

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

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3 In the Matter of the Appeal)
4 of AURELIA JOHNSON)
5 of the Approval of Use Permit 18-01) FINDINGS OF FACT AND DECISION
6 [AB 19-01])
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8 This proceeding was commenced by virtue of an appeal by Aurelia Johnson
9 (the "Appellant") of the Planning Commission's determination on January 24, 2019 to
10 approve the request of Applicant Horizon Tower, LLC for a Major Use Permit (UP 18-
11 01) to allow the development of an eighty-five (85)-foot tall unmanned broad leaf mono-
12 tree wireless telecommunications tower located at 9475 Mojave Trail in Kelseyville,
13 California.

14 A duly noticed public hearing before the Board of Supervisors occurred on April
15 23, 2019, at which time evidence, both testimonial and documentary, was presented.
16 Based upon the evidence and applicable law, we find the following:

- 17 1. That the Lake County Planning Commission held a noticed public hearing on
18 January 24, 2019 to consider the adoption of a mitigated negative declaration
19 and use permit approval (UP 18-01) to allow the Applicant Horizon Tower to
20 construct an eighty-five (85)-foot tall unmanned broad leaf mono-tree wireless
21 telecommunications tower located at 9475 Mojave Trail in Kelseyville,
22 California (hereinafter, the "Project").
- 23 2. That the Planning Commission approved the use permit on January 24, 2019,
24 making the required findings for approval of Major Use Permit UP 18-01
25 (Article 51, Section 51.4a), and Wireless Communication Facility Approval
26 (Article 71, Section 71.13). The Planning Commission found that the Project,
27 with the incorporated mitigated measures in Initial Study, IS 18-06, would not
28 have significant impact on the environment and adopted a Mitigated Negative

1 Declaration.

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

4 4. That the Appellant is Aurelia Johnson. She is joined by other concerned
5 persons known as the Clear Lake Riviera Residents opposed to this Project.
6 The grounds for the appeal in summary include:

7 a. There was prejudicial placement during the Planning Commission hearing
8 on January 24, 2019, in that County employees and the Project Applicant were
9 seated at tables and those in opposition (who are the Appellants here) were in
10 the general audience. Additionally, insufficient time was given to discuss the
11 Project. Those in opposition (some of whom join the Appellant in this appeal)
12 were each given three minutes to speak and so, stood in line to speak over and
13 over again.

14 b. There is a concern with cultural resource preservation as insufficient
15 information was provided and a lack of consideration area wildlife was shown.

16 c. There is concern as to earthquake fault lines running through the Project.

17 d. There is a concern that there will be a decrease in real estate values for
18 homes located in the neighborhood of the Project.

19 e. The cell tower representative did not answer the question of why the location
20 of the Project was the location selected.

21 f. The Planning Commission was incorrect in its determination that the cell
22 tower will not be visually obtrusive.

23 5. Staff of the Community Development Department presented evidence both
24 documentary and testimonial. Staff submitted a staff report, dated April 23,
25 2019, and accompanying exhibits. Said exhibits included: A Vicinity Map,
26 Exhibit "A"; the Appeal Application Packet, Exhibit "B"; the Planning
27 Commission Staff Report with Attachments dated January 24, 2019, Exhibit
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1 “C”; Document received during the January 24, 2019 meeting of the Planning
2 Commission, Exhibit “D”; Planning Commission Minutes from January 24,
3 2019, Exhibit “E”; Horizon Tower’s Response to the Appeal, Exhibit “F”, a
4 Biological Resource Assessment, Exhibit “G”; and Proposed Conditions of
5 Approval, Exhibit “H”. Testimony included:

6 a. Community Development Department Associate Planner Mark Roberts
7 made a power point presentation and presented the staff report. Mr. Roberts
8 described the Project, reviewed and responded to each of the bases for this
9 appeal, and described the conditions required for approval of this Project.

10 6. The Appellant presented evidence, both documentary and testimonial. The
11 Appellant, Ms. Johnson, testified that the photographs provided do not do the
12 height of the Project tower justice. The eight-five- (85-) foot pole will stick up
13 “like a toothpick in the sand.” Ms. Johnson further testified to concerns over the
14 aesthetic impacts to the beauty of the area, that the location was inappropriate
15 to a heavy residential area, the risk of increased EMF emissions in a location
16 with two existing earthquake fault lines, and the risk of fires.

17 7. Project Applicant, Horizon Tower, presented evidence in the form of its written
18 response dated February 25, 2019, to the contentions raised on appeal, with
19 accompanying exhibits. Additionally, its representative, Greg Guerrazzi
20 testified, as did the electrical engineer retained by the Applicant, Rajat Mathur.
21 An independent engineering firm evaluated the Project and concluded that it will
22 operate well below Federal Communications Commission ("FCC") limits on
23 radio-frequency ("RF") emissions. The Project meets all of the County code
24 requirements for siting on the subject property.

25 8. Testimony in opposition to the Project location was received from several
26 members of the public, including members of a community group of which the
27 Appellant stated she was a part, who joined in this appeal. Those persons
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1 included Carol Sterrett Frost, Don Greene, Frank Howard, and Kirsten Olsen.
2 Statements were read from Corrina Bettencourt and Barbara Greene.
3 Additionally, Association of Realtors Scott Nickmeyer spoke on studies
4 regarding the impact of communications towers on property values.

5 9. That this Board finds, based on substantial evidence in the record of these
6 proceedings as to this Project:

7 a. That as to the contention that there was prejudicial placement during the
8 Planning Commission hearing on January 24, 2019, in that County employees
9 and the Project Applicant were seated at tables and insufficient time was given
10 to discuss the issues relating to the Project, to the extent these contentions
11 raise appealable issues, this Board finds no substantial evidence was
12 presented by Appellants in support of these contentions. There was no appeal
13 before the Planning Commission and those in opposition to the Project were
14 among the members of the general public, not appellants. Those who are
15 Appellants before this Board in the present matter were members of the
16 general public when the Project was considered by the Planning Commission.
17 No preferential placement was given. Both the employees of the Community
18 Development Department and the Project Applicant made presentations to the
19 Commission in regard to the subject Project. Those in opposition were each
20 given three minutes to speak and, according to the statement of the Appellants,
21 stood in line to speak over and over again.

22 b. That as to the contentions that insufficient information was provided as to
23 cultural resource preservation and insufficient consideration was given to area
24 wildlife, this Board finds no substantial evidence was presented by the
25 Appellants in support of these contentions.

26 As to the issue of cultural resources, as the evidence presented by County staff
27 shows, a request for review for sufficiency was sent to Northwest Center at
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1 Sonoma State University and to eight surrounding tribal nations. Some tribes
2 did not comment, others declined or expressed no interest in the Project. As
3 discussed in Initial Study 18-06, a records search and site visit was conducted
4 by Archaeological Resources Technology which determined that no cultural
5 soils and/or materials were observed. Further staff noted that in compliance
6 with CEQA guidelines, if archaeological resources are uncovered during
7 construction, work at the place of discovery should be halted immediately until a
8 qualified archaeologist can evaluate the findings. With that mitigation measure,
9 the impacts would be reduced to less than significant.

10 As to the issue of area wildlife, a biological assessment was prepared for the
11 Project by Synthesis Planning and the Project has included twelve (12)
12 mitigation measure that would reduce all potential impacts to less than
13 significant.

14 c. That as to the contention relating to concerns as to earthquake fault lines
15 running through the Project, this Board finds no substantial evidence was
16 presented by the Appellants in support. The Project area is within the Konocti
17 Bay Fault Zone. Developments, including infrastructure projects such as the
18 Project at issue, must meet the design standards for Seismic Design Category
19 D2 as well as all current California Building Code requirements. All building
20 plans submitted for the Project would be reviewed for compliance with these
21 requirements.

22 d. That as to the contention that there will be decrease in real estate values for
23 homes located in the neighborhood of the Project, this Board finds that no
24 substantial evidence was presented by Appellant in support of this contention.
25 The Board agrees with the response of staff that the California Environmental
26 Quality Act (CEQA) does not require economic analysis as part of the Initial
27 Study (IS).

1 e. That as to the contention that the cell tower representative did not answer
2 the question of why the location of the Project was the location selected, this
3 Board finds no substantial evidence was presented by Appellant in support of
4 this contention. The Staff Report points to the Applicant's Project description
5 wherein the Applicants states that the subject property and location were
6 selected after a thorough evaluation of the area, with the reasons for that
7 selection including that there were no existing structures in the immediate area
8 which could support antennas at the required height, the subject property is
9 almost 40 acres in size which allows the Project to be sited away from adjacent
10 residences, and the subject property has an existing driveway with access to
11 the required utilities. Additionally, the Applicant stated that it had investigated
12 other properties adjacent to the subject property, but it could not secure a lease
13 agreement with any of those properties.

14 f. That as to the contention that the Planning Commission is incorrect in its
15 determination that the cell tower will not be visually obtrusive, this Board finds
16 no substantial evidence was presented by Appellant in support of this
17 contention.

18 As part of the use permit application package, the Project Applicant submitted
19 a photo simulations analysis of the proposed Project. These photographic
20 simulations were presented to the Planning Commission for its review and
21 consideration.

- 22 10. That this Board has considered and incorporates by reference the Community
23 Development staff memoranda and exhibits thereto submitted to this Board for
24 the hearings on this matter as well as the written submissions by the Appellant,
25 the Project Applicant, and members of the public for the public hearing of this
26 matter. This Board has further considered the applicable declaratory rulings
27 issued by the Federal Communications Commission.
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- 1 11. That this Board finds, based upon substantial evidence in the record of these
2 proceedings, that all the findings of Section 51.4 of the Lake County Zoning
3 Ordinance can be made as follows:
- 4 a. The establishment, maintenance, or operation of the use applied for will not
5 under the circumstances of the particular case, be detrimental to the health,
6 safety, morals, comfort and general welfare of the persons residing or working
7 the neighborhood of such proposed use, or be detrimental to property and
8 improvements in the neighborhood or the general welfare of the County. A
9 communications tower is a permitted use in the Rural Residential Zoning
10 District upon the issuance of a major use permit. The proposed
11 communications tower meets all federal, state, and local agency requirements.
12 Once a building permit is submitted, the Community Development Department
13 will perform a zoning clearance to ensure the proposed use has met all
14 conditions of approval. Building permits and zoning clearances will also be
15 required for the service providers who locate and collocate at the tower in the
16 future.
- 17 b. The site for the Project is adequate in size, shape, location, and physical
18 characteristics to accommodate the type of use and level of development
19 proposed. The Project site is approximately 39.5 acres and developed with a
20 residence and outbuildings. The Project parcel has a slope of less than ten
21 percent (10%). It is located in close proximity to existing infrastructure and
22 services and is in an area developed with single and multi family residences.
- 23 c. The streets, highways, and pedestrian facilities are reasonably adequate to
24 safely accommodate the specified proposed use. The Project is accessible
25 by private easement from Mojave Trail, a County-maintained roadway.
- 26 d. There are adequate public or private services, including but not limited to,
27 fire protection, water supply, sewage disposal, and police protection to serve
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1 the project. The Project site has existing on-site private well and wastewater
2 systems and is served by the Lake County Sheriff's Office, and by the
3 Kelseyville Fire Protection District.

4 e. The Project is compatible with surrounding land uses and will be in
5 conformance with the applicable provisions and policies of the Lake County
6 Code, the General Plan, and any approved zoning or land use study or plan
7 upon issuance of the Major Use Permit 18-01.

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

12 12. That this Board finds that the findings for approval of wireless facilities
13 described in Section 71.13 of the Zoning Ordinance can be made as follows:

14 a. That the development of the proposed wireless communications facility will
15 not significantly affect any public viewshed, scenic corridor or any identified
16 environmentally sensitive area or resource as defined in the Lake County
17 General Plan. The Applicant completed visual simulations for the proposed
18 eighty-five- (85-) foot tall wireless communications tower from four locations
19 representing views from public vantage points. Public views of the proposed
20 tower would be partially screened and, although visible from some locations, its
21 design is intended to blend with the environment so as not to block scenic
22 vistas. Potential environmental impacts have been reduced to less than
23 significant with the incorporated mitigation measures and conditions of
24 approval.

25 b. That the site is adequate for the development of the proposed wireless
26 communications facility and that the applicant has demonstrated that it is the
27 least intrusive for the provision of services as required by the Federal
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1 Communications Commission ("FCC"). The Project site will be located on a
2 parcel of approximately 39.5 acres already developed with a residence and
3 outbuildings. Although the site has existing development, the site is adequate
4 for the development of the Project. The proposed Project constitutes the least
5 intrusive alternative to fill the identified significant gap in cell coverage, although
6 it must be noted that the ongoing use of such a standard is of questionable
7 value given the September 2018 Declaratory Ruling of the Federal
8 Communications Commission wherein the requirement for such a showing was
9 disapproved.

10 c. That the Proposed wireless communication facility complies with all of the
11 applicable requirements of Article 71 of the Lake County Zoning Ordinance
12 upon the issuance of a major use permit. As indicated hereinabove, once a
13 building permit is submitted, the Community Development Department will
14 perform a zoning clearance to ensure the proposed use has met all conditions
15 of approval. Building permits and zoning clearances will also be required for
16 the service providers who locate and collocate at the tower in the future.

17 d. That the subject property upon which the wireless communications facility is
18 to be built is in compliance with all rules and regulations pertaining to zoning
19 uses, subdivisions, and any other applicable provisions of the Zoning
20 Ordinance, and that all zoning violation abatement costs, if any, have been
21 paid.

22 As indicated hereinabove, there is substantial evidence to show that the
23 Project, subject to the approval of Major Use Permit 18-01, will be built in
24 compliance with all rules and regulations pertaining to County zoning uses,
25 wireless communications facilities provisions, and all other applicable
26 provisions of the County Zoning Ordinance. There is no evidence that any
27 zoning violation abatement costs have ever been assessed against the subject
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property or, if they have, that such costs remain unpaid.

13. That this Board finds that the Project Applicant has demonstrated that a significant gap in cell coverage exists in the Kelseyville area and that the construction of the Project at the location specified is the least intrusive means of closing that gap. This Board notes the value of such a demonstration may now be moot in that it appears doubtful that communications entities must continue to make such a showing in light of the September 2018 Declaratory Ruling of the Federal Communications Commission wherein the requirement for such a showing was disapproved.

14. That this Board finds that this Project is consistent with land uses in the vicinity, the Project is consistent with the Rivas Area Plan and the Zoning Ordinance, and, as mitigated, this Project will not result in any significant adverse environmental impacts. On the basis of those findings, Initial Study IS 18-06, and the mitigation measures added to the Project, this Board further finds the use permit applied for by the Project Applicant will not have a significant effect on the environment and this Board hereby adopts the mitigated negative declaration.

15. That this Board, having made the findings described in Section 51.4 of the Zoning Ordinance, hereby grants Use Permit 17-04 subject to the conditions described therein.

16. Based upon the foregoing and for the reasons set forth hereinabove, this Board denies Appeal AB 19-01.

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1 NOTICE TO APPELLANT: You are hereby given notice that the time within which any
2 judicial review of the decision herein may be sought is governed by the provisions of
3 the Code of Civil Procedure Sections 1094.5 - 1094.6.
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6 Dated: _____ CHAIR, Board of Supervisors
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10 ATTEST: CAROL J. HUCHINGSON
11 Clerk to the Board
of Supervisors APPROVED AS TO FORM:
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13 By: _____ ANITA L. GRANT
14 Deputy County Counsel
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