



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning
& Development
Department No.: 053
For Agenda Of: December 2, 2014
Placement: Departmental
Estimated Time: 1.5 hrs.
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Glenn Russell, Ph. D., Director, Planning & Development
(805) 568-2085
Contact Info: Alice McCurdy, Deputy Director, Development Review
(805) 568-2518
SUBJECT: **Hearing for the Hanrahan Appeal (Case No. 14APL-00000-00025) of the County Planning Commission's Approval of an AT&T Telecommunications Facility at Hollister Avenue Christ of the King Episcopal Church (Case No. 13CUP-00000-00014), Second Supervisorial District**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

Recommended Actions:

Consider the appeal file by Jayme Hanrahan of the County Planning Commission's September 24, 2014 approval of the AT&T telecommunication facility at Christ the King Episcopal Church on Hollister Avenue.

Staff recommends your Board take the following actions:

1. Deny the appeal, Case No. 14APL-00000-00025, thereby upholding the County Planning Commission's approval of Case No. 13CUP-00000-00014, as shown in the Planning Commission Action Letter, dated September 29, 2014 (Attachment 1);
2. Make the required findings for the project, specified in Attachment A of the Planning Commission Action Letter, dated September 29, 2014 and included as Attachment 1 of this Board Letter, including CEQA findings;
3. Determine approval of the project is exempt from CEQA pursuant to CEQA Guideline Sections 15303 and 15304 as shown in Attachment C of the Planning Commission Staff Report dated September 4, 2014 and included as Attachment 2 of this Board Letter; and,

4. Approve the project, Case No. 13CUP-00000-00014, thereby affirming *de novo* the decision of the Planning Commission, subject to the conditions included in Attachment B of the Planning Commission Action Letter, dated September 29, 2014 and included as Attachment 1 of this Board Letter.

Alternatively, refer back to staff if your Board takes an action other than the recommended action for appropriate findings and conditions.

Summary Text:

The subject appeal was filed by a member of the public following the Planning Commission's approval of a Major Conditional Use Permit consisting of: 1) twelve (12) 6-foot panel antennas located within a 50-foot tall faux bell tower; 2) construction of a new addition to the existing church consisting of a 14'x 33' storage room for the church; and 3) a 12'x 24' AT&T equipment enclosure for storage of the ground mounted equipment associated with the antenna structure. The proposed project also includes landscaping the area between the existing church and Hollister Avenue with a "reconciliation garden" for the Church. The proposed project site is a 2.97 acre parcel zoned DR-4.6 (Assessor Parcel Number 065-110-004), located on the south side of Hollister Avenue (5073 Hollister Avenue), approximately 0.5 miles east of the intersection of Hollister and Patterson Avenue, in the Goleta area, Second Supervisorial District.

Background:

The proposed project was approved by the County Planning Commission on September 24, 2014 by a vote of 5 to 0. The appeal of the Planning Commission's approval (Attachment 3) was filed to your Board in a timely manner on October 3, 2014. The Findings of the Planning Commission are contained in the Planning Commission Action letter, dated September 29, 2014 (Attachment 1).

The regulation of telecommunications facilities by local jurisdictions is subject to, and limited by, the Federal Telecommunications Act of 1996, the Federal "Shot Clock" Ruling of November 18, 2009, and the Middle Class Tax Relief & Job Creation Act. These regulations are discussed in the "Background Information" Section 5.4 of the Planning Commission Staff Report, dated September 4, 2014 (Attachment 2). The shot clock for this project was extended from October 17, 2014 to January 7, 2015 to process this appeal.

Appellant Issues and Staff Responses:

The appellants' appeal issues have been summarized below and are followed by staff's response.

Issue No. 1: The 50' steel tower will block the mountain –San Marcos Pass views the appellant has enjoyed for six decades from San Domingo Drive. Additionally, the Planning Commission did nothing to address 'good neighbor' policies to protect the appellant's views of the mountains from San Domingo Drive.

The project was approved by the Planning Commission based on their determination that the project would be consistent with policies and ordinances as identified in the Planning Commission Staff Report dated September 2, 2014. The Planning Commission's deliberation considered the substantial evidence including the Staff Report, public testimony, and comment letters provided at the hearing. Neither the Santa Barbara County Comprehensive Plan nor the Goleta Community Plan includes specific policies

identified as “Good Neighbor” policies. The Eastern Goleta Valley Residential Design Guidelines includes “Good Neighbor Tips” that are intended to identify potential design issues, such as privacy and views to provide suggestions for improvement. The Design Guidelines and “Good Neighbor Tips” are not mandatory requirements but are voluntary and apply only to residential development.

Visual Resource Policy #3 of the Land Use Element requires new structures in urban areas to be in conformance with the scale and character of the existing community. The policy consistency analysis for Visual Resource Policy #3 in the Planning Commission’s Staff Report dated September 4, 2014 (Attachment 2) states in part:

“..Technical requirements dictate that wireless facilities be sited in a manner that provides clear line-of-site transmission of signals. The bell tower would be located approximately 55 feet south of Hollister Avenue, and would be visible to passing motorists in both the eastbound and westbound directions. However, the design would resemble a church bell tower and the equipment shelter would blend architecturally with the existing structures onsite. Additionally, all proposed antennas will be mounted behind RF-friendly screening to conceal the antennas from view. On June 6, 2014, the proposed project received conceptual design review from the South Board of Architectural Review (SBAR). The SBAR considered the project design and provided conceptual comments indicating that the proposed design was acceptable, directing the applicant to return for preliminary/final review.”

Additionally, all telecommunication facilities are subject to the development standards in Section 34.44.010.D of the Santa Barbara Land Use Development Code (LUDC). These development standards are specific to telecommunication facilities, and include requirements such as ensuring the facility is designed to resemble the natural or manmade environment, siting facilities below ridgelines to minimize their profile and intrusion into the skyline, and ensuring visible surfaces are non-reflective. As discussed in Section 6.3 of the Planning Commission Staff Report (Attachment 2) the proposed project complies with all of these development standards.

As designed, the proposed faux bell tower would be sited over 400 feet north of the northern terminus of San Domingo Road. Subsequent to the Planning Commission’s September 24th hearing, the applicant submitted additional visual simulations (provided as Attachment 5). Three of the visual simulations depict the proposed project from Hollister Avenue. These visual simulations were presented to the Planning Commission during their September 24th hearing. Two of the visual simulations (labeled View 1A and 2A, dated October 24, 2014) depict views of the proposed project as it would be seen from both the northern and the southern terminus of San Domingo Drive. The visual simulation from the northern terminus of San Domingo Drive (directly south of the church property) shows that views of the Santa Ynez mountains would be mostly maintained after the proposed faux bell tower is constructed. The visual simulation prepared from the southern terminus of San Domingo Drive suggest that the proposed project would be hardly noticeable and would have a minimal impact on the views of the Santa Ynez mountains.

The other two visual simulations (labeled 3A and 4A, dated October 24, 2014) depict the existing setting and a view of the proposed project from Oleander Place and Via Jacinto, respectively. Oleander Place is located southwest of the project site. Only the very top of the proposed faux bell tower and cross are seen from the visual simulation from Oleander Place. Via Jacinto is located directly east of the proposed project. The visual simulation from Via Jacinto shows the top half of the proposed faux bell tower. Both of these visual simulations are superimposed onto photos taken at times when clouds obscured the views of the mountains. The photo simulation taken from Oleander Place does document that at most, the faux

bell tower would minimally obstruct the existing view of the Santa Ynez mountains. As viewed from San Jacinto, the proposed faux bell tower would not obstruct views of the mountains because this view is looking in a westerly direction where there are no mountain backdrops. At the Planning Commission hearing, it was noted that the original approval of the church included a 43-foot tall bell tower. Although that bell tower was never constructed, the proposed faux bell tower has been designed to resemble the originally designed bell tower. Additionally, the proposed faux bell tower would be located in approximately the same location as the originally approved, but unbuilt bell tower

Issue No. 2: The Planning Commission and AT&T failed to properly address the Federal policies for site specific radio frequency radiation reports. Additionally, the RF report did not take into account the two-story homes located nearby.

The Federal Communications Commission (FCC) regulates radio frequency (RF) emissions of telecommunications facilities. The Federal Telecommunications Act preempts local authorities from prohibiting any telecommunications service, stating “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” (47 U.S.C.A. § 253 (b).) However, the Federal Telecommunications Act acknowledges that although local authorities may not prohibit telecommunications facilities, their general local zoning authority is preserved “over decisions regarding placement, construction, and modification of personal wireless service facilities,”(47 U.S.C.A. § 332 (c)(7)) within certain limitations.

The FCC has set exposure limits for the various types of wireless services and the frequencies at which they operate. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. According to the FCC,

“These limits have been endorsed by federal health and safety agencies such as the Environmental Protection Agency and the Food and Drug Administration. The FCC’s rules have been upheld by a Federal Court of Appeals. As discussed below, most facilities create maximum exposures that are only a small fraction of the limits. Moreover, the limits themselves are many times below levels that are generally accepted as having the potential to cause adverse health effects.”¹

Additionally, the Federal Telecommunications Act prohibits the County from denying a project on the basis of perceived health effects, if a provider has demonstrated that a facility would be in compliance with the FCC regulations. The County required AT&T to submit a report as part of their permit application that assessed the proposed project’s emissions and compliance with applicable safety limits. A Radio Frequency Electromagnetic (RF-EME) Compliance report was prepared by EBI Consulting, dated September 22, 2014 and is included as Attachment 4 to this Board letter. The EBI report concludes that “At the nearest walking/working surfaces to the AT&T antennas, the maximum power density generated by the AT&T antennas is 12.3% of the FCC’s general public exposure limits (2.46 percent of the FCC’s occupational limit).” In addition, the report calculates the public exposure limit at 20 feet above grade. The report concludes that the public exposure limit would be less than 1% at a

¹ Federal Communications Commission “Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures and Practical Guidance” dated June 2, 2000, p.1.

distance of 100 feet from the proposed antennas. The closest two-story residential structure to the proposed antennas is approximately 200 feet east of the project site. Since the proposed project complies with the FCC's radio frequency emissions standards, the County may not deny the proposed facility on the basis of these emissions.

The appellant also states that a neighbor spoke directly to the RF report preparer, Lindsey Dutton, who indicated that she never went to the site. According to the applicant, Mr. Robert McCormick, it is not uncommon for the RF report preparer to not conduct a site visit when there are no existing telecommunication facilities on or near the project site. Instead, the calculations are based on standard industry accepted RF modeling procedures. Condition of Approval No. 12 requires a follow-up RF report with actual measurements taken at the project site within 30 days of Final Building Clearances. The condition also requires that RF field testing be conducted every five years to ensure compliance with current FCC standards.

Issue No. 3: The Planning Commission abused its discretion, and did not provide sufficient information and community outreach needed for a Major Conditional Use Permit. Additionally, the property value impacts, aesthetics and views and safety were not vetted with neighbors appropriately.

LUDC Section 35.44.010.I. 3 requires design review by the Board of Architectural Review Committee of commercial telecommunication facilities. The project was originally considered by the South Board of Architectural Review (SBAR) on July 12, 2013. Prior to the July 12th SBAR meeting, P&D mailed out a notice to the owners of property residing within 1,000 feet of the project site informing them of the SBAR meeting. The project was considered by the SBAR five additional times (August 9th, August 23, 2013, January 24th, February 7th, and June 6, 2014). The LUDC does not require a separate public notice for these additional SBAR meetings.

The project application was determined to be complete for processing on July 31, 2014. LUDC Section 35.106.020.1.b(1)(f) requires P&D to mail a notice to property owners and residents of property located within a 1,000-foot radius of the project site within 15 calendar days following P&D's determination of application completeness. The "completeness" notice was mailed on August 14, 2014. Finally, pursuant to LUDC Sections 35.44.010.F. and 35.106.020 a public notice informing property owners and occupants residing within 1,000 feet of the project site of the Planning Commission's September 24, 2014 hearing was prepared and mailed on September 11, 2014. All of the LUDC noticing requirements for the SBAR meeting, the determination of application completeness, and the Planning Commission's September 24th hearing were adhered too. Therefore, adequate notice was provided to the public.

As discussed above, the county is limited in its review of telecommunication facilities. Planning and Development requires carriers to meet FCC radiofrequency emissions standards (which the project does), but P&D does not regulate on the basis of property values. Furthermore, as discussed above in Appeal Issue #1, the visual simulations prepared for the project (and included in Attachment 5 to this letter) show that the proposed project would have a minimal impact on the views of the Santa Ynez mountains as viewed from San Domingo Drive.

Performance Measure:

N/A

Fiscal and Facilities Impacts:

Budgeted: Yes

The costs for processing appeals are provided through a fixed appeal fee and funds in P&D's adopted budget. In regards to this appeal, the appellant paid an appeal fee of \$648.26. P&D will absorb the costs beyond that fee, estimated at approximately \$3,208.92 (17 hours). This work is funded in the Planning and Development Permitting Budget Program on page D-212 of the adopted 2014-2016 fiscal year budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice at least 10 days prior to the hearing on December 2, 2014. The notice shall appear in the Santa Barbara News-Press. The Clerk of the Board shall fulfill noticing requirements. A minute order of the hearing and copy of the notice and proof of publication shall be returned to Planning and Development, attention David Villalobos.

Attachments:

1. Planning Commission Action Letter dated September 29, 2014
2. Planning Commission Staff Report dated September 4, 2014, also available online at:
http://www.sbcountyplanning.org/boards/pc/documents_archive
3. Appeal Application Letter to the Board of Supervisors
4. EBI Radiofrequency Emissions Report dated September 22, 2014
5. Visual Simulations of Existing Setting and with the Proposed Project dated October 26, 2014

Authored by:

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