



Legislation Text

File #: 17-012, Version: 1

MEMORANDUM

TO: Board of Supervisors

FROM: Robert Massarelli, Community Development Director
By Keith Gronendyke, Associate Planner

SUBJECT: (Continued from September 13, 2016, August 23, 2016, July 26, 2016 and June 28, 2016) Verizon Wireless Appeal (AB 16-01) of denial of Use Permit (15-10) Supervisorial District 4

DATE: June 8, 2016

EXHIBITS:

- A. Appeal Form and attached documents
- B. Planning Commission Staff Report Dated December 3, 2015
- C. Planning Commission meeting minutes from January 14, 2016.
- D. Revised documents submitted by applicant.
- E. Correspondence from surrounding property owners.

I. BACKGROUND

The applicant is appealing the decision by the Planning Commission on January 14, 2016 to deny an application for a Major Use Permit to construct a new seventy-five foot tall monopole cellular antenna disguised as an evergreen tree for the purpose of increasing cell carrier capacity in the Kelseyville area. Twelve eight foot high panel type antennae, two six-foot diameter microwave dishes and assorted required equipment would be mounted on the mono-tree antenna, while various ground based equipment would be located at the base of the antenna tower including four equipment cabinets, a 30 KW diesel powered electrical generator and a 132 gallon diesel fuel tank. A six-foot tall chain link fence with privacy slats and topped by barbed wire would surround the 2,500 square foot lease area. Access to the site would be from a twenty-foot wide non-exclusive access easement located off of Staheli Drive. As required by Article 71 of the Zoning Ordinance, the applicant has made provisions for future co-location from other cellular communication companies on the proposed mono-tree.

II. APPEAL DISCUSSION

The appeal to the above noted denial of Use Permit UP 15-10 was filed on January 20, 2016, by Andrew Lesa of Epic Wireless Group for Verizon Wireless. Along with the appeal form, Mr. Lesa attached verbiage detailing

the reason for the appeal including the following purported violations of United States Code:

47 U.S.C.332(c)(7)(b)(i)(ii) which reads:

(i) "The regulation of the placement, construction and modification of personal wireless service facilities by any State or local government or instrumentality thereof-

(I) shall not unreasonably discriminate among providers of functionally equivalent services and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

(ii) "A state or local government or instrumentality thereof shall act on any request for authorization to place, construct or modify personal wireless service facilities within a reasonable period of time after the request is filed with such government or instrumentality, taking into account the nature and scope of such request."

(iii) "Any decision by a State or local government or instrumentality thereof to deny a request to place, construct or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record."

In response to the above, staff offers the following:

(i)

(I) There was no discrimination to the applicant as to other relevant applications for the installation of cellular antennas in Lake County. In fact, the Planning Commission recently approved two other sites for the installation of Verizon associated mono-tree antennae.

(II) Because the County of Lake accepted and processed Verizon's application for the proposed cellular antenna, it shows that there is no prohibition of personal wireless services by the County.

(ii) The application for the Verizon antenna site was submitted on June 2, 2015 and brought to the Planning Commission on January 14, 2016 per an agreement with Mr. Andrew Lesa, the representative for Verizon. As such, the County processed the application in a reasonable time.

(iii) In a letter dated January 14, 2016 (see attachment A), Planning staff notified the applicant Epic Wireless Group/Verizon Wireless of the denial of their application UP 15-10 to construct a seventy-five foot tall mono-tree cellular antenna. Additionally, the attached minutes of the January 14, 2016 Planning Commission meeting includes Planning Commissioner comments on why they voted to deny the above noted application.

At the Planning Commission meeting of January 14, 2016, the Planning commissioners heard comments from nine neighboring property owners objecting to the placement of the proposed mono-tree cell tower in proximity to their residences, reasons given include being an "eyesore", "*negatively affect property values*", "*would be degrading to the area*", and "*was inappropriate in a small residential area.*" There were also concerns about the large fuel tank associated with the diesel electricity backup generator and one speaker wondered who would be maintaining the tree. There was not a representative present for Verizon who could address the above noted questions and concerns. As such, the Commission voted to deny Verizon Wireless' Use Permit

application.

Subsequent to the Planning Commission's denial, planning staff identified several locations as possible alternatives to the project site that would not generate anxiety for neighboring residents. The applicant has submitted revised plans along with photo simulations for the project along with an alternative site analysis and reasons for rejection as noted below:

4695 Cole Creek Road: Suggested alternative by the County of Lake's Planning Department was rejected because the site was deemed too far south from the targeted area of the State Highway 29 corridor (see attached information supplied by applicant).

4820 Loasa Road: Suggested alternative by the County of Lake's Planning Department was rejected because the site was deemed too far north from the targeted area of the State Highway 29 corridor (see attached information supplied by applicant).

6738 Live Oak Drive: Suggested by the Kelseyville Business Association was rejected because it would require the height of the tower to be taller than the proposed tower at the Staheli Drive location and the coverage would not be as comprehensive (see attached information supplied by applicant).

Additionally, the applicant has since made minor changes to the project proposal by reducing the height of the proposed facility from seventy-five feet to sixty-four feet. Other than this, all other aspects of the project remain the same.

III. CONCLUSION

The Planning Commission denied the Major Use Permit for the construction of a seventy-five foot mono-tree cellular antenna on January 14, 2016 for property located at 5660 Staheli Drive in Kelseyville for the following reasons:

1. The Public input on the project indicated that the site location was inappropriate due to surrounding residential and rural property uses.
2. The staff report indicated that the proposed use was outside the parameters of the land use guidelines in that the proposal did not comply with the majority of Policy PFS-7.3 **Siting of Telecommunications Infrastructure** of the County of Lake's General Plan, which stipulates in part that: *"visual impacts of wireless telecommunications facilities shall be minimized to the greatest extent possible and*
 - *Located away from residential and open space areas; and*
 - *When possible, are located on existing buildings, existing poles or other existing support structures; and..."*

Staff noted in the Planning Commission staff report that: *"the project site would not be located away from residences, as there is a small subdivision of houses to the west and an undeveloped subdivision to the north. It also will not be located away from open space areas, as surrounding properties to the east and south are sparsely developed with mostly open space surrounding them. Additionally, it is not possible to place the*

structure, or a similar one, on existing building, poles or other structures."

Additionally in support of number 2 above, six specific findings are required to be made to approve a major use permit. One of these findings is:

5. *That the project is in conformance with the applicable provisions and policies of this code, the General Plan and any approved zoning or land use plan.* As noted above, this project is not completely in conformance with Policy PFS-7.3 **Siting of Telecommunications Infrastructure** of the County of Lake's General Plan.

Sample Motions:

Appeal Approval

I move that the Board of Supervisors make an intended decision to grant appeal AB 16-01 and overturn the Planning Commission's denial of Use Permit UP 15-10 applied for by Epic Wireless Group for Verizon Wireless for property located at 5660 Staheli Drive in Kelseyville, and direct County Counsel to prepare findings of fact before remanding the project back to the Planning Commission for completion of the Environmental review.

Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the appeal AB 16-01 and sustain the Planning Commission's denial of Use Permit UP 15-10 applied for by Epic Wireless Group for Verizon Wireless for property located at 5660 Staheli Drive in Kelseyville, and direct County Counsel to prepare findings of fact.