



Legislation Details (With Text)

File #: 18-1299 **Version:** 1

Type: Agenda Item **Status:** Approved

File created: 8/15/2018 **In control:** Board of Supervisors

On agenda: 9/11/2018 **Final action:** 9/11/2018

Title: HEARING - To consider a request submitted by Bruce and Marjorie Crawford appealing the Planning Commission's July 26, 2018 approval of Site 6-Zee Estates of Conditional Use Permit S17-0016/AT&T CAF 4 to allow the construction and operation of a new 120-foot tall stealth monopine tower on property identified by Assessor's Parcel Number 104-370-24, consisting of 60 acres, in the Pilot Hill area; and staff recommending the Board take the following actions:
 1) Approve the project thereby denying the appeal by Bruce and Marjorie Crawford based on the Findings (Attachment C) and subject to the Conditions of Approval (Attachment D); and
 2) Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff (Attachment E). (Supervisorial District 4)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A - Appeal Form-Site 6, 2. B - Site 6-Zee Estates Planning Commission Minute Order 07-26-18, 3. C - Findings (Sites 2-7)-Planning Commission 07-26-18, 4. D - Conditions of Approval (Sites 2-7)-Planning Commission 07-26-18, 5. E - Staff Report Exhibit K-Proposed Mitigated Negative Declaration and Initial Study, 6. F - Site 6-Staff Report Exhibit K-Attachments 1-6, 7. G - Site 6-Alternative Site Analysis, 8. H - Site 6-Plan Set, 9. I - Site 6-Photo Sims, 10. J - Planning Commission 02-22-18 Findings of Denial, 11. K - Planning Commission Minute Order 02-22-18, 12. L - Communication Act Excerpt, 13. M - Site 6-Zee Estates Notification Map, 14. N - Site 6-Proof of Publication-Mountain Democrat, 15. O - Site 6-Proof of Publication-Georgetown Gazette, 16. Public Comment Rcvd 9-10-18 BOS 9-11-18, 17. Public Comment Rcvd 9-7-18 BOS 9-11-18, 18. Public Comment Rcvd 9-6-18 BOS 9-11-18, 19. Public Comment Rcvd 9-5-18 BOS 9-11-18, 20. Public Comment Rcvd 9-4-18 BOS 9-11-18, 21. Public Comment Rcvd 08-27-18 to 08-28-18, 22. FINAL Findings, 23. FINAL Conditions of Approval, 24. APPROVED STAMPED Exhibits-Site 6 Zee Estates, 25. ADOPTED Mitigated Negative Declaration-Sites 2-7, 26. RECEIPT Notice of Determination-Sites 2-7, 27. FILED Notice of Determination-Sites 2-7

Date	Ver.	Action By	Action	Result
9/11/2018	1	Board of Supervisors	Approved	Pass

HEARING - To consider a request submitted by Bruce and Marjorie Crawford appealing the Planning Commission's July 26, 2018 approval of Site 6-Zee Estates of Conditional Use Permit S17-0016/AT&T CAF 4 to allow the construction and operation of a new 120-foot tall stealth monopine tower on property identified by Assessor's Parcel Number 104-370-24, consisting of 60 acres, in the Pilot Hill area; and staff recommending the Board take the following actions:
 1) Approve the project thereby denying the appeal by Bruce and Marjorie Crawford based on the Findings (Attachment C) and subject to the Conditions of Approval (Attachment D); and
 2) Adopt the Mitigated Negative Declaration based on the Initial Study prepared by staff (Attachment E). (Supervisorial District 4)

DISCUSSION / BACKGROUND

This is a request submitted by Bruce and Marjorie Crawford appealing the Planning Commission's July 26, 2018 approval of Site 6-Zee Estates of Conditional Use Permit S17-0016/AT&T CAF 4 ("Project") to allow the construction and operation of a new 120-foot tall stealth monopine tower. The

property, identified by Assessor's Parcel Number 104-370-24, consisting of 60 acres, is located on the west side of Gate Lane, approximately 925 feet southeast of the intersection with Salmon Falls Road, in the Pilot Hill area, Supervisorial District 4. (County Planner: Evan Mattes) (Mitigated Negative Declaration prepared)

The Project is proposed as a new 120-foot tall stealth monopine tower, with one 15KW DC Diesel Generator with a 54 gallon Belly Tank, one 1-ton HVAC unit, and one equipment shelter, located upon a 1,350 square foot leased space of a 60 acre parcel in the Pilot Hill area. The site is zoned Limited Agriculture 10-Acres (LA-10) with a General Plan Land Use Designation of Low Density Residential (LDR). In order to construct and operate a new communication tower or monopole within a residential zone a Conditional Use Permit is required by the Zoning Ordinance. The Conditional Use Permit (S17-0016 Site 6-Zee Estates) is required to comply with the California Environmental Quality Act (CEQA) and all other adopted rules, regulations, and ordinances.

The Planning Commission held a public hearing on July 26, 2018, and approved the Project. Pursuant to the County Zoning Ordinance, there is an appeal period of 10 working days after approval. Bruce and Marjorie Crawford filed an appeal on August 9, 2018 (and \$239 appeal fee) within 10 working days. The Zoning Ordinance provides that the appeal of a Planning Commission decision be decided at a public hearing with the Board of Supervisors.

Appeal

The appeal (Attachment A) asserts that the Project would significantly impact aesthetic resources, has inadequate setbacks, would have a negative impact on surrounding properties, would violate CEQA and is inconsistent with Zoning Ordinance 130.40.1300.A. The appeal items are listed verbatim below in bold with County staff responses immediately following in italics.

1) "The approval is inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021.C.2.): 'The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood;' We believe it is injurious to the neighborhood as it will be constantly visible from our Residential Parcels and is therefore an Aesthetic intrusion into our lives and for the rest of our lives, or until we sell our home. There are viable alternative locations that have not been identified or explored".

County Response: Per Zoning Ordinance Section 130.40.130.D.1, "where screening is not feasible the towers are required to blend with the surrounding area through paint or construction with stealth technology", including but not limited to stealth monopine towers such as the proposed Project (Attachment H). Site 6-Zee Estates is not within an identified scenic corridor or scenic vista. Impacts to aesthetics are anticipated to be less than significant. An Alternative Site Analysis is not an item that is required by the El Dorado County Zoning Ordinance. Section 130.40.130 of the El Dorado County Zoning Ordinance provides specific rules and regulations regarding the requirements for communication facilities. "Communication service providers are required to employ all reasonable measures to site their antennas on existing structures as facade mounts, roof mounts, or co-location on existing towers" and to "work with other service providers and the Department to co-locate where feasible". The submitted Alternative Site Analysis (Attachment G) did include an analysis of potential co-locations within the project vicinity. The Alternative Site Analysis has been a practice requested by the Planning Commission, however there is no ordinance requiring it and no parameters showing number of sites needed to be analyzed.

2) **“The Approval is inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021.B.) that a project is OK with CEQA policy and requirements regarding ‘Alternative Analysis’: ‘The approval of a Conditional Use Permit is a discretionary project and is subject to the requirements and procedures of CEQA’. We believe the CEQA analysis is severely flawed and there was considerable testimony at three hearings and staff did not respond to these concerns via any responses ‘suggested’ by CEQA Process [sic]. We believe the CEQA Analysis of Alternatives was virtually non-existent and only (poorly) conducted by the applicant to point only to their ‘contracted’ site. We believe that this lack of meaningful Alternative Location and Co-Location analysis is inconsistent with the intent of CEQA to consider such analysis. Similarly, we believe the current process is flawed and a county-wide approach to antenna location must be undertaken through an overlay mapping program to identify current and approved locations, their coverage via all providers, including ‘Hardline Providers’ (Comcast, AT&T, etc.) as well as other over-the-air providers, to clearly identify ‘Coverage Needs’ County-wide. A Program EIR is needed to achieve this goal and then we can go about providing service to our rural community as envisioned by CAF technology and Federal desires (not mandates) to provide such service”.**

County Response: CEQA does not require alternatives for Mitigated Negative Declarations like the proposed Project. No Project impacts were identified that could not be mitigated to a less than significant level. If significant impacts were identified, a reasonable range of alternatives to the Project or Project location that could feasibly attain most of the basic Project objectives and would substantially lessen any of the significant impacts would need to be described within the draft Environmental Impact Report (EIR). The current rules and regulations were used in the analysis and processing of this Conditional Use Permit. Furthermore, local governments may not unreasonably discriminate among providers of functionally equivalent services.

3) **“The Approval is not consistent with the Wireless Ordinance: (130.40.130.A.); ‘The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare.’ We believe the proposed location and the ‘System’ proposed by ATT [sic] (and others) is not consistent with this ‘Finding’ the BOS used to adopt the Wireless Ordinance [sic]”.**

County Response: The Zoning Ordinance Section (130.40.130.A.1.a & b) enforcing the goals of Section 130.40.130.A requires communication service providers to “employ all reasonable measures to site their antennas on existing structures prior to applying for new towers or poles” and to “work with other service providers and the Department to co-locate where feasible. Where co-location is not feasible, develop new sites which are multi-carrier”. The Project applicant has demonstrated that they have employed reasonable measures to site their antennas on existing structures (Attachment G). Additionally, the Project has been designed to accommodate 12 additional antennas at heights of 110 and 100 feet (Attachment H).

4) **“The approval is not consistent with just plain common sense of who bears the price of these facilities without compensation. We will have to suffer all the impacts of these towers and if we are served by this or that provider, we might gain better internet connection. But at what cost? Is there an alternative? Yes, but that has not been clearly analyzed and illustrated to our satisfaction”.**

County Response: The project has been analyzed under CEQA and potential impacts have been mitigated to a less than significant impact.

5) “Inadequate setbacks were considered in the first denial of the project, and on July 26, 2018 the Fire Chief from Diamond Springs spoke saying that current setbacks for these towers are not adequate, and should be reviewed and modified to protect the neighboring parcels. There should be a fall zone equal to the height of the tower. In the event of catastrophic failure, the tower would fall on property outside the leased area and/or Gate Lane. The fall zone of the proposed tower includes three properties and Gate Lane (A dead end) which could block residents egress”.

County Response: Pursuant to Section 130.40.130.D.2 of the Zoning Ordinance, new towers must be compliant “with the applicable zone setbacks” and that “setback waivers shall be considered to allow flexibility in siting the facility in a location that best reduces the visual impact on the surrounding area”. The Project parcel is zoned LA-10 which has an applicable rear and side setback of 30 feet when adjacent to a residential zone. The Project would be sited 30 feet from the nearest property line (Exhibit H). Additionally, Ken Earl of the Diamond Springs/El Dorado Fire Protection District stated that he understood citizen concerns regarding “fall zones”, he did not make a statement that the setbacks are inadequate, pursuant to public testimony in the public record. Site 6-Zee Estates is within the El Dorado County Fire Protection District, which did not provide comments to the Project site.

6) “The approval is inconsistent with established hearing procedure and ‘fair play’ if you will. The Planning Commission advertised and heard this Project as ‘One Application’ originally on the February 8, 2018 Agenda and decided to separate them into seven (7) project for approval as it appeared some sites were generating more comments and opposition than others. As the hearing progressed, each item was voted on for approval, but it was a 2:2 ‘Split Vote’ (as there was not a ‘Full Commission of 5, but a ‘Quorum’ of at least 3) that by Rule is equal to a Denial. The majority of those in the audience were confused by this process, but were thrilled by the explanation that such a vote functioned as a denial. Aesthetic, access and Alternative Analysis issues were cited by the Commissioners as primary reasons for Denial. The Planning Commission then directed staff to ‘Craft’ Findings for Denial that were consistent with El Dorado County Policies and Procedures, CEQA and Planning Land, and return February 22 with these ‘Crafted’ Findings. The majority of the Public in attendance February 8 did not foresee the possible results of the February 22 hearing as they were under the impression that the Project was to be denied with the ‘Crafted Findings’ and therefore did not attend as they have jobs and other obligations. To the surprise of many, ATT [sic] submitted a letter on February 21, 2018 to staff proposing some modifications to the project and asking for a continuance of the project for one stated purpose: ‘Public outreach’ to answer questions from concerned neighbors. Two meeting [sic] occurred on July 11 & 12 and then Staff scheduled a hearing for July 26, 2018. Indeed it was ‘advertised’ per County policy and State Law, but some, given the actions of February 8, were confused and may have not attended. The point here is the ‘Project’ was ‘modified’ by lowering the towers 20-30 feet (presented in July 24, 2018 Memo from Planner Evan Mattes to the Commission entitled: ‘S17-0016/AT&T CAF 4; Revised Project Description and New Conditions [sic]). During the hearing there were ‘Visual Simulations’ that were at first claimed to be representing ‘Reduced Height’ but were in fact the same as before. Additionally, the memo didn’t allow the Public (or the Commission or Fire and other reviewers) much time to consider the ‘Revisions’ to the project. Again, it felt as if the ‘Project’ was now this ‘moving target’ that was a guess to all involved, including the

Commissioners. The Vote on Site #1 was 2-1 for Approval that once again meant ‘Denial’ due to procedural Rules [sic]. To most in attendance, It [sic] just felt a little disingenuous, and while not a ‘violation’ of Law or Ordinance, it appeared dishonest”.

County Response: At the February 8, 2018, Planning Commission hearing, each site was considered to be conceptually denied and was continued to the February 22, 2018, Planning Commission hearing, to allow for staff to make findings of denial in writing (Attachment J) based on aesthetics, compatibility with neighboring land uses, co-location possibilities, alternative site analysis, and access. Based upon additional information and a request by the Project applicant, the conceptual denial was overturned and the Project was continued off-calendar to allow for the Project applicant to provide additional public outreach (Attachment K). The Planning Commission does have the authority to continue, deny, and approve items within their jurisdiction. The Project applicant did hold two public outreach meetings on June 11 and June 12, 2018. These two meetings resulted in a revised Project description. As the revised Project description was considered to have a lessened impact, new/additional analysis was not required.

8) “As the Commission considered additional sites, there was a mention by the Chairman that there were 36 comments supporting ‘the project’ and many were ‘Form Letter’ comments (perhaps 10) and some other ‘more original’ e-mails; but all praised the overall concept of ‘Wireless Internet’ to El Dorado County IN GENERAL with NO reference to S17-0016. Lofty, but not applicable to the project in question [sic]. The ‘10 in Support’ were focused on one or more of the specific locations under consideration. Another disingenuous situation that swayed one Commissioner to vote to Approve the rest of the 6 locations. Pretty thin reason to support such a project that would impact and be ‘injurious’ to the neighborhood [sic]. We understand that we all want ‘better internet connection’ but when it comes to putting it in YOUR backyard, with no compensation, it feels wrong and may amount to a ‘takings’ especially regarding setbacks that do not protect neighbors from ‘Tower Failure’ damage”.

County Response: The Planning Commission relies upon staff analysis and public comments for Project consideration. This is a typical procedure for discretionary projects. Issues related to potential takings are considered a civil issue and are not incorporated within the purview of staff analysis.

Conclusion: It is the Planning Director’s recommendation that the appeal should be denied and the decision of the Planning Commission on July 26, 2018 be upheld because the Project is consistent with the Zoning Ordinance, General Plan, and CEQA as determined by the Planning Commission. Should the Board choose to approve the appeal, thus denying Site 6-Zee Estates of Conditional Use Permit S17-0016, Planning Staff would be required to make Findings in writing under Section 332(c) (7) of the Communications Act (Attachment L) based on substantial evidence.

ALTERNATIVES

The Board may elect to approve the appeal and reverse the action taken by the Planning Commission on July 26, 2018, resulting in the denial of Site 6-Zee Estates of Conditional Use Permit S17-0016/AT&T CAF 4. A Denial of the application should be continued to a date certain so that staff can prepare Findings of Denial.

CONTACT

Roger Trout, Director
Community Development Services, Planning and Building Department