



Legislation Text

File #: 18-1296, Version: 1

HEARING - To consider a request submitted by Ellen Vaughn appealing the Planning Commission's July 26, 2018 approval of Site 3-Pleasant Valley 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 078-180-38, consisting of 2 acres, in the Pleasant Valley Rural Center; and staff recommending the Board take the following actions:

- 1) Approve the project thereby denying the appeal by Ellen Vaughn 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 2)

DISCUSSION / BACKGROUND

This is a request submitted by Ellen Vaughn appealing the Planning Commission's July 26, 2018 approval of Site 3-Pleasant Valley 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 078-180-38, consisting of 2 acres, is located on the north side of Pleasant Valley Road, approximately 400 feet west of the intersection with Mount Aukum Road, in the Pleasant Valley Rural Center, Supervisorial District 2. (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 1,800 square foot leased space of a two acre parcel in the Pleasant Valley area. The site is zoned Residential Two-Acres (R2A) with a General Plan Land Use Designation of Medium Density Residential (MDR). 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 3-Pleasant Valley) 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. Ellen Vaughn 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 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. Site 3 -Pleasant Valley is not within an identified scenic corridor or scenic vista and will be constructed as a stealth monopine tower (Attachment I). 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 H) did include an analysis of potential co-locations within the Project vicinity, which was not viable for the Project coverage goals. 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. Alternative Sites were analyzed as part of the Findings. 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 be 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 H). Additionally the Project has been designed to accommodate 12 additional antennas at heights of 110 feet and 100 feet (Attachment G).

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.

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 3-Pleasant Valley 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 J) 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 3-Pleasant Valley 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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