1) times the height, plus 50 feet from all boundaries of the site on which the facility is located and 2. at least 750 feet horizontally from any existing dwelling units."

Caldwell County, NC Section 90G.20 "Fall zones, setback and buffers" "The minimum setback measured from the property line shall be equal to 100% of the telecommunication tower height."

Town of Edgewood, NM Ordinance 2003-11 "All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater."

As set forth below, *AT&T's* application for reconsideration should be denied because, if the 140 foot cell tower is built where *AT&T* has proposed, my property would be well within the fall zone and danger zone of this massive tower.

There are four (4) physical dangers that have induced local governments to adopt specific setback and/or safezone requirements for cell towers, and which serve as the reason why the required setback distances for cell towers are invariable tied directly to the height of respective towers.

These well-known dangers are structural failures, fire, ice fall, and debris fall.

Structural Failures & Fires

The multiple dangers of structural failures of all types of cell towers, from lattice structures to monopoles, are well-documented. A component of an installation fails, causing an element or part of the structure to hurdle to the ground, or in some cases, the entire tower to collapse or to burst into flames and fall over.

Annexed hereto as Exhibit "G" are images depicting a typical cell tower failure, wherein a virtually "brand new" monopole collapsed in a matter of seconds, crushing a Fire Chief's vehicle in the process.[9]

Some of the most common elements and areas of failure which result in the collapse of cell towers are baseplates,[10] flanges, joints, bolts and guy wires.[11]

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[9] To obtain details about the monopole cell tower which collapsed at the Oswego fire house, crushing the Fire Chief's vehicle, go to www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle, or go to *Google* and search for "Oswego cell tower collapse."

[10] To see images of monopole baseplate failures, go to http://residentsact.blogspot.com/2007/11/just-how-safe-are-monopole-cell-towers.html.

[11] To see multiple images of telecommunications towers which have collapsed, go to *Google*, type in a search for "radio tower collapse", and then choose "images" from the search results.

With respect to monopoles and fires, while a layperson might fight it hard to believe, roughly once per month a cell tower somewhere in the United States bursts into flames, and occasionally collapses in a flaming heap that can ignite anything within a broad area surrounding the base upon which it had been erected.[12]

Remarkably, as proposed by *AT&T*, its tower at Site #5 would be irresponsibly placed so that my property would all be well within the fall zone of the Tower, as well as the danger zones for fire, ice fall, and debris fall.

Ice Fall

A natural, but well-known danger associated with communications towers is ice, and the very real risk that can come during the winter-early spring when ice, which has formed upon an installation, begins to melt, comes loose and hurdles to the ground. In this case, such ice chunks, which would fall from a height as high as 160 feet, would reach speeds well over 60 mph by the time they hit the ground.[13]

Annexed hereto as Exhibit "H" is an engineering analysis which establishes that ice falling from a 150 foot tower would reach a speed of 67 mph by the time it reached the ground and that the ice chunks could easily reach the ground at such a speed at distances as great as 100 feet from the tower.

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[12] To see videos of modern towers bursting into flames and/or burning to the ground, go to http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1 or http://www.youtube.com/watch?v=y NKVWrazg, or simply go to *Google*, and search for "cell tower burns."

[13] To see dramatic video footage of chunks of ice falling from a communications tower causing severe damage to automobiles in a parking lot below, go to www.youtube.com/watch?v=pfBp2QYOIbc www.youtube.com/watch?v=YWqiSHRwmk8 or search on YouTube for "ice falls from tower". While such video depicts ice falling from a tower higher than that being proposed, experts have calculated that ice falling from a 150-foot tower would reach the speed of 67-70 mph by the time it hit the ground (*See e.g.* Exhibit "N" - a true copy of a physicist's report dated April 16, 2013 which calculates the speed of ice falling from a 150-foot cell tower).

As proposed by *AT&T*, the proposed tower for Site #5 would place my property well within the ice fall zone of the tower.

As logic would dictate, if chunks of ice fell from a height of 140 feet, they could easily seriously injure or kill anyone struck by them. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, any person under it would receive no warning before being struck by same.

Debris Fall

Finally, there is the danger of falling debris, and more specifically, items dropped or caused to fall during routine maintenance activities that must be performed upon such towers on a regular basis.[14]

To afford adequate protections against these very real dangers, local governments have imposed setback requirements to afford sufficiently sized buffer/safety areas to ensure the safety of both their citizens and the public at large.

These buffer or safety zones consist of an area surrounding a tower which is restricted from public or personal access, and which is large enough to ensure that if a tower were to fail or collapse, or ice were to hurdle downward from the top of it, nobody would be close enough to be injured or killed by same.

[14] Annexed hereto as Exhibit "I" is a page from a study completed by a consultant hired by the City of Brookfield, Wisconsin, which depicts a lump hammer that had been dropped from a cell tower during routine maintenance and crashed through the roof of a nearby structure.

A sample of a typical local government zoning regulation that actually describes such concerns is the Town of Huntington, NY Code Section §113, which provides as follows:

> "It shall be demonstrated to the satisfaction of the Town Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties."
>
> Huntington Town Code §113-58.1(F)

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained, knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.

As such, *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit cannot be granted, because the Commission cannot reasonably make an affirmative finding that "the proposed use would not be detrimental to the public health, safety, and welfare, or injurious to the neighborhood" as is explicitly required under Section 130.52.021(C)(2) of the El Dorado Zoning Ordinance.

POINT IV

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow *AT&T* to Increase the Size of the Proposed Cell Tower Without Prior Zoning Approval

As substantial as the adverse impacts upon the nearby homes and communities will be if the tower were built at fourteen (14) stories, the fact is that once the tower is built, *AT&T* would thereafter be permitted to increase the height of the tower by an additional twenty-eight (28) feet, and the City would be legally prohibited from stopping *AT&T*, due to the constraints of the Middle Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides that "notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." *See* 47 U.S.C. § 1455(a).

Under the FCCs reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to cell towers unless the modification will "substantially change" the physical dimensions of the tower.

The FCC defines "substantial change" to include any modification that would increase the height of the tower by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas are usually eight (8) feet tall, so this provision would allow an increase in the proposed cell tower's height by approximately twenty-eight (28) feet, and this height increase could not be challenged or prevented by the City.

Simply stated, under the FCC's regulation, if the tower proposed for Site #5 were to be built, *AT&T,* at any time thereafter, could unilaterally increase the height of the tower by as much as an additional twenty-eight (28) feet, and there would be no way for the County to prevent such an occurrence.

Considering the even more extreme adverse impacts which increasing the height of the tower would inflict upon my home and the surrounding community, *AT&T's* application should be denied, especially since, as set forth above, *AT&T* doesn't actually *need* the proposed tower in the first place.

Point V

To Comply With the TCA, *AT&T*'s Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a cell tower: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

(i) The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial that is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See e.g.* MetroPCS v. City and County of San Francisco, 400 F.3d 715(2005).

(ii) The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations. *See e.g.* American Towers, Inc. v. Wilson County, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196].

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *AT&T's* application in a separate written decision, wherein the Board cites the evidence based upon which it made its determination.

Conclusion

In view of the forgoing, it is respectfully submitted that *AT&T's* application for reconsideration of the previous denial of its application for a Conditional Use Permit should be denied in its entirety.

Respectfully Submitted,

Robert L. Craft

PC 7-26-18
#3
6 Pages

Planning Department <planning@edcgov.us>

FW: Opposition to Application of AT&T Mobility

1 message

Colleen Bullock <cnbullock@droecalaw.com> Mon, Jul 23, 2018 at 4:44 PM
To: planning@edcgov.us

Please also add the attached letters from Mr. Brewster and Mr. Contreras as opposition to the matter referenced below.

Thank you

Colleen Bullock

From: Colleen Bullock <cnbullock@droecalaw.com>
Sent: Thursday, July 19, 2018 2:39 PM
To: 'planning@edcgov.us' <planning@edcgov.us>
Subject: Opposition to Application of AT&T Mobility

Please see attached Memo of Opposition and Exhibits to Memo. This is opposition to the Application of AT&T Mobility; Project S 17-0016 AT&T CAF4 for a Conditional Use Permit. The Planning Commission Hearing is set for Thursday, July 26, 2018.

Please call or email me if you have any questions or problems opening these documents.

Thank you

Colleen Bullock
Legal Assistant
Douglas R. Roeca
3062 Cedar Ravine
Placerville, CA 95667
Telephone: (530) 626-2511
Facsimile: (530) 626-2514

2 attachments

06. Peter Brewster Ltr.pdf
67K

05. Joe Contreras Ltr.pdf
359K

BREWSTER & ASSOCIATES

2954 ALHAMBRA DRIVE, CAMERON PARK , CALIFORNIA 95682
Phone (530) 677-3348 Fax (530) 676-5373 brewsterandassociates.com

February 6, 2018

Randy Hellesvig
P.O. Box 122
Diamond Springs, CA 95619

Re: **Field Survey Report of Findings for Set-Back Stake Locations**
Site 2 El Dorado County Planning Commission Agenda Item 18-0161
Proposed Wireless Telecommunication Facility (S17-0016)

Your Property: Thundercloud Lane, Camino, California
Assessor's Parcel Number 077-732-29-100
Lot 1 of Rancho Del Sol Subdivision (F-90)

Dear Mr. Hellesvig:

Pursuant to your request on January 31, 2018 this office conducted a field survey to retrace the Southerly boundary of your above referenced property. The purpose of the retracement was to verify the set-backs for the currently staked wireless telecommunication facility pending the El Dorado County Planning Commission approval with respect to your boundary. Our findings are as follows:

1.0 The property requesting consideration for construction and operation of a wireless telecommunication facility consisting of a new monopine tower 122 feet above ground level, with individual ground equipment and fencing, Assessors Parcel Number 077-091-06 being Parcel 1 of Parcel Map 8-36 (PM 8-36) adjoins your lot along a portion of your Southerly boundary.

2.0 Monuments delineating the Southerly line of your parcel were found to be of character and occupy their true positions pursuant to the map that created your parcel, AKA Assessor's Parcel Number 077-732-29-100, Lot 1 of Rancho Del Sol Subdivision (F-90). A portion of this Southerly line is synonymous with the Northerly line of the proposed wireless telecommunication facility site, AKA Assessors Parcel Number 077-091-06 being Parcel 1 of Parcel Map 8-36 (PM 8-36).

3.0 Sheet C-1 of the improvement plans for Newtown Site Number 2 CVLO3158 as provided for the commission's consideration is attached hereto and made part of this report for reference. This sheet calls for set-back distances of 30 feet at the Northwesterlymost corner of the proposed fenced wireless lease area and 37.2 feet at the Northeastelymost corner of same.

4.0 Lath stakes were found and tied delineating the approximate 35 foot by 45 foot proposed fenced wireless lease area. Measured at right angles from your Southerly boundary, the Northwesterlymost corner of the proposed fenced wireless lease area was found to be approximately 27 feet from your Southerly boundary, and the Northeastelymost corner was found to be approximately 34.5 feet from same. Both of these distances fall short of those called for in 3.0 above and do not comport with the plan as submitted.

In relying on the recorded documents and field evidence described herein, Brewster & Associates does not warrant the work of previous surveyors. This letter constitutes an expression of professional opinion only, and does not constitute a warranty or guaranty, either expressed or implied.

This concludes our surveying services performed under your contract. I have sincerely enjoyed working with you If you have any questions or need anything else, please don't hesitate to call me.

Sincerely,

BREWSTER & ASSOCIATES

Peter S. Brewster, PLS

PB/me

Attachment

Lease Area Description

All that certain lease area being a portion of Parcel "1" as is shown on that certain Parcel Map, filed for record in Book 8 of Parcel Maps, Page 36, El Dorado County Records, located in the County of El Dorado, State of California, and being a portion of the Northwest 1/4 of Section 21, Township 10 N., Range 12 E., M.D.B.& M., and being more particularly described as follows:

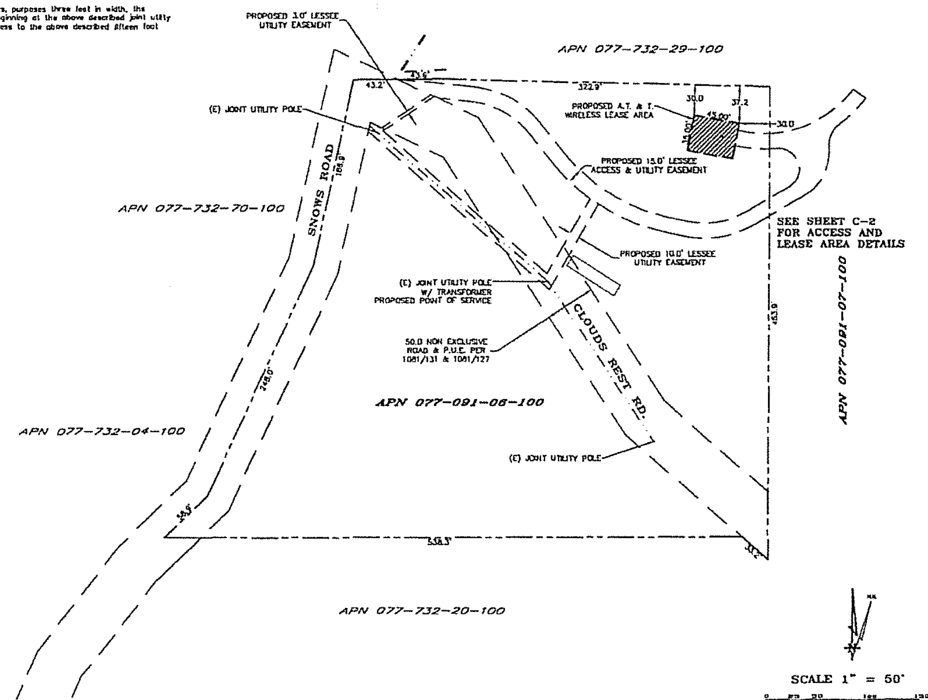
Commencing at the Northwest corner of the aforementioned Section 21; thence South 88°39'30" East, 249.04 feet along the North Section line; thence leaving said Section line South 1°20'30" West, 30.00 feet to the True Point of Beginning; thence from said point of beginning South 79°23'40" East, 45.00 feet; thence South 10°36'20" West, 35.00 feet; thence North 79°23'40" West, 45.00 feet; thence North 10°36'20" East, 35.00 feet to the point of beginning.

Together with a non-exclusive easement for access and utility purposes, purposes fifteen feet in width, the centerline of which is more particularly described as follows: Beginning at a point which bears South 10°36'20" West, 14.43 feet from the Northeast corner of the above described lease area; thence along a non-tangent curve to the East, having a radius of 116.30 feet a central angle of 39°11'38", and a chord of 78.01 feet bearing North 83°39'19" East; thence along said curve a distance of 79.55 feet to a point hereafter referred to as Point A; thence along a non-tangent curve to the Southeast, having a radius of 42.50 feet a central angle of 88°52'50", and a chord of 59.51 feet bearing North 14°24'49" East; thence along said curve a distance of 65.93 feet; thence South 58°51'14" West, 54.87 feet; thence along a tangent curve to the Southwest, having a radius of 92.50 feet and a central angle of 42°39'21"; thence along said curve a distance of 68.86 feet. ; thence North 78°29'25" West, 14.38 feet; thence along a tangent curve to the West, having a radius of 192.50 feet and a central angle of 23°20'35"; thence along said curve a distance of 78.43 feet, to a point hereafter referred to as Point B ; thence continuing Northwest along said curve, a distance of 53.64 feet; thence North 39°10'53" West, 37.28 feet; thence along a tangent curve to the Northwest, having a radius of 92.50 feet and a central angle of 45°22'53"; thence along said curve a distance of 73.27 feet. ; thence North 84°33'46" West, 51.69 feet more or less to the public right of way more commonly known as Snows Road.

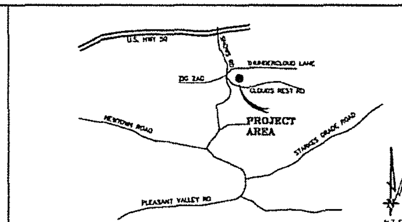
Also together with a non-exclusive easement for access and utility purposes, purposes fifteen feet in width, the centerline of which is more particularly described as follows: Beginning at the above described Point A, thence from said point of beginning along a curve concave to the northwest, having a radius of 116.30 feet, a central angle of 27°18'44", and a chord of 54.91 feet bearing North 50°24'00" East.

Also together with a non-exclusive easement for utility purposes, purposes ten feet in width, the centerline of which is more particularly described as follows: Beginning at the above described Point B, thence from said point of beginning South 30°09'35" West, 98.79 feet; thence North 48°52'43" West, 232.32 feet more or less to an existing joint utility pole; thence continuing to the public right of way.

Also together with a non-exclusive easement for utility purposes, purposes three feet in width, the centerline of which is more particularly described as follows: Beginning at the above described joint utility pole and running thence North 56°24' East 65.3 feet more or less to the above described fifteen foot wide access and utility easement.



OVERALL PROJECT AREA



PLACERVILLE, CA

VICINITY MAP

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATION AS INSTRUMENTS OF SERVICE, ARE THE EXCLUSIVE PROPERTY OF GEIL ENGINEERING AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE AND CARRIER FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM GEIL ENGINEERING. TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH GEIL ENGINEERING WITHOUT PREJUDICE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

BOUNDARY SHOWN IS BASED ON MONUMENTATION FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY. THIS IS A SPECIALIZED TOPOGRAPHIC MAP WITH PROPERTY LINES AND EASEMENTS BEING A GRAPHIC DEPICTION BASED ON INFORMATION GATHERED FROM VARIOUS SOURCES OF RECORD AND AVAILABLE MONUMENTATION FOUND DURING THE FIELD SURVEY. NO EASEMENTS WERE RESEARCHED OR PLOTTED. PROPERTY LINES AND LINES OF TITLE WERE NOT INVESTIGATED NOR SURVEYED. NO PROPERTY MONUMENTS WERE SET.

DATE OF SURVEY: 04-24-17

SURVEYED BY OR UNDER DIRECTION OF: KENNETH D. GEIL, R.C.E. 14803

LOCATED IN THE COUNTY OF EL DORADO, STATE OF CALIFORNIA

BEARINGS SHOWN ARE BASED UPON MONUMENTS FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY.

ELEVATIONS SHOWN ON THIS PLAN ARE BASED UPON U.S.G.S. N.A.V.D. 88 DATUM, ABOVE MEAN SEA LEVEL.

N.G.V.D. 1929 CORRECTION: SUBTRACT 2.84' FROM ELEVATIONS SHOWN.

CONTOUR INTERVAL: 1 FT.

CONTRACTOR IS RESPONSIBLE TO VERIFY LEASE AREA PRIOR TO CONSTRUCTION.

ASSESSOR'S PARCEL NUMBER: 077-091-06-100

OWNER(S): KAREN McCORMACK
4160 CLOUDS REST ROAD
PLACERVILLE, CA 95667

A.T.& T. Mobility

Project No./Name: CVL03158 / NEWTOWN

Project Site Location: 3921 Snows Road
Placerville, CA 95667
El Dorado County

Date of Observation: 04-24-17

Equipment/Procedure Used to Obtain Coordinates: Trimble Geo XT post processed with Pathfinder Office software.

Type of Antenna Mount: Proposed Monopine Tower

Coordinates

Latitude:	N 38°42'44.18" (NAD83)	N 38°42'44.53" (NAD27)
Longitude:	W 120°39'58.27" (NAD83)	W 120°39'54.52" (NAD27)

ELEVATION of Ground at Structure (NAVD88) 2623' AMSL

at&t MOBILITY

CVL03158 Newtown
3921 Snows Road
Placerville, CA 95667

PLOT PLAN AND SITE TOPOGRAPHY

GEIL ENGINEERING

Surveyor

DEPT	APPROVED	DATE
A&C		
RE		
RF		
INT		
EE\IN		
OPS		
EE\OUT		

REVISIONS	
04-25-17	Preliminary Drawing
08-08-17	redlines

Sheet C-1

July 22, 2018

Dear El Dorado County Planning Commissioners,

My name is Joe Contreras. My wife Nancy and I own 5541 Salmon Falls Rd. at the corner of Gate Lane where we enjoy the peace and the quiet of this country property. I oppose the building of the proposed site 6 Zee Estate cell tower on Gate Lane in Pilot Hill, which is planned to be built three hundred feet from my house and 30 feet from my property.

Our property is within the fall zone. If this tower fell it could cause injury or death to us and our guests. This tower could conceivably fall and start a fire – we live in an extreme fire danger zone.

This tower will be in view of my house. This cell tower will dominate by 100 feet over the surrounding trees that are about 60 feet high at max. Even though the tower will be disguised as a "tree" this camouflage does not even come close to looking like the surrounding vegetation. It will stick out like a sore thumb. We will see it every time we enter or exit our home from our driveway.

Our real estate values will be impacted as potential buyers of our country property would see that they would have to suffer this eyesore as their nearest neighbor. Local realtors say that prospective buyers may not even look at it, all because of having a cell tower so close to our home.

This is a peaceful and serene oak woodland, and I would like it to stay that way.

Please deny this application.

Thank you,

Joe Contreras
5541 Salmon Falls Rd.
Pilot Hill, CA 95664
joecontr123@gmail.com
916.303.3958