



RESOLUTION No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION UPHOLDING THE APPEAL FILED BY JENS LARSON, ROD CORVINGTON, KURT ANDERSON, CHARLES MCCOLLOUGH, GEORGE BASSO, AND SCOTT KASTNING, OVERTURNING THE ZONING ADMINISTRATOR'S MARCH 27, 2019 APPROVAL OF THE CONDITIONAL USE PERMIT (CUP17-0016) AND THE PETITION FOR EXCEPTIONS TO DRIVEWAY STANDARDS (MIS18-0012); AND THE ADOPTION OF THE MITIGATED NEGATIVE DECLARATION (EIS17-0023), FOR THE CONSTRUCTION AND OPERATION OF A 110-FOOT-TALL TELECOMMUNICATIONS TOWER AND 1,500-SQUARE-FOOT EQUIPMENT FACILITY AT 13083 WILD LIFE LANE IN GRASS VALLEY (APN 012-720-045)

WHEREAS, pursuant to Government Code § 65964.1(e), a County has authority over decisions regarding the placement, construction, and modification of a wireless telecommunications facility; and

WHEREAS, on June 30, 2017, Sara King as the agent for AT&T Mobility dba AT&T Wireless, applied for a Conditional Use Permit to allow the construction and operation of a 110-foot-tall unmanned telecommunications tower and 1,500-square-foot equipment facility with up to four carriers, on a 2.32-acre privately-owned parcel at 13083 Wild Life Lane in unincorporated Nevada County (APN 012-720-045); and

WHEREAS, on May 31, 2018, the application for the Petition for Exceptions to Driveway Standards was added to the project to allow a driveway grade of up to twenty-five percent (25%), and to allow a reduced driveway width of twelve (12) feet along the existing section of driveway that would be paved, instead of the standard width of twelve (12) feet with one-foot shoulders, for grades that exceed sixteen percent (16%); and

WHEREAS, on February 27, 2019, the Nevada County Zoning Administrator conducted a public hearing and continued the project indefinitely, due to the property owner withdrawing his consent for the project; and

WHEREAS, on March 13, 2019, the property owner, Michael Stapleton, gave consent for the project to be rescheduled for public hearing to seek approval; and

WHEREAS, on March 27, 2019, the Nevada County Zoning Administrator conducted a public hearing, considered and adopted the Mitigated Negative Declaration, and considered and approved the applications by AT&T Mobility dba AT&T Wireless for a Conditional Use Permit and a Petition for Exceptions to Driveway Standards. The applications are to allow the construction and operation of a 110-foot-tall unmanned telecommunications tower and 1,500-square-foot equipment facility with up to four carriers, with individual equipment cabinets and backup generators. The project includes 230 feet of driveway improvements along an existing driveway, and additional grading to construct a new 225-foot long driveway to the telecommunications facility, and a new hammerhead turnaround; and

WHEREAS, pursuant to Section L-II 5.12.D of the Nevada County Land Use and Development Code, the Zoning Administrator's approval of the Applications are appealable to the Board of Supervisors within 10 days after the date of the decision; and

WHEREAS, on April 4, 2019, Appellants Jens Larson, Rod Corvington, Kurt Anderson, Charles McCollough, George Basso, and Scott Kastning filed a timely appeal of the Zoning Administrator's decision, and requested that the applications for the Conditional Use Permit and Petition for Exceptions to Driveway Standards are denied, and to overturn the Zoning Administrator's decision to adopt the Mitigated Negative Declaration; and

WHEREAS, on April 23, 2019, the Board of Supervisors adopted Resolution 19-168 to accept the appeal as to the Zoning Administrator's actions on the project and scheduled the appeal for hearing on May 28, 2019; and

WHEREAS, on May 28, 2019, the Board of Supervisors held a duly noticed public hearing at which the Board considered all evidence both oral and written regarding the appeal; and

WHEREAS, a large number of public comments expressing aesthetic objections were voiced from neighboring property owners as well as objections that the cell tower is inconsistent with the rural, residential setting of the area; and

WHEREAS, the Board of Supervisors made a motion of intent to uphold the appeal and deny the Conditional Use Permit, Petition for Exceptions and Mitigated Negative Declaration and continued the matter for final action to June 11, 2019; and

WHEREAS, on June 11, 2019 the Board of Supervisors held a duly noticed public hearing at which the Board upheld the appeal and denied the Conditional Use Permit, Petition for Exceptions and Mitigated Negative Declaration.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines that:

1. The facts set forth above are true and correct.
2. The telecommunication tower and equipment facility is an allowed use, subject to approval of a Use Permit, but was found to be inconsistent and incompatible with the surrounding developed residential neighborhood, in which the project site is located.
3. That this project even as conditioned and mitigated, does not meet the established purpose of Land Use and Development Code Chapter II, Section L-II 3.8 Communication Tower and Facilities to ensure compatibility with adjacent land uses.
4. That this project does not blend with the surrounding, existing, natural and man-made environment so as to be effectively unnoticeable pursuant to Land Use and Development Code Chapter II, Section L-II 3.8.E.1.b, because statements from the overwhelming public comment period stated the tower would be in a location that is not developed with other communication facilities, and would be quite noticeable and did not blend in with the surrounding existing environment.
5. That the proposed use does not meet all applicable provisions of the Land Use and Development Code, or the same practical effect of those provisions, including design and siting to meet the intent of the Site Development Standards set forth in the Zoning Ordinance, and has not mitigated the impact of the development on the surrounding residential development as proposed.

6. The site for the proposed use is not of adequate size and location to accommodate the proposed use and all facilities needed for that use and reasonable expansion thereof, if any, and to make appropriate transitions to nearby properties and permitted uses thereon.
7. That the communications tower is proposed to be located in a developed residential neighborhood made up of small rural lots with residences in close proximity to one another. The proposed tower and the impacts to the neighborhood from construction, operation and ongoing maintenance of the facility would impact the rural residential neighborhood by the introduction of the commercial facility and commercial operations into a rural residential neighborhood.
8. The proposed use and facilities are not compatible with, and are detrimental to, existing and anticipated future uses on-site, on abutting property and in the nearby surrounding neighborhood or area.
9. These findings are supported by substantial evidence in the record, as detailed in this Resolution and as discussed at the hearing. That evidence includes the judgment of the Board of Supervisors.
10. The location and custodian of the documents, which constitute the record of these proceedings, is the Nevada County Planning Department, 950 Maidu Avenue, Nevada City, California.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby upholds the appeal of the Appellant and overturns the decision of the Zoning Administrator to adopt the Mitigated Negative Declaration (EIS17-0023); and approve the Conditional Use Permit (CUP17-0016) and the Petition for Exceptions to Driveway Standards (MIS18-0012), for the telecommunication tower and equipment facility, and driveway improvements at 13083 Wild Life Lane in unincorporated Nevada County, based on the findings as set forth herein.

The Clerk of the Board shall mail the Appellant a copy of this Resolution, and any appeal of this decision shall be governed by California Code of Civil Procedure section 1094.6.