



Legislation Text

File #: 18-1300, **Version:** 1

HEARING - To consider a request submitted by Bonnie Way appealing the Planning Commission's July 26, 2018 approval of Site 7-Gold Hill 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 105-110-81, consisting of 10 acres, in the Lotus area; and staff recommending the Board take the following actions:

- 1) Approve the project thereby denying the appeal by Bonnie Way 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). (Supervisory District 4)

DISCUSSION / BACKGROUND

This is a request submitted by Bonnie Way appealing the Planning Commission's July 26, 2018 approval of Site 7-Gold Hill 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 105-110-81, consisting of 10 acres, is located on the south side of Gods Way, approximately 2,200 feet south of the intersection with Clark Mountain Road, in the Lotus area, Supervisory 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 1,600 square foot leased space of a 10 acre parcel in the Lotus area. The site is zoned Rural Lands 10-Acres (RL-10) with a General Plan Land Use Designation of Rural Residential (RR). 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 7-Gold Hill) 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. Bonnie Way filed an appeal on August 7, 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 be detrimental to public health, the alternative site analysis was inadequate, there would be substantial impacts to aesthetics, significantly impact aesthetic resources, increase fire hazards, impact biological resources and have a negative impact on surrounding property values. The appeal items are listed verbatim below in bold with County staff responses immediately following in italics.

1) "The Planning Commission [sic] was wrong in granting the Conditional Use Permit. Specific

findings for a Conditional Use Permit were not made as the project would be detrimental to public health”.

County Response: Finding 4.2 of the Staff Report (Attachment C) makes findings that the proposed project would not be detrimental to public health, safety and welfare or injurious to the neighborhood. At 0.24 to 0.76 percent of the public safety standard established by the Federal Communications Commission (FCC) for microwave frequencies, the risk of Radio Frequency (RF) emissions to the surrounding public at all Project sites is remote. As proposed and conditioned, the Project would not be detrimental to public health.

2) “All other alternative sites did not receive full consideration prior to the decision of the proposed site on Gods Way. At the meeting the Planning Commission reported that an additional 5 properties were considered in the alternative site analysis but the PC received no interest or no response from land owners of other locations. The Planning Commission should continue to look into the properties where they received no response until they do get a response”.

County Response: 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.

3) “There is an ‘Open Space’ designated parcel to the South of the proposed site that is at higher elevation and farther away from the public who do not want the tower next door to them. A tower at this site would probably provide more service to more people and cause less problems for the neighbors who oppose the tower on Site #7”.

County Response: The Open Space (OS) zoned parcel to the south of the proposed Project site is owned by the Bureau of Land Management and outside of the jurisdiction of El Dorado County for discretionary projects. As stated above, the alternative site analysis is not an item that is required by the El Dorado County Zoning Ordinance. The OS parcel was not included in the Alternative Site Analysis.

4) “The tower is unsightly and it will be visible right outside my front door. It will be marring of the landscape and ruining the aesthetics of my property and surrounding area”.

County Response: Pursuant to 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. Site 7-Gold Hill is not within an identified scenic corridor or scenic vista. Impacts to aesthetics are anticipated to be less than significant.

5) “The unfairness to other telecommunications providers in the area that already serve that area and provide excellent coverage to home owners in that area”.

County Response: The primary purpose of the proposed Project is to provide broadband internet with increase cellular coverage as a secondary objective. Additionally, local governments may not unreasonably discriminate among providers of functionally equivalent services.

6) “The potential increase in fire danger from the tower”.

County Response: The Project was reviewed by the El Dorado County Fire Protection District and will be required to be constructed and engineered to current fire code.

7) “The potential reduction of my property value caused by the tower”.

County Response: Under CEQA, direct social and economic effects, such as project effects on property values, are not considered significant impacts. CEQA only analyzes direct physical environmental impacts from projects. The Federal Telecommunications Act of 1996 does not allow local governments to make general prohibitions on cellular towers nor may they defend a denial with vague concerns of diminished property values.

8) “The harm the tower will cause to all the birds and wildlife in the area”.

County Response: A biological study by Sycamore Environmental Consultants analyzed potential impacts to birds and wildlife caused by the proposed Project. Mitigation Measure BIO-1, which requires a pre-construction bird survey during the nesting season, was incorporated into the initial study to reduce impacts to birds to less than a significant level.

9) “The decline in my health since the approval of the tower”

County Response: A decline in health due to the approval of a project is not analyzed or considered in the approval or the denial of a project.

10) “The potential worsening of my health if the tower gets built”.

County Response: The Project applicant has provided RF Emission reports demonstrating that the proposed Project is below the minimum requirements established by the FCC. The Communications Act preempts local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC’s regulations concerning such emissions.

11) There are several neighbors who live adjacent to the tower site who signed a petition that I submitted to the Board of Supervisors at the last meeting stating they do not want the tower next door to them for various reasons”.

County Response: Public comments, including this petition, were sent to the Planning Commission for their consideration as part of the public hearing process. Additionally, Planning Staff did prepare a memo addressing public comments received prior to the July 26, 2018 hearing.

12) “None of the persons who signed the petition including myself received proper notification of all the meeting held by the County Planning Commission [sic]. We each only received one notification / letter informing us of one upcoming meeting and there was more than just one meeting. If properly informed, people would have attended these other meetings”.

County Response: The Project complies with the notification requirements for a Conditional Use Permit as detailed within Section 130.04.015 of the El Dorado County Zoning Ordinance. Notifications were sent to neighboring parcels within a 1,000 foot radius and a notice was published within the Mountain Democrat (Attachment J). The appellant was included in the mailing notification for each public hearing.

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 7-Gold Hill 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 H) 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 7-Gold Hill 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

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