

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

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3 In the Matter of the Appeal  
4 of VERIZON WIRELESS  
5 of the Denial of Use Permit 15-10  
6 [AB 16-01]  
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FINDINGS OF FACT AND DECISION

8 This proceeding was commenced by virtue of an appeal by Verizon Wireless (the  
9 "Appellant" or "Verizon") of the Planning Commission's determination on January 14, 2016  
10 to deny the Appellant's request for a Major Use Permit (UP 15-10) to allow construction of  
11 a cellular facility at 5660 Staheli Drive in Kelseyville, California.

12 A duly noticed public hearing before the Board of Supervisors occurred on June 28,  
13 2016 and was continued to July 26, 2016 for further proceedings. The matter was again  
14 continued to August 23, 2016 and rescheduled to September 13, 2016. On September  
15 13, 2016, further evidence was taken. The matter was continued to December 13, 2016  
16 and rescheduled to January 3, 2017. On January 3, 2017, further evidence was taken and  
17 the matter continued for further proceedings to January 24, 2017. The hearing concluded  
18 on January 24, 2017. During the lengthy public hearing, evidence, both oral and  
19 documentary, was presented. Based upon the evidence and applicable law, we find the  
20 following:

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1. That the Lake County Planning Commission held a public hearing to consider the adoption of a mitigated negative declaration and use permit approval (UP 15-10) to allow the Appellant to construct a seventy-five (75) foot monopole known as a faux pine at 5660 Staheli Drive in Kelseyville, California (hereinafter, the "Project").
  2. That the Planning Commission denied the use permit on the basis that the site location was inappropriate and the Project did not comply with the County's General Plan policy that visual impacts of telecommunications facilities should be minimized

1 to the greatest extent possible.

2 3. That the Project is located at 5660 Staheli Drive in Kelseyville, California. The  
3 proposed Project originally involved the construction of a seventy-five (75) foot high  
4 monopole known as a monopine (a faux pine tree) cell facility. In light of concerns  
5 expressed by members of the public, the Appellant changed the design to a faux  
6 water tower and reduced the height of the cell facility to sixty-four (64) feet. The  
7 Project further includes ground-based equipment, a 30 KW diesel powered  
8 electrical generator and a 132 gallon diesel fuel tank. The area to be leased by the  
9 Appellant consists of 2500 square feet of a seventeen-acre parcel. The facility will  
10 be placed in a 1200 square foot fenced area.

11 4. That the Board of Supervisors has conducted a de novo hearing in this matter as  
12 required by Section 58.34 of the Lake County Zoning Ordinance.

13 5. That the Appellant is Verizon Wireless, the Project applicant. The grounds for the  
14 appeal in summary include:

- 15 a. The proposed facility complies with all requirements of the Lake County  
16 Code, the General Plan, and Kelseyville Area Plan and meets all findings for  
17 issuance of a use permit;
- 18 b. There is no substantial evidence in support of a denial;
- 19 c. Radio frequency emissions comply with FCC Standards and are not a local  
20 zoning issue;
- 21 d. Approval is required in order to avoid an unlawful prohibition of service.

22 6. Staff of the Community Development Department presented evidence both  
23 documentary and testimonial. Staff submitted a staff report, dated June 8, 2016  
24 and Exhibits. Said exhibits included the Appeal AB 16-01, Planning Commission  
25 staff reports dated December 3, 2015 and January 14, 2016, documents submitted  
26 by the Appellant, and correspondence from surrounding property owners.

27 Testimony included:  
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1 a. Community Development Department Associate Planner Keith Gronendyke  
2 made a power point presentation and presented the staff report. The power point  
3 presentation illustrated the site plan for the Project and photographs of the alternate  
4 sites that were analyzed by the Appellant.

5 7. The Appellant presented evidence, both documentary and testimonial. Testimony  
6 included, but was not limited to:

7 a. Andrew Lesa, employed by Epic Wireless and representing the Appellant  
8 testified that Verizon's objective is to enhance their existing cell coverage for  
9 current and future customers. Verizon has identified a significant gap in services  
10 located within and adjacent to the town of Kelseyville. It is essentially the entire  
11 community of Kelseyville. Service in Kelseyville and along Highway 29 is  
12 substandard, and in some cases, nonexistent. Verizon's objective is to fill that gap  
13 by installing a new cell facility at 5660 Staheli Drive. Mr. Lesa testified that Verizon  
14 is proposing a sixty-four foot tall monopine (faux pine tree) cell facility. He noted  
15 that Verizon previously proposed a cell facility seventy-five feet in height, but that  
16 has since been reduced due to concerns of local residents. The equipment space  
17 will be enclosed with a security fence. The proposed Project location is zoned rural  
18 residential which does allow wireless facilities. Verizon determined that this  
19 location is the least intrusive because it is wide coverage with the height of tower at  
20 sixty-four feet high. Verizon has now analyzed seventeen alternate site locations. All  
21 alternative locations would require the tower to be one hundred fifty feet tall and  
22 coverage would still be inadequate. Verizon will change the design from a  
23 monopole to a faux water tank since that is more in keeping with the area.

24 b. Raj Mathur, a licensed electrical engineer, testified that the radio frequency  
25 exposure levels were mapped to show that the emissions and the exposure levels  
26 are well below Federal Communication Commission (FCC) limits.

27 c. Ed Godfrey, a Verizon vice president, testified that 70% of all 911 calls are  
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1 made from cell phones. Verizon has worked on this Project for two and a half to  
2 three years now and, after an exhaustive review of alternative locations, has clearly  
3 shown a significant gap in coverage and that the Staheli property is the least  
4 intrusive alternative.

5 d. Paul Albritton, outside counsel for the Appellant, stated that substantial evidence  
6 is required to deny a cell facility. It is not enough to state it is unattractive; that is not  
7 substantial evidence. Denial of this facility would be a prohibition to providing  
8 service in violation of federal law. A significant gap in coverage was identified in  
9 the Kelseyville area. That is nineteen square miles of coverage area. County  
10 Code has been followed to find the least intrusive means to provide service to  
11 address the significant gap in service in the Kelseyville area. They reviewed very  
12 carefully the County General Plan and Zoning Ordinance. They looked at possible  
13 co-location at existing facilities, but those facilities are too far away to serve the  
14 coverage area. They began with an analysis of six alternate sites, but in response  
15 to community concerns, they have now looked at eleven more and have reviewed  
16 them all thoroughly. They received 352 e-mails, texts, and letters in support of  
17 improved cell service in Kelseyville.

18 Additionally Mr. Albritton presented several written submissions which  
19 included, but were not limited to, a statement by Verizon Wireless Radio Frequency  
20 Engineer Benjamin Santa Maria confirming a significant gap in coverage in Verizon  
21 Wireless AG LTE service of nineteen square miles in the Kelseyville area, the radio  
22 frequency study of Hammett & Edison, Inc. consulting engineers, the statement of  
23 radio frequency engineer Rajat Mathur concerning radio frequency exposure, the  
24 alternate site analysis, and the revised site alternate analysis.

- 25 8. Testimony was received from several members of the public, including but not  
26 limited to, Michael Powers, Nina Marino, Valerie Carlton, Mark Borghesani, and  
27 Helen Sondacre who opposed approval of the Project at the location proposed.  
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- 1 9. Testimony was received from Susan Cochman and Peggy King in support of the  
2 Project.
- 3 10. Testimony was received from Lake County Sheriff Brian Martin testified that he had  
4 no position as to the location of the cell facility, but can attest to the importance of  
5 having adequate cell service to law enforcement and all first responders.
- 6 11. That this Board finds, based on substantial evidence in the record of these  
7 proceedings as to this project:
- 8 a. That as to the Appellant's claim that the proposed facility complies with all  
9 requirements of Lake County Code, General Plan, and Kelseyville Area Plan and  
10 meets all findings for issuance of a use permit, for reasons more fully described  
11 hereinbelow, this Board agrees.
- 12 b. That as to the Appellant's challenge that there is no substantial evidence in  
13 support of denial, this Board agrees. Although several members of the public  
14 testified to a risk of reduction of the values of neighboring properties, the  
15 unattractiveness of faux pine tree design, and the general inappropriateness of the  
16 selected location, such evidence is insufficient to support a denial of the Project in  
17 this instance.
- 18 c. That as to the Appellant's claim that radio frequency emissions comply with FCC  
19 standards and are not a local zoning issue, this Board finds that the Appellant has  
20 produced substantial evidence to show that the radio frequency emissions are well  
21 below FCC limits.
- 22 d. That as to the Appellant's claim that approval is required in order to avoid an  
23 unlawful prohibition of service, this Board finds that, based upon the evidence  
24 presented in these proceedings under the applicable federal standards, that claim  
25 is, in this case, correct.
- 26 12. That this Board has considered and incorporates by reference the Community  
27 Development staff memoranda and exhibits thereto submitted to this Board for the  
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1 hearings on this matter as well as the written submissions by the Appellant, and  
2 members of the public for the public hearing of this matter.

3 13. That this Board finds, based upon substantial evidence in the record of these  
4 proceedings, that all the findings of Section 51.4 of the Lake County Zoning  
5 Ordinance can be made as follows:

6 a. The establishment, maintenance, or operation of the use applied for will not  
7 under the circumstances of the particular case, be detrimental to the health, safety,  
8 morals, comfort and general welfare of the persons residing or working the  
9 neighborhood of such proposed use, or be detrimental to property and  
10 improvements in the neighborhood or the general welfare of the County.

11 The Appellant has redesigned the proposed Project to lower the height of  
12 the antenna from seventy-five to sixty-four feet and from a monopine to a faux water  
13 tank more in keeping with the community. The Antennas will be completely hidden  
14 by the faux tank structure. The proposed facility will be constructed on property  
15 zoned as rural residential and not on prime agricultural soils. The Project will  
16 significantly enhance the cell service to residents, travelers, and emergency  
17 responders in the Kelseyville area.

18 b. The site for the project is adequate in size, shape, location, and physical  
19 characteristics to accommodate the type of use and level of development  
20 proposed.

21 The proposed Project will be located on a parcel that is seventeen acres in  
22 size and meets all setback requirements. The area where the tower and ancillary  
23 structures are to be located is approximately 2500 square feet. The facility will be  
24 placed in a 1200 square foot fenced area which will also contain radio cabinets and  
25 a generator. The Project site is sufficient to accommodate all of the proposed  
26 physical improvements.

27 c. The streets, highways, and pedestrian facilities are reasonably adequate to  
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1 safely accommodate the specified proposed use.

2 The proposed Project will generate little in traffic other than  
3 maintenance visits. Additionally, the conditions of the use permit require the  
4 Appellant to pave or, at a minimum, chip seal the surface of all access roads,  
5 driveways, and parking areas and to improve the existing driveway encroachment  
6 at Staheli Drive to current encroachment standards.

7 d. There are adequate public or private services, including but not limited to, fire  
8 protection, water supply, sewage disposal, and police protection to serve the  
9 project.

10 The Project site is served by the Lake County Sheriff's Office for law  
11 enforcement protection and by the Kelseyville Fire Protection District for fire  
12 suppression needs. The site will not have water or sewage disposal services.

13 e. The Project is compatible with surrounding land uses and is in conformance with  
14 the applicable provisions and policies of the Lake County Code, the General Plan,  
15 the Kelseyville Area Plan, and the Lake County Zoning Ordinance.

16 County staff previously determined in its report to the Planning Commission  
17 dated December 3, 2015, that the proposed Project complies with all relevant  
18 requirements of County Code, the General Plan and the Kelseyville Area Plan. The  
19 Project, which will consist of a sixty-four foot faux water tower completely hiding the  
20 antennas does comply with the General Plan Policy that the visual impacts of  
21 telecommunications facilities should be minimized to the greatest extent possible.

22 f. That no violation of Chapters 5, 17, 21, 23, or 26 of the Lake County Code  
23 currently exists on the property. No evidence has been presented nor records  
24 located by County staff to indicate there are any existing violations of Lake County  
25 Code.

26 14. That this Board finds that the findings for approval of wireless facilities described in  
27 Section 71.13 of the Zoning Ordinance can be made as follows:  
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1 a. That the development of the proposed wireless communications facility will not  
2 significantly affect any public viewshed, scenic corridor or any identified  
3 environmentally sensitive area or resource as defined in the Lake County General  
4 Plan.

5 There has been no evidence presented that the proposed facility will  
6 significantly affect any public viewshed or scenic corridor. There has been no  
7 evidence presented that any identified environmentally sensitive area or resource  
8 will be significantly affected. The Project location is zoned rural residential. The  
9 Project will be located on a bluff on a seventeen-acre parcel, just south of Highway  
10 29.

11 b. That the site is adequate for the development of the proposed wireless  
12 communications facility and that the applicant has demonstrated that is the least  
13 intrusive for the provision of services as required by the FCC.

14 As already described hereinabove, the proposed Project will be located on  
15 a parcel that is seventeen acres in size and meets all setback requirements. The  
16 area where the tower and ancillary structures are to be located is approximately  
17 2500 square feet. The facility will be placed in a 1200 square foot fenced area  
18 which will also contain radio cabinets and a generator. The Appellant did pursue  
19 opportunities to co-locate on existing wireless facilities, but there are no existing  
20 facilities in the vicinity of Kelseyville where the significant gap in coverage exists.  
21 The closest existing facility could not serve the significant gap in service due to  
22 distance. The Appellant has considered seventeen alternate sites. At many of  
23 these locations, even at the 150 foot maximum height allowed by Article 71 of the  
24 Zoning Ordinance, the gap in coverage could not be served. Some of these  
25 locations either have no willing landlord or a wireless facility is not permitted in that  
26 zoning. The proposed facility with the antennas placed within a faux water tank  
27 constitutes the least intrusive alternative to fill the identified significant gap in cell  
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1 coverage.

2 c. That the Proposed wireless communication facility complies with all of the  
3 applicable requirements of Article 71 of the Lake County Zoning Ordinance.

4 As shown by the substantial evidence presented by the Appellant regarding  
5 the size and description of the Project, the location of the Project, and the analysis  
6 of alternate sizes, the proposed facility does comply with the applicable  
7 requirements of Article 71.

8 d. That the subject property upon which the wireless communications facility is to  
9 be built is in compliance with all rules and regulations pertaining to zoning uses,  
10 subdivisions, and any other applicable provisions of this Title and that all zoning  
11 violation abatement costs, if any, have been paid.

12 The property location is zoned rural residential which allows for wireless  
13 facilities. There is no evidence that any zoning violation abatement costs have ever  
14 been assessed against the subject property or, if they have, that such costs remain  
15 unpaid.

16 15. That this Board finds that the Appellant has presented substantial evidence that a  
17 significant gap in cell coverage exists in the Kelseyville area and that the  
18 construction of the Project at the Staheli location is the least intrusive means of  
19 closing that gap.

20 16. That this Board finds that this Project is consistent with land uses in the vicinity, the  
21 Project is consistent with the Kelseyville Area Plan and the Zoning Ordinance, and,  
22 as mitigated, this Project will not result in any significant adverse environmental  
23 impacts. On the basis of those findings, Initial Study 15-18, and the mitigation  
24 measures added to the Project, this Board further finds the use permit applied for  
25 by the Appellant will not have a significant effect on the environment and this Board  
26 hereby adopts the mitigated negative declaration.

27 17. That this Board, having made the findings described in Section 51.4 of the Zoning  
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Ordinance, hereby grants Use Permit 15-10 subject to the conditions described therein.

18. Based upon the foregoing and for the reasons set forth hereinabove, this Board grants Appeal AB 16-01.

NOTICE TO APPELLANT: You are hereby given notice that the time within which any judicial review of the decision herein may be sought is governed by the provisions of the Code of Civil Procedure Section 1094.5.

Dated: \_\_\_\_\_

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CHAIR, Board of Supervisors

ATTEST: CAROL J. HUCHINGSON  
Clerk to the Board  
of Supervisors

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy

\_\_\_\_\_  
ANITA L. GRANT  
County Counsel