



RESOLUTION No. 24-480

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

A RESOLUTION TO UPHOLD THE APPEAL FILED BY JEFF AND KRISTIN PHALEN OVERTURNING THE ZONING ADMINISTRATOR'S JUNE 12, 2024, APPROVAL OF THE CONDITIONAL USE PERMIT (CUP23-0015) FOR THE CONSTRUCTION AND OPERATION OF A NEW UNMANNED WIRELESS COMMUNICATION FACILITY LOCATED AT 20896 DOG BAR ROAD, GRASS VALLEY, APN 027-010-018

WHEREAS, on November 8, 2023, Sequoia Development on behalf of Verizon Wireless ("Verizon") submitted an application for a Conditional Use Permit to construct a new unmanned wireless communication tower at 20896 Dog Bar Road, Grass Valley; and

WHEREAS, on June 12, 2024, the Zoning Administrator approved a Conditional Use Permit and Mitigated Negative Declaration for the construction of the wireless communication tower ("Project"); and

WHEREAS, approval of the Project was conditioned and mitigated in an attempt to comply with the County's Zoning Ordinance and to ensure less than significant impacts to all environmental issues; and

WHEREAS, pursuant to Section 12.05.120.D of the Nevada County Code, any decision of the Zoning Administrator may be appealed within 10 days after the date of the decision; and

WHEREAS, on June 24, 2024, Jeff and Kristin Phalen, ("Appellant") filed a timely appeal of the Zoning Administrator's June 12, 2024 conditional approval of the Use Permit; and

WHEREAS, on July 9th, 2024, the Board of Supervisors accepted the appeal filed by Jeff and Kristin Phalen and heard the appeal; and

WHEREAS, on July 9, 2024, 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 continued the hearing until the regularly scheduled hearing on August 20, 2024; 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 project was found inconsistent for approval under Conditional Use Permit for wireless communication towers pursuant to Nevada County Code Section 12.03.080 and Section 12.05.060; and

WHEREAS, the aesthetics of the tower were found to adversely impact the rural quality of the neighborhood; and

WHEREAS, the aesthetic impacts of the tower will have a potentially detrimental impact on the property values of the surrounding area; and

WHEREAS, substantial evidence was presented that Verizon failed to show that there was a significant gap in its wireless communication service; and

WHEREAS, a large number of public comments from neighboring property owners provided evidence that the public had no cell-phone coverage issues at their properties or on public roads in the surrounding area of the proposed Project; and

WHEREAS, the Appellants submitted evidence and testimony concerning the negative health effects of radio frequency emissions; and

WHEREAS, the Board of Supervisors is not basing its decision in any way on the Appellant's evidence concerning radio frequency emissions; and

WHEREAS, Verizon failed to provide sufficiently detailed information to justify the need for the proposed tower site; and

WHEREAS, on August 20, 2024, 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 upheld the appeal, overturning that the decision of the Zoning Administrator to approve a Conditional Use Permit to construct and operate an unmanned wireless communication tower; and

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

1. The facts and findings 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 neighborhood, in which the project site is located.
3. That this project, even as conditioned and mitigated, does not meet the established purpose of Nevada County Code Section 12.03.080 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 Nevada County Code 12.03.080 E.1.b, because overwhelming statements from public comment indicated the tower would be in a location that is not developed with other communication facilities, and would be noticeable from several surrounding property viewsheds and would not blend in with the surrounding existing environment.
5. 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.
6. Verizon failed to show that there was a significant gap in its wireless communication service; and
7. Verizon failed to provide detailed information to justify the need for the proposed tower site pursuant to Nevada County Code Section 12.03.080.D1; and
8. 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.
9. 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 filed by Jeff and Kristin Phalen and overturns the decision to approve a Conditional Use Permit to construct a wireless communication tower and facility 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.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 20th day of August 2024, by the following vote of said Board:

Ayes: Supervisors Edward C. Scofield, Lisa Swarthout, Susan Hoek, and Hardy Bullock.

Noes: Heidi Hall.

Absent: None.

Abstain: None.

Recuse: None.

ATTEST:

TINE MATHIASSEN
Chief Deputy Clerk of the Board of Supervisors

By: _____

Hardy Bullock, Chair