



COUNTY OF SONOMA

575 ADMINISTRATION
DRIVE, ROOM 102A
SANTA ROSA, CA 95403

SUMMARY REPORT

Agenda Date: 10/8/2024

To: Sonoma County Board of Supervisors
Department or Agency Name(s): Permit Sonoma
Staff Name and Phone Number: Tennis Wick, (707) 565-1900
Vote Requirement: Majority
Supervisorial District(s): Fifth

Title:

1:45 P.M. - UPE22-0051: Appeal of denial of an intermediate freestanding telecommunications facility located at 9300 Mill Station Road.

Recommended Action:

Conduct a public hearing and adopt a Resolution granting the appeal, reversing the decision of the Board of Zoning Adjustments to deny a use permit for an intermediate freestanding telecommunication facility at 9300 Mill Station Road; and approving the permit and finding the project exempt from the California Environmental Quality Act.

Executive Summary:

This report presents an appeal of a Board of Zoning Adjustments (BZA) decision to deny a use permit to allow a new intermediate telecommunication facility located inside a 70-foot-tall faux eucalyptus tree within a 2,500-square foot lease area enclosed by an 8-foot-tall slatted fence on a ±14-acre parcel zoned Diverse Agriculture. Permit Sonoma staff recommended approval of the use permit to the Board of Zoning Adjustments at a public hearing that commenced March 23, 2023, and was continued three times, to July 27, 2023, May 23, 2024, and June 13, 2024, with the BZA ultimately denying the application on June 13, 2024, on a majority vote count (4-0-1-0 vote).

The BZA based its denial on its findings that a significant service gap did not exist, an alternative site existed, and the proposed project is inconsistent with the Zoning Code.

A timely appeal of the denial was filed by the applicant, on June 20, 2024. The appeal states that the county has not met its burden of proving that a service gap does not exist, the identified alternative site was analyzed and found to not be available, and that all aspects of the application are consistent with the zoning code.

Because, in staff's estimation, the evidence presented at the BZA hearing was not substantially different than the evidence staff evaluated when formulating its original recommendation for approval, and because the BZA may not have recognized the burden of proof on the County when denying an application for a telecom tower, unless new or more information is presented to the Board of Supervisors that would change the analysis, staff's recommendation is to grant the appeal, find the project exempt from the California Environmental Quality Act (CEQA), and issue the use permit for the proposed intermediate telecommunication facility at 9300 Mill Station Road.

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Discussion:

Project Description

Vertical Bridge, on behalf of T-Mobile, submitted a use permit application seeking authority to develop a new intermediate telecommunication facility located inside a 70-foot-tall faux eucalyptus tree, with associated ground-mounted equipment, and build an 8-foot-tall, slatted fence with landscaping and associated access road improvements (“the Project”). The Project would be located within a 2,500-square foot lease area on a ±14-acre parcel zoned Diverse Agriculture located at 9300 Mill Station Road, APN 061-141-001 (see Attachment 2).

Construction activities for the project would be minimal as all development would be contained within the 2,500-square foot lease area and expand 353 feet of an existing driveway. Development would not involve modification of any existing structures on site.

Project Site

The project site is located at 9300 Mill Station Road, in a predominantly agricultural area of the County, adjacent to a residential area. The ±14-acre parcel is located in an area that is predominantly zoned Diverse Agriculture and abuts a cluster of properties zoned Rural Residential to the south. The project site is located ±1.5 miles Northwest of the City of Sebastopol (see Attachment 3). Adjacent properties to the North, East, and West are zoned Diverse Agriculture; and zoned Rural Residential to the South (see Attachments 4 and 5). The site is developed with a single-family dwelling and barn. The existing dirt driveway is proposed to be improved and utilized to conduct maintenance on the telecommunication facility. The eastern edge of the property facing Mill Station Road has an abandoned apple orchard and a small stand of trees. The southern edge of the property is delineated by a mapped unnamed stream that feeds into Atascadero Creek. The remainder of the property is pastureland with a gentle slope to the western boundary line. The leased area is located in the northeastern quadrant of the property outside of the property line and riparian corridor setbacks.

General Plan Land Use and Zoning

The General Plan Land Use Designation on the parcel is Diverse Agriculture (DA 20-acre density).

Zoning on the parcel is Diverse Agricultural (allowed density: B6 20, 20 acres per dwelling unit) with a combining zone for Riparian Corridor (RC) setback of 100 feet for development and 25 feet for agriculture along the south boundary of the parcel as an unnamed stream. Intermediate telecommunications facilities may be allowed on Diverse Agriculture properties subject to a Use Permit and compliance with the criteria in Section 26-88-130 of the Sonoma County Code, Telecommunication Facilities.

Section 26-88-130 sets forth the specific design and siting criteria for telecommunications facilities. Sec. 26-88-130(a)3.ii. requires intermediate freestanding telecommunications facilities “be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve neighborhood compatibility”.

Project History

Date	Action
August 31, 2022	Application Accepted
March 23, 2023	Board of Zoning Adjustments: Continued
July 27, 2023	Board of Zoning Adjustments: Continued
May 23, 2024	Board of Zoning Adjustments: Continued
June 13, 2024	Board of Zoning Adjustments: Denial
June 20, 2024	Appeal filed

Federal Law Regarding Telecommunications Facilities

Federal law preserves local authority over land use decisions for wireless facilities but sets forth specific limitations on that authority.

If a proposed telecommunications facility complies with the radio frequency standards set by the Federal Communications Commission (FCC), the County cannot deny or modify a proposed project based on concerns related to radiofrequency emissions (47 U.S.C. Section 332(c)(7)(B)(iv)). The Radio Frequency report submitted by the applicant indicates the Project, if approved, would result in radio frequency exposure levels below the FCC’s most stringent General Population Maximum Permissible Exposure (MPE) Limits.

In addition, local governments "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." (See 47 U.S.C. Section 332(c)(7)(B)(i).) This means the County may not prevent a carrier from closing a significant gap in service coverage within that carrier’s service area. The determination of whether a significant gap in service coverage exists is a factual inquiry. In-building, in-vehicle, and outdoor service are different types of service protected by the Federal Telecommunications Act. The application and supporting materials indicate that T-Mobile has identified a lack of reliable in-building service in the area. The proposed tower is meant to provide this new service. Under telecommunications law, this information in the application is considered “prima facie” evidence of a service gap. Here “Prima facie” means accepted as correct until proved otherwise by the County. Thus, to reject the application, the County has the burden of identifying substantial evidence in the record that supports a determination that a service gap does not exist or that technologically feasible and available alternative sites or designs exist and are less intrusive. The applicant must be given an opportunity to rebut the County’s determinations regarding service gap and/or alternatives.

Visual Analysis & Alternative Designs

The application submitted on August 31, 2022 originally proposed a faux Pine design, however, before the May 23, 2024 BZA hearing, the applicant changed the application to propose a faux Eucalyptus tree design. Aside from the two faux tree designs the applicant also presented three alternative designs for the proposed

telecommunications facility: a monopole, a faux water tower, and a faux windmill. The applicant also submitted coverage maps depicting the level of service towers of 40, 50, 60, 70, and 80 feet in height would achieve. (Attachments 7 & 8). Pursuant to this information, a tower of at least 70 feet is required to address the identified service gap. There is no information in the record showing otherwise.

Using the County's Visual Assessment Guidelines, the project site's sensitivity is characterized as Moderate, as it is not located within a scenic resource designation but is within a rural agricultural area and would be visible from public roads.

The mono-pine and mono-eucalyptus designs' visual dominance can be characterized as Co-Dominant as the proposed faux tree design can be considered prominent within the setting but attract attention equally with other landscape features. The combination of Moderate site sensitivity and Co-Dominant project characteristics determines that the project's visual impact on public views is considered to be less than significant for a faux tree design.

The Water Tower design's visual dominance can also be characterized as Co-Dominant as the proposed design can also be considered prominent within the setting and attract attention equally with other landscape features as this design is in line with typical rural landscape features. The combination of Moderate site sensitivity and Co-Dominant project characteristics determines that the project's visual impact on public views is considered to be less than significant for a faux water tower design.

The faux windmill and monopole designs could be characterized as "Dominant" as those designs would stand out against the setting and attract attention away from the surrounding landscape and have exposed equipment. The combination of Moderate site sensitivity and Dominant project characteristics determines that the project's visual impact on public views, if pursued as a monopole or faux windmill, would be significant and would need to be reduced through other siting or screening methods. Photo simulations of the proposed faux water tower, faux windmill, and faux eucalyptus designs have been included as Attachment 10.

The BZA disagreed with staff's analysis and found that any and all designs presented could be characterized as "Dominant" as no designs would not stand out against the setting, and all would attract attention away from the surrounding landscape. The combination of Moderate site sensitivity and Dominant project characteristics determines that the project's visual impact on public views would be significant and that there was no possible way, through siting or screening methods, to lessen the visual impact.

Site Location & Alternative Sites Analysis

The applicant submitted an alternative site analysis that considered seven alternative sites for this project and discussed the feasibility of each alternative. The alternative sites analysis concluded one site (9502 Mill Station Road) was not feasible due to insufficient available space to construct a tower and associated equipment. Two other sites (9845 Cherry Ridge Road and 1296 Barlow Lane) were determined not to be

available due to unresponsiveness from the owners, and even if available would have required the telecommunications tower to have a height of 80 to 100 feet. In addition, the applicant submitted a co-location report which concluded that co-location would not address the identified service gap, making it infeasible.

If a local government disagrees with an alternative site analysis, the burden shifts to the locality of showing that feasible and available alternatives exist. Theoretical alternatives are insufficient to meet this burden. Staff did not identify any evidence in the record suggesting an alternative site to the one proposed by the applicant as technologically feasible and available.

Based on the record before it, including the applicant's coverage maps, and based on the BZA's view that the applicant had not shown evidence of unavailability of the alternative site, the BZA found that a significant gap in service coverage does not exist and that an alternative site does exist. The applicant asserts that the BZA had the burden of proving such facts and that BZA cannot support a denial based on its determination the applicant had not proven a service gap or a lack of feasible alternatives for covering the service gap.

Board of Zoning Adjustments Decision

The BZA initially heard this application on March 18, 2023. This hearing concluded with the BZA requesting that the applicant provide an alternative site analysis that included height justifications and that the applicant explore the technical feasibility of a lower height of tower to 70 feet and 60 feet in meeting coverage goals and general direction on reducing visual impacts through a reduced silhouette. The BZA also requested a coverage map of the area showing all wireless providers, however, the applicant does not have access to that information and the request was not necessary for determining whether a substantial gap in T-Mobile's wireless coverage exists. This hearing had significant public comment regarding microplastics from the faux boughs of the proposed mono-pine design. The hearing was continued to July 27, 2023.

On July 27, 2023, the applicant responded to the BZA's direction by providing a more robust alternative site analysis that included height and co-location alternatives. The applicant also submitted a bare mono pole design in response to a reducing the silhouette and addressing the public's microplastics concern. This hearing concluded with direction for the applicant to provide coverage maps at 40 feet and 50 feet and a request for a water tower design. Also requested was that the applicant assess impacts to private views. The BZA asked that inconsistencies in previously submitted visual simulations be corrected. The BZA also asked the applicant to explore the technical feasibility of separating the facility into multiple thinner towers as well as an additional ground-level screening analysis including existing vegetation and the use of landscaping. Comments were made generally about the proposed on-site emergency generator that had been analyzed in the staff report. The hearing was continued to May 23, 2024.

Before the May 23, 2024 hearing, the applicant modified the application to be for a Faux Eucalyptus. At the hearing, the applicant provided drone video, a visual simulation with the requested changes, and an arborist's

report and designs for a faux water tower and faux windmill. All submitted designs incorporated landscaping and included no generator. The applicant also submitted a letter declining the request to explore multiple smaller facilities and addressing the public comments regarding property value. The BZA heard comments from the public and the applicant and requested that the applicant return the previously analyzed generator to the site plans and explore securing a new lease area in the subject parcel. The BZA continued to a date certain before concluding the hearing and closing the record to new information.

When the application returned on June 13, 2024, the public record was reopened to accept the applicant's site plans submittal for a faux water tower, faux windmill, and faux eucalyptus tree that included the aforementioned generator and a letter from the property owner attesting that no other lease area would be offered. The BZA then accepted public comment on the new information only. After closing the public record, the BZA deliberated and moved to recommend denial and continued the item to the end of the day's agenda to allow staff time to generate a resolution reflecting a denial determination.

The BZA found that a coverage gap did not exist, that one of the alternative sites might be a better location for this project, that the applicant did not do enough to secure a lease on the identified alternative property, the project was incompatible with the community's character, and the project would be detrimental to the health, safety, peace and comfort or general welfare of the public because it would result in significant visual impacts that could not be mitigated. The BZA voted 4-0-1-0 to deny the application and made the following findings:

- 1) A service gap does not exist;
- 2) A feasible alternative could provide coverage to areas currently without service;
- 3) The identified alternate site, once analyzed might provide better service coverage to the area; and
- 4) Based on evidence in the record including public testimony and the Visual Assessment Guidelines, the project's visual dominance should be classified as "Dominant" resulting in a significant visual impact. This visual dominance finding did not identify a specific design and visual dominance for each alternative design was not discussed.

See BZA Resolution in Attachment 20.

Issues raised in the Applicant's Appeal Letter

The appeal letter is provided as Attachment 6. The issues raised by the appeal and staff response are stated below.

1. *Significant gap in service coverage*

The applicant states that not all evidence of record was considered in the Board of Zoning Adjustments' decision. The applicant asserts that information provided to the County demonstrates a significant gap in service coverage exists due to inadequate in-building coverage in the identified area.

Staff Response:

The determination of whether a significant gap in service coverage exists is a factual inquiry local jurisdictions must make after reviewing all information, analysis, and testimony presented in the record before the decision-maker. Once the applicant presents evidence of a significant service gap, that evidence must be accepted by the decisionmaker as true, until proven otherwise. Currently, staff does not have the capability to independently peer review or otherwise verify carrier coverage through separate studies, and therefore relies on the coverage maps, and other information, submitted by the applicant. Should a third party have these resources or abilities, the record could be supplemented with such evidence provided by such third-party.

The application materials and testimony provided by the applicant identify a significant gap in service of in-building service. During the BZA hearings, public comment was submitted stating that existing wireless service is acceptable in the area and some members of the public cited T-Mobile's coverage maps, which are available online, to support their statements. However, T-Mobile's Coverage Objective & Engineering Justification (Attachment 7) indicates these online maps only approximate outdoor coverage, not in-building coverage. Therefore, there is no evidence in the record regarding in-building service in the area beyond the applicant's submittals, which were provided to the BZA.

2. Feasible alternatives

The applicant submitted an alternative site analysis that meets the requirements of the Federal Telecommunications Act by demonstrating the proposed facility is the least intrusive means of addressing the identified service gap. Theoretical alternatives may not be relied on.

Staff Response:

Under the Federal Telecommunications Act, if a significant gap in service exists, a governing body can only deny a project if there is evidence in the record of a technologically feasible and available alternative site to the proposed location, which will also be less intrusive. If such evidence is identified by the locality, the applicant must be given an opportunity to reply. The locality then needs to determine whether substantial evidence supports the finding that a technologically feasible and available alternative site exists. Case law indicates that in order to be "available" an alternative site must be leasable and localities may not rely on theoretical alternatives.

The alternative site analysis submitted by the applicant states that two sites were determined to not be available due to the landowners failing to respond to the applicant's letters. The landlord of a third site expressed interest in having a tower on the property, but the site did not have sufficient available space to accommodate a tower and therefore would not constitute a technologically feasible and available site.

3. Alternative site of 9845 Cherry Ridge Road

Under the Federal Telecommunications Act a local government may not consider hypothetical

alternatives. The alternative site analysis concluded this site was not a viable option due to lack of landowner interest. Additionally, there is nothing in the record to support the finding that a facility located at 9845 Cherry Ridge Road would be a “less intrusive” facility than one located at 9300 Mill Station Road.

Staff Response:

Under the Federal Telecommunications Act, if a significant gap in service exists, a governing body can only deny a project if there is evidence in the record of a technologically feasible and available alternative site to the proposed location. If such evidence is identified by the locality, the applicant must be given an opportunity to reply. The locality then needs to determine whether substantial evidence supports the finding that a technologically feasible and available alternative site exists. Based on the applicant’s testimony before the BZA and the Alternative Site Analysis, 9845 Cherry Ridge Road is not an available alternative site because the property owner did not respond to a mailing sent by the applicant inquiring if the property owner was interested in leasing a portion of their land to the applicant. The appeal also indicates the applicant sent certified mailings to this property owner on June 27, 2024, and July 24, 2024, but both were returned as undeliverable and a published phone number for the property owner was invalid. Evidence contradicting the applicant’s assertions was not submitted into the record during the BZA hearings. Staff does not have capacity to independently investigate the availability of potential alternative sites. Therefore, in staff’s analysis of the evidence in the record, the Cherry Ridge site is not an available alternative site.

The appeal also argues that even if available, the site at 9845 Cherry Ridge Road would be more visible to the surrounding neighborhood due to the lack of trees and landscape elements that would provide natural screening of the tower, and therefore would not be less intrusive. There is no evidence in the record that suggests 9845 Cherry Ridge Road would be a less intrusive site, even if it were an available and technologically feasible alternative site. Staff’s analysis of the evidence concurs with the appellant’s finding that the absence of tall trees on the Cherry Ridge site would make a tower located on this property more visible to the public and neighbors.

4. Consistency with County Zoning Code

The applicant asserts that the siting of the lease area more than 350 feet away from a public road behind existing vegetation and using a stealth design reduce the visual impacts, the proposed project should be considered Co-Dominant with the existing vegetation patterns. Moderate site sensitivity and Co-Dominant project characteristics would result in a less than significant visual impact. The applicant also asserts the project would not be detrimental to the health, safety, peace and comfort or general welfare of the public.

Staff Response:

Under the telecommunication law, assuming the county complies with all of the limitations placed on it

via the Telecommunications Act, the county can regulate setbacks, heights, and aesthetics. For instance, the County can require screening, camouflage, and visual impact studies, all of which were done for this project. The County can also consider concerns regarding impacts to visual resources such as scenic views. However, generalized expressions of aesthetic concerns do not amount to substantial evidence on which to base a denial of a telecommunications project.

The site is not within a scenic resource area but is in a rural setting, because of this the County Visual Assessment Guidelines classify the site's sensitivity as "Moderate" as "the site or portion thereof is within a rural land use designation or an urban designation that does not meet the criteria above for low sensitivity, but the site has no land use or zoning designations protecting scenic resources. The project vicinity is characterized by rural or urban development but may include historic resources or be considered a gateway to a community. This category includes building or construction sites with visible slopes less than 30 percent or where there is significant natural features of aesthetic value that is visible from public roads or public use areas (i.e. parks, trails, etc.)."

In staff's estimation, the project is consistent with the General Plan land use designation of Diverse Agriculture, and General Plan Policies including, Policy PF-2u: "Review proposals for public and private telecommunication facilities for consistency with General Plan policies and adopted siting and design criteria." The tower design of a Faux tree (either mono-eucalyptus or mono-pine) will help the proposed facility blend in with existing vegetation and topography within the project vicinity. The facility is substantially setback from the nearest public roads and will be effectively screened by natural vegetation as viewed from public roads. Due to the site's location outside of a scenic landscape unit, existing vegetation, facility setbacks, and faux tree design the project would not pose a significant visual impact from public rights of way. The provision of a telecommunications tower on this site is justified to meet coverage needs and will close gaps in wireless service for both people in transit and indoors.

Additionally, in staff's estimation, the proposed project is consistent with the requirements for siting a telecommunications tower within the Diverse Agriculture (DA) zoning designation because the proposal has demonstrated through an alternative sites analysis which meets the requirements of Section 26.88.130(a) (3) (xiv) that there is no other technically feasible method of providing the needed service that would result in fewer or less severe environmental impacts. The applicant has prepared a visual analysis utilizing photo simulations as required by Section 26-88-130 (b)(2)(iii), which identifies the potential visual impacts at design capacity of the proposed facility and demonstrates that siting and design as described above will result in a facility that visually blends in with the character of the area and would not result in adverse impacts. The project is also consistent with Section 26-88-130 (Telecommunication Facilities) of the Zoning Code in that the project minimizes visual impacts and is compatible with the neighborhood and character of the community to the extent feasible because it utilizes faux eucalyptus tree design, setbacks, and existing vegetation of the site to blend the facility

with the surrounding environment.

The BZA disagreed with staff's analysis showing co-dominance and considered the project "dominant" as the proposed 70-foot faux eucalyptus tree would be screened from public view only by a stand of Willows averaging 25 feet and approximately 200 feet of an abandoned apple orchard, with an average tree height of 15 feet. Because of this, the BZA considered "Project elements are strong - they stand out against the setting and attract attention away from the surrounding landscape. Form, line, color, texture, and night lighting contrast with existing elements in the surrounding landscape." The BZA did not agree that other project elements would reduce impacts to less than significant, including the project's planned minimal tree removal, the project's proposed colors and textures designed to mimic the surrounding landscape using either of the faux tree designs, the project's incorporation of screening vegetation, and that the project does not propose lighting. In staff's analysis, the aforementioned project elements screening and camouflaging the tower, in an area that is not in a scenic resource designation, indicates the aesthetic concerns with the proposed project do not amount to substantial evidence on which to base a denial.

In addition, staff does not believe there is substantial evidence in the record indicating the proposed project will be detrimental to the health, safety, peace and comfort or general welfare of persons residing or working in the neighborhood.

Environmental Determination

Staff recommends the Board determine the project categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) as development will be limited to within a 2,500 square foot lease area. There are no facts or circumstances specific to this project that would support an exception to the categorical exemption.

Alternatively, if the Board denies the appeal and project based on findings supported by substantial evidence in the record, then staff recommends determining the action exempt, Pursuant to Public Resources Code section 21080, subdivision (b)(5), for projects which a public agency rejects or disapproves, as they are exempted from the California Environmental Quality Act (CEQA).

Staff Recommendation

Conduct a public hearing and adopt a Resolution granting the appeal, finding the project exempt from CEQA, and approving the project.

For an action other than the recommended action, staff recommends the Board provide direction to staff and an opportunity for it to return and present a written resolution memorializing that alternative direction so that the Board can take action without delay.

Was this item identified as an opportunity to apply the Racial Equity Toolkit?

No

Prior Board Actions:

None

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

N/A

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

UPE22-0051 ATT 1 Board of Supervisors Resolution
UPE22-0051 ATT 1a Draft Conditions of Approval
UPE22-0051 ATT 2 Site Plans
UPE22-0051 ATT 3 Vicinity Map
UPE22-0051 ATT 4 Aerial Map
UPE22-0051 ATT 5 Land Use Map
UPE22-0051 ATT 6 Appeal
UPE22-0051 ATT 7 Coverage Objective and Engineering Justification.pdf
UPE22-0051 ATT 8 Alternatives Site Analysis
UPE22-0051 ATT 9 Co-location Viability Report
UPE22-0051 ATT 10 Photo Simulations
UPE22-0051 ATT 11 Arborist Report and Tree Protection Plan
UPE22-0051 ATT 12 Sonoma County Visual Assessment Guidelines
UPE22-0051 ATT 13 Vertical Bridge Response to BZA 03.23.2023
UPE22-0051 ATT 14 Vertical Bridge Response to BZA 07.27.2023
UPE22-0051 ATT 15 Vertical Bridge Response to BZA 05.23.2024
UPE22-0051 ATT 16 BZA Staff Report 03.23.2023
UPE22-0051 ATT 17 BZA Staff Report 07.27.2023
UPE22-0051 ATT 18 BZA Staff Report 05.23.2024
UPE22-0051 ATT 19 BZA Memo 06.13.2024
UPE22-0051 ATT 20 BZA Resolution 6.13.2024
UPE22-0051 ATT 21 Tolling Agreements 1-5
UPE22-0051 ATT 22 Staff Presentation
UPE22-0051 ATT 23 Public Comment

Related Items "On File" with the Clerk of the Board:

N/A