



Contra
Costa
County

To: Board of Supervisors
From: John Kopchik, Director, Conservation & Development Department
Date: February 26, 2019

Subject: Verizon Wireless Access Permit #WA18-0002

RECOMMENDATION(S):

1. OPEN the public hearing on an appeal of a Planning Commission decision to approve a wireless facilities access permit for a Verizon Wireless cell site on a utility pole in the right of way near 401 Horsetrail Court in Alamo (Permit No. WA18-0002), RECEIVE testimony, and CLOSE the public hearing.
2. DETERMINE that County File #WA18-0002 is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303.
3. DIRECT the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk.
4. APPROVE a wireless facility access permit for a Verizon Wireless cell site on a utility pole in the Danville Boulevard public right of way in Alamo (Permit No. WA18-0002).
5. APPROVE the findings in support of Permit No. WA18-0002.
6. APPROVE the conditions of approval for Permit No. WA18-0002.
7. DENY the appeal of Alice Lee, MD.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **02/26/2019** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes: See Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I
Supervisor
Candace Andersen, District II
Supervisor
Karen Mitchoff, District IV
Supervisor
Federal D. Glover, District V
Supervisor

ABSENT: Diane Burgis, District III
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: February 26, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Susan Johnson,
925-674-7868

cc:

FISCAL IMPACT:

The applicant has paid the initial deposit and is responsible for all of the time and material costs associated with processing the application.

BACKGROUND:

This is a hearing for an appeal of the County Planning Commission's decision to deny an appeal and uphold the decision of the County Zoning Administrator to approve a Wireless Facilities Access Permit to establish a new Verizon Wireless cell site attached to an existing utility pole in the public right-of-way near 401 Horsetrail Court in the Alamo area of unincorporated Contra Costa County.

Project Description

The project is to establish a new Verizon Wireless cell site attached to an existing utility pole in the public right-of-way and includes adding one 4-foot canister antenna (on top of a 5-foot-tall pole extension) located on top of the pole and ancillary equipment also attached to the pole. Ancillary equipment includes:

- two (2) RRUS32
- two (2) diplexers inside two (2) RRU shrouds
- one (1) fiber demarc box
- one (1) disconnect switch
- two (2) power supply units
- one (1) power meter

After installation of the antenna, the existing pole, which measures 42.4 feet tall, will measure 51.9 feet tall post construction. In addition, this request includes the installation of two bollards adjacent to the utility pole within the public right-of-way. All pole equipment will be painted to match the existing utility pole.

Appeal of the County Planning Commission's Decision

On December 21, 2018, Ms. Alice Lee filed an appeal with the Department of Conservation and Development, Community Development Division, over the decision of the County Planning Commission to deny the appeal and uphold the decision of the County Zoning Administrator to approve the Wireless Facilities Access Permit. Ms. Alice Lee submitted a revised appeal letter on December 24, 2018. The appeal points in the revised letter have been summarized and addressed below:

Alice Lee, 321 Iron Horse Court, Alamo

Summary of Appeal Point #1: The proposed wireless telecommunications facility would aesthetically clash with the bucolic country lifestyle of Alamo.

Staff Response: Public Utilities Code section 7901 grants telecommunications

companies, like Verizon, a franchise to locate their facilities in public road rights of way. The facility is a low-visibility facility which is described as a facility or antenna installed on an existing high-voltage electricity transmission tower, or installed on an existing utility or street light pole, under the County's Wireless Telecommunications Ordinance, chapter 88-24 of the County Ordinance Code ("Wireless Ordinance"). (See Ord. Code, §§ 88-24.204(p)(4), 88-24.404.)

The facility meets all of the applicable aesthetic requirements in Wireless Ordinance. The proposed canister antenna and ancillary equipment will be painted to match the existing utility pole, which will help the proposed cell site blend in with its surroundings (this includes the existing utility pole and telephone wires). The proposed shrouds will conceal the pole-mounted equipment. The pole extension and antenna will result in an approximately 9.5-foot height increase for the pole, thus complying with the County Wireless ordinance, which limits such height increases to a maximum of 10 feet. Therefore, by placing equipment on an existing utility pole, matching the equipment color to the color of the pole, and providing shrouds to create visual continuity, the proposed wireless telecommunications facility will not substantially change the existing visual character of the area and complies with the design requirements of Section 88-24.408 for facilities located in the public right-of-way.

Summary of Appeal Point #2: The proposed cell site is unnecessary because it would not address current network coverage or capacity needs.

Staff Response: Ordinance Code section 88-24.612 provides that a wireless access permit will be issued if the zoning administrator makes the following findings:

- (i) The facility or substantial change will be designed in a manner that complies with the applicable requirements of section 88-24.408.
- (ii) The facility or substantial change will not interfere with the use of the County right-of-way, or existing improvements or utilities located on, in, under, or above the right-of-way.
- (iii) The facility or substantial change will not interfere with any vehicular, bicycle, or pedestrian use of the County right-of-way.
- (iv) The facility or substantial change will not cause any violation of the accessibility requirements of the Americans with Disabilities Act.

The zoning administrator made those findings based on evidence in the record. Appellants argue that Verizon has not established a need for the facility. Verizon is not required to make that showing to obtain a wireless access permit for this facility. Here, Verizon meets all of the requirements under Chapter 88-24 of the Ordinance Code to obtain a wireless access permit to place its wireless facility on an existing PG&E pole within the public right of way. Because Verizon meets the Ordinance Code's requirements for obtaining a wireless access permit, it is not required to show that the wireless facility is required at this particular location to close a significant gap in

coverage or to densify its network. Verizon would only need to make that showing if the County were to deny a permit because Verizon didn't satisfy the requirements of Chapter 88-24 of the Ordinance Code. (See *T-Mobil USA, Inc. v. City of Anacortes* (2009) 572 F.3d 987.)

Summary of Appeal Point #3: The proposed cell site would decrease property values. Lowered property values would negatively affect the local public school system.

Staff Response: Ordinance Code Section 88-24.612(b)(4) of the County Wireless Telecommunications Facilities ordinance provides that a wireless access permit will be issued (*i.e.*, may not be denied) if all of the requirements in Ordinance Code Sections 88-24.612(b)(4)(A) through Section 88-24.612(b)(4)(I) are satisfied. None of these requirements or approval findings require the analysis of the facility's impact on property values in the surrounding area. Therefore, irrespective of the project's potential impacts on property values in the surrounding area, the County Zoning Administrator and the County Planning Commission approved the proposed Verizon Wireless cell site because all of the requirements in Section 88-24.612(b)(4)(A) through Section 88-24.612(b)(4)(I) have been met.

According to the Court of Appeal in *Oliver v. AT&T Wireless*, "the mere displeasing appearance in size and shape of a neighboring structure [a wireless tower] that is otherwise permitted by law, the only admitted effect of which is an alleged diminution in value of the adjacent property, cannot constitute a nuisance or give rise to an inverse condemnation claim." (*Oliver v. AT&T Wireless* (1999) 76 Cal.App.4th 521, 524.) The facility is permitted by law and the applicant has satisfied all applicable requirements of the County's Wireless Ordinance.

Summary of Appeal Point #4: Neither the Federal Telecom Act of 1996 nor Chapter 88-24 (Wireless Telecommunications Facilities) of the County's Ordinance Code show any prohibition on annual electromagnetic emissions (EME) measurements. The Zoning Administrator is within the County's legal rights in making annual EME measurements a condition of approval.

Staff Response: The County's Wireless Ordinance does not currently require annual EME measurements to be taken by a permittee. The Planning Commission modified the portion of the zoning administrator's decision that required these measurements by removing the annual-measurement requirement. The permit now requires the permittee to take EME measurements within 15 days after facility installation, and again any time equipment is added or replaced.

Federal law completely preempts the County's ability to regulate the placement, construction, or modification of personal wireless service facilities based on the effects of radio frequency (RF) or EME emissions on health or the environment. (47 U.S.C., § 332(c)(7)(B)(iv); *Telespectrum, Inc. v. Public Services Comm. of Kentucky* (6th Cir.

2000) 227 F.3d 414, 424); see also *AT&T Wireless Services of Southern California, LLC v. City of Carlsbad* (C.D. Cal. 2003) 308 F.Supp.2d 1148, 1159.) The County may not regulate RF or EME emissions under a permit. The FCC establishes the RF or EME limits within which the facility is required to operate.

Summary of Appeal Point #5: The proposed antenna is a fire risk.

Staff Response: This application was routed to the Contra Costa County Fire Protection District for comments during the initial 30-day noticing period for the project. The Contra Costa County Fire Protection District did not indicate that the proposed cell site would result in an increased fire risk to people or property. In addition, the proposed wireless telecommunications facility would have to be compliant with all applicable building and fire codes relating to the installation of the facility's equipment to the existing utility pole, to ensure it would not result in an increased fire risk to people or property.

Project History

Verizon Wireless c/o On Air, LLC, submitted County File #WA18-0002 on April 17, 2018. At the September 4, 2018 Alamo MAC Meeting, the Alamo MAC recommended that a public hearing be held on County File #WA18-0002, becoming the impetus for the October 1, 2018 County Zoning Administrator Meeting.

After taking testimony on the project at the October 1, 2018 County Zoning Administrator Meeting, the Zoning Administrator closed the public hearing and continued it to October 15, 2018, in order to consider all of the testimony presented prior to making a decision. The Zoning Administrator approved the Wireless Access Permit at the public hearing held on October 15, 2018 with the following added Condition of Approval, "Within 15 days of the antenna being installed, Verizon shall take RF power density measurements with the antenna operating to verify the level reported in the Hammett and Edison report and to ensure that the FCC public exposure level is not exceeded in any publicly accessible area. This measurement shall be taken again on an annual basis or if any equipment is replaced. Verification of these measurements shall be submitted to CDD for review and approval".

On October 25, 2018, Alice Lee and Verizon Wireless c/o On Air, LLC, appealed the Zoning Administrator's decision, prior to the appeal deadline, thus becoming the impetus of the November 28, 2018 County Planning Commission Meeting.

After taking partial testimony on the project at the November 28, 2018 County Planning Commission Meeting, the Commission continued the meeting to December 12, 2018 because the meeting was adjourned at 10:30 PM. At the December 12, 2018 County Planning Commission Meeting, the Commission made a motion to uphold the County Zoning Administrator's decision and deny the appeal. The motion was passed by the Commission with a 5-1 vote. This approval included a modification to the Condition of

Approval added by the Zoning Administrator at the October 15, 2018 Zoning Administrator meeting: “Within 15 days of the antenna being installed, Verizon shall take RF power density measurements with the antenna operating to verify the level reported in the Hammett and Edison report and to ensure that the FCC public exposure level is not exceeded in any publicly accessible area. This measurement shall be taken again if any equipment is replaced or added. Verification of these measurements shall be submitted to CDD for review and to confirm that the requirements of the Ordinance Code have been met.”

On December 21, 2018, Alice Lee appealed the County Planning Commission’s decision, prior to the appeal deadline. Subsequently, Ms. Alice Lee submitted a revised appeal letter on December 24, 2018, also prior to the appeal deadline.

Conclusion

The appeal is similar to the testimony offered to the County Zoning Administrator and County Planning Commission and does not provide support for overturning the County Planning Commission’s decision. The proposed Verizon cell site complies with the County Wireless Telecommunications Facilities Ordinance and would not conflict with the Single-Family Residential, Low-Density (SL) General Plan land use designation or the Single-Family Residential R-20 Zoning District. The proposed project is also consistent with State and Federal regulations governing cellular telecommunications, and installation, within a public right-of-way. Additionally, staff has determined that the project, as conditioned, is the least obtrusive design. Therefore, staff recommends that the Board of Supervisors deny the appeal and sustain the County Planning Commission’s approval of County File #WA18-0002, based on the attached findings and subject to the attached conditions of approval.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors grants the appeal, the County Planning Commission’s decision to uphold the County Zoning Administrator’s approval of the proposed Verizon Wireless cell site, attached to an existing utility pole in the public right-of-way, will be overturned. The applicant, Verizon Wireless, would be unable to move forward with the project as proposed.

CLERK'S ADDENDUM

Speakers; Matt Lewis; Cathy Wojan; Joia Boos; Cathy Wojan; Gina; Art Scimia, Meadow Lane Improvement Association; David Baer; Lisa Snortum-Phelps; Ruth Strong; Kraj Khararjan; Linda Uhrenholt; Roger Smith; Anne Goldman; Alex Krueger; Megan Maddern; Melanie Volk; Kimberly Crowe; Shannon Erickson; Nadine Whisnant; Jill Sanchez.

Written commentary was received from (attached): Jami Tucker, Christine Scimia, Rob Harrison, Scott Maddern, Erin Lewis, Blessings Robertson-Winn, Elaine Gast, Judy DeYoe, Kirsten Muzinich, Rachel Day, Melanie Volk, no name, Irene Amido, Penelope

Kojina, Tanya Krueger, Hayuta Jain, Susanne Frey, Jodee Brydges, Alex & Tanya Krueger, Kate Rudick, Christina Heil, Mandula Rewal, Kimiko Nguyen, Mitch Tunick, Karrie Haneman, Barry Winters, Tarplaijo, Eunice Chan, Christine Brashear, Miriam Winters, Bradley Hillbrandt, Laura Hillebrandt, Elizabeth Yuan, Devon Mitzel, Brett Pels, Woodie Dixon, Edward Volk, Hanh T. Estep, Joe & Paula Buenavistas, Mary Dietler, Lianna Gatto, Melanie Volk, Wendy Ko, Caroline Sherborne & Charles Bouch.

CLOSED the public hearing; DETERMINED that County File #WA18-0002 is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303; DIRECTED the Department of Conservation and Development to file a CEQA Notice of Exemption with the County Clerk; APPROVED a wireless facility access permit for a Verizon Wireless cell site on a utility pole in the Danville Boulevard public right of way in Alamo (Permit No. WA18-0002); APPROVED the findings in support of Permit No. WA18-0002; APPROVED the conditions of approval for Permit No. WA18-0002 with amendments: (1) within 15 days after facility installation, Verizon must complete radio frequency (RF) testing at the facility, and, at the same time, Verizon must perform RF testing for interested property owners at their properties within a 300 foot radius of the facility , and (2) one year after facility installation, Verizon must re-perform RF testing at the facility, and, at the same time, perform RF testing for interested property owners at their properties within a 300 foot radius of the facility; and DENIED the appeal of Alice Lee, MD.

ATTACHMENTS

Maps

Project Plans

WA18-0002 BOS Appeal

Findings and Conditions of Approval

Radio Frequency Report

PowerPoint Presentation