File #: 18-1297, **Version:** 1

HEARING - To consider a request submitted by Ken Greenwood appealing the Planning Commission's July 26, 2018 approval of Site 4-Soapweed of Conditional Use Permit S17-0016/AT&T CAF 4 to allow the construction and operation of a new 140-foot tall stealth monopine tower on property identified by Assessor's Parcel Number 085-010-13, consisting of 10 acres, in the Swansboro area; and staff recommending the Board take the following actions:
1) Approve the project thereby denying the appeal by Ken Greenwood 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 Ken Greenwood appealing the Planning Commission's July 26, 2018 approval of Site 4-Soapweed of Conditional Use Permit S17-0016/AT&T CAF 4 ("Project" to allow the construction and operation of a new 140-foot tall stealth monopine tower. The property, identified by Assessor's Parcel Number 085-010-13, consisting of 10 acres, is located on the north side of Stope Road, approximately 1,200 feet north of the intersection with Dickinson Road, in the Swansboro area, Supervisorial District 4. (County Planner: Evan Mattes) (Mitigated Negative Declaration prepared)

The Project is proposed as a new 140-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 10 acre parcel in the Swansboro area. The site is zoned Forest Resource 40-Acres (FR-40) with a General Plan Land Use Designation of Rural Residential (RR). In order to construct and operate a new communication tower or monopole adjacent to a residential zone a Condition Use Permit is required by the Zoning Ordinance. The Conditional Use Permit (S17-0016 Site 4-Soapweed) 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. Ken Greenwood 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) "Based on testimony and evidence in the record (incorporated by reference throughout this Appeal), 'the Actions' on Agenda Item 3 (herein referring to above definition) are 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;' Based on testimony and evidence in the record I believe it is Injurious to the neighborhood as it will be constantly and forever visible from Residential Parcels and are therefore an Aesthetic intrusion into the owners lives and for the rest of their lives, or until they sell their home. There are viable alternative locations that were not meaningfully analyzed"

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 4-Soapweed 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. Furthermore, Site 4-Soapweed did not receive any public comments regarding aesthetics. One public comment was received on Site 4-Soapweed during the February 8, 2018, Planning Commission public hearing regarding concerns to road damage during construction, which has been addressed in the Conditions of Approval (Attachment D).

2) "Based on testimony and evidence in the record, the Actions are inconsistent with the required findings for Conditional (Special) Use Permits per Section (130.52.021.B.) that a project is supported with [sic] CEQA policy and requirements regarding 'Alternative Analysis' and there are no significant environmental impacts; (130.52.021.B.): 'The approval of a Conditional Use Permit is a discretionary project and is subject to the requirements and procedures of CEQA'. This approval is similarly inconsistent with the intent of the 'Wireless Ordinance' as cited below. I 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 meaningful responses "suggested" by CEQA Process. I believe the CEQA analysis of Alternatives was virtually non-existent and only (poorly) conducted by the applicant to point ONLY to their 'contracted' site. I believe that this lack of MEANINGFUL Alternative Location and Co-Location 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, ATT [sic], 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) "Based on testimony and evidence in the record the Actions 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 G). The nearest potential co-location to Site 4-Soapweed is located approximately 4.5 miles to the south in the Placerville area. Additionally, the Project has been designed to accommodate 12 additional antennas at heights of 140 and 130 feet (Attachment H).

4) "Based on testimony and evidence in the record the Actions [sic] 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. This is seen as a 'takings' issue that is unresolved with current County Policies and must be resolved prior to approval of any additional facilities".

County Response: The Project has been analyzed under CEQA and potential impacts have been mitigated to a less than significant impact. The Project is not considered a takings.

5) "Based on testimony and evidence in the record the Actions are 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 entitles: '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 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.

6) "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 [sic] 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.

7) “Based on testimony and evidence in the record the Actions are inconsistent with the meaning and function of "Setbacks" to achieve balance in the activities on one parcel or Zone from those of another, as well as "Public Health Safety and Welfare" provisions in State Law and County Ordinance. In the case of a 100 to 160 foot tower, meaningful setbacks are not provided if a tower were to "Fall over" for or by whatever means. This concept also apples [sic] to "Shading" and "Visual" impacts on surrounding Residential parcels. The Sites in most of S 17-0016 are are [sic] subject to a maximum 30 foot setback and tower height is or exceeds 1 00 feet. I would not like the liability f [sic] such a situation if I were a neighbor, OR a wireless provider. Providers have far more insurance than any Residential owner could possibly afford, so they willing to risk it, whereas a Resident would not want to risk it given the CHOICE to do so.
Sadly, this reality is a takings without compensation for adjacent landowners. A revised "Wireless Ordnance" must include REQUIRED setbacks to eliminate this takings and threat to Public Health, safety and welfare”.

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 FR-140 which has an applicable rear and side setback of 30 feet when adjacent to a residential zone. The Project would be sited 70 feet from the nearest property line (Exhibit H). The proposed tower would be engineered and built to current engineering codes.

8) Based on testimony and evidence in the record the Actions are inconsistent with the "Access Road Construction damage" that always results from construction of these sites. The conditions requiring before and after photos are meaningless to truly mitigate the damage and once again counter the SUP Finding of "Not Injurious" to the neighborhood. Road damage is a reality that cannot be avoided and is BEST mitigated by a CASH BOND to be only released upon agreement by the effected parties upon completion of the work. The County uses similar conditions on road construction and erosion control measures, why not here?

County Response: There is no evidence to show that road damage is always sustained from construction activities. The Project site has been conditioned to provide evidence of the existing state of the road prior to a building permit issuance and the state of the road after construction activities prior to the finaling of the building permit. Planning Staff will not allow for the finaling of the building and grading permits until all Conditions of Approval are met, including repair to road damage sustained through construction activities.

8) “Based on testimony and evidence in the record the Actions are inconsistent the purpose and intent of Wireless Ordinance itself. This indicates that the 'Wireless Ordinance" is out of date as 4G LTE (and soon "5 G") needed density of towers (1 to 2 miles/tower 4G LTE vs 5-12 miles for phones) was not part of the discussion in the crafting of it. Therefore, the Ordinance is outdated AND as above, the Actions are inconsistent with the Ordinance”.

County Response: The current Communications Facilities Specific Use Regulations were adopted in 2015 and does not differentiate between facilities used for cellular communications or broadband internet. The County analyzes and processes projects with the rules and regulations currently in

effect.

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 4-Soapweed 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 4-Soapweed 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