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Agenda Date: 1/14/2014  
Agenda Placement: 9B  
Set Time: 9:15 AM PUBLIC HEARING  
Estimated Report Time: 45 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Pete Parkinson - Interim Director  
Planning, Building and Environmental Services  
**REPORT BY:** John McDowell, Deputy Planning Director - 299-1354  
**SUBJECT:** AT&T Wireless/Big Ranch Road Appeal

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### **RECOMMENDATION**

Consideration and possible action regarding an appeal filed by Elegance Properties, LLC to a decision by the Napa County Planning Commission on November 20, 2013 to approve Use Permit No. P12-00419 to construct a telecommunications tower at 2046 Big Ranch Road, Napa, CA 94558 within an Agricultural Preserve (AP) Zoning District. (Assessor's Parcel No. 038 -190-008)

**ENVIRONMENTAL DETERMINATION:** Denial of the appeal and approval of the use permit qualifies as a Class 3 Categorical Exemption ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303.

Upholding the appeal and denying the use permit constitutes an exception to the California Environmental Quality Act (CEQA), as CEQA does not apply to projects which a public agency rejects or disapproves. See 14 CCR 15270(a).

### **EXECUTIVE SUMMARY**

This is an appeal of a decision made by the Planning Commission on November 20, 2013, to approve AT&T's request for Use Permit P12-00419, which authorizes AT&T to construct an 85 foot telecommunication tower (a monopole disguised as a pine type tree with associated antennas) at 2046 Big Ranch Road, Napa, California. The appeal was filed by a neighboring property owner, Elegance Properties LLC (hereafter Appellant). Appellant recorded its deed by which it had acquired its adjoining property at 620 Trancas with the County Recorder's Office on October 22, 2013.

Appellant asserts various grounds of appeal as to why the Planning Commission's decision should be overturned. These specific grounds are set forth in the Background section of this item, with Planning staff's response. Generally, Appellant contends they did not receive proper notice of the hearing or pending application, the

application treated a structure as a barn and not a residence, calculations of NIRE (non-ionizing electromagnetic radiation) levels were not submitted, AT&T submitted inaccurate information with respect to setbacks and screening, and that Appellants will suffer economic losses if the tower is built.

Planning staff agrees with Appellant's contention that the presence of residence and other areas of habitation in close proximity to the proposed facility was not disclosed to the Planning Commission, and that the application and subsequent presentation to the Planning Commission contained other inaccuracies. Therefore, staff recommends the appeal be granted, and the matter be remanded back to the Commission for further consideration as provided in Napa County Code Section 2.88.090(C).

As the Planning Commission conducted a public hearing on issue, which was electronically recorded and noticed in the manner set forth in Napa County Code Section 18.136.040, the decision of the Board should be based on a review of the documentary record, unless the Board finds good cause has been shown to accept additional evidence which could not have been presented at the use permit hearing.

### **PROCEDURAL REQUIREMENTS**

1. Chair introduces item and requests Staff report presentation.
2. Chair opens public hearing, requests testimony from appellant followed by the applicant and any other interested parties.
3. At the beginning of the appeal hearing if an interested party requests that the record be augmented or that the matter be heard de novo, the Board must first decide whether "good cause" (a substantial reason) exists for such request. Any motion made by a member to allow additional evidence or hear all relevant evidence (de novo hearing) should identify the specific facts presented that support the required good cause finding. If no member makes such a motion, the request will be considered denied.
4. After the Board has heard testimony and received evidence from the appellant, staff and interested parties supporting each, Chairman closes the public hearing.
5. A motion of intent is made and seconded to either deny or uphold the appeal and refer the matter to County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal. Alternatively, a motion could be made and seconded to remand the matter back to the Planning Commission for further consideration.
6. Chairman calls for the Vote on the motion of intent to either deny or uphold the appeal and refer the matter to the County Counsel's office for preparation of a Resolution of Findings and Decision on Appeal.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

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## **BACKGROUND AND DISCUSSION**

On November 20, 2013, after conducting a noticed public hearing, the Planning Commission approved the issuance of Use Permit P12-00419. The use permit was issued pursuant to the requirements of Napa County Code Chapter 18.119 (Telecommunication Facilities, Satellite Dishes, And Other Antennas). The use permit allowed AT&T to construct a telecommunications tower on the far southeast portion of an approximately 6-acre site on the east side of Big Ranch Road, north of Trancas Road, within the Agricultural Preserve (AP) zoning district at 2046 Big Ranch Road, Napa CA, 94558. (APN 038-190-008).

Specifically, the use permit authorized AT&T to: 1) construct an 85 foot tall monopole disguised as a pine type tree; 2) install twelve (12) panel antennas: 73.4" in length, 11.9" in width and 7.1" in depth, one (1) GPS antenna on shelter, as well as, fifteen (15) small Crus (remote radio units) behind the antennas; 3) place the monopole and associated ground-mounted equipment on a 45' by 20' lease area on the southeast corner of the property; and 4) construct a 6 foot tall wooden fence to screen the equipment building to house AT&T's equipment; 5) install a 24-hour emergency diesel-powered back-up generator within the fenced lease area; 6) trench for installation of underground power and telecommunication lines; and 7) install emergency notification signs on the site.

Elegance Properties LLC (hereafter Appellant) owns an adjoining parcel of land located at 620 Trancas Road, Napa, California. Appellant recorded its deed to that property with the County Recorder's Office on October 22, 2013. Appellant timely filed the instant appeal.

Permits for telecommunication facilities such as the one at issue in this appeal are governed by Napa County Code (NCC) Chapter 18.119. Permits that meet all of the requirements of that chapter may be issued administratively through a site plan approval. If a request for a facility cannot meet all of the listed requirements, the facility may still be approved through the issuance of a use permit by the Planning Commission. Appellant has listed in the appeal several specific code sections with which the use permit arguably does not comply. However, noncompliance with those sections is not grounds in of itself to deny a use permit, or uphold this appeal. It simply means the approving authority (Planning Commission or Board of Supervisors) must weigh the merits of the application and determine in its best judgment and discretion whether the use permit should be issued, despite a variation from the stated standards.

Appellant's grounds of appeal, and Planning staff's responses thereto, are set forth below. As staff has noted in the Executive Summary, *supra*, the presence of a residence and other areas of habitation in close proximity to the proposed facility was not disclosed to the Planning Commission, and the application and subsequent presentation to the Planning Commission contained other inaccuracies. Therefore, staff recommends the appeal be granted, and the matter be remanded back to the Commission for further consideration as provided in Napa County Code Section 2.88.090(C).

**Appeal Ground Number 1:** Appellant asserts it was not given actual written mailed notice of the Planning Commission's use permit hearing, and that Appellant did not learn of the use permit approval until December 5, 2013.

**Staff Response:** County complied with the applicable use permit noticing requirement. Under Napa County Code (NCC) Chapter 18.124 (Use Permits), notice of public hearings on use permits is to be given in accordance with NCC 18.136.040. That subsection (B)(4) of that section provides notice shall be mailed or delivered ten days prior to the hearing to: *"To all owners of real property, including businesses, corporations or other public or private entities, as shown on the latest equalized assessment roll within three hundred feet of the real property that is the subject of the proposed zoning change. In lieu of utilizing the assessment roll, the records of the county assessor*

*or tax collector which contain more recent information than the assessment roll may be used." Id.*

On October 27, 2013, County staff consulted and reviewed the applicant's title company certified mailing list for accuracy with latest equalized assessment role, which is accessed through the County's Geographic Information System. The mailed notice was sent to identified neighboring property owners on November 7, 2013. That roll/GIS listed the US Small Business Administration (from whom Appellant obtained ownership) as the owner of the property, not the Appellant. This is because Appellant's Grant Deed recorded on October 22, 2013, had not yet been transferred to the roll/GIS, as it generally takes several weeks (up to three months) for that data base to be updated with ownership changes. As such, the noticing issued by the Planning Department was consistent with code requirements and was legally sufficient.

**Appeal Ground Number 2:** While Appellant met with Planning staff several times to conduct due diligence prior to their acquisition of the property, Planning staff did not tell Appellant there was a telecommunication facility use permit application for the adjacent property.

**Staff Response:** The appellant does not indicate whether they asked Planning staff if there were any pending use permit applications on adjoining properties, nor does staff recall that question being asked. In any case, this issue is irrelevant to the Planning Commission's decision on this use permit. Likewise, Appeal Ground Number 2 is not a legally sufficient basis upon which to grant the requested appeal.

**Appeal Ground Number 3:** Appellant contends that a structure referred to as the "Barn" located at 610 Trancas Street in documents considered by the Planning Commission was actually converted, finalized, and approved by the County as a residence in 2003, and remains in use as residence by its owner. The Planning Commission was not aware that the "Barn" was actually a residence when it issued the use permit.

**Staff Response:** Planning staff agrees that AT&T's application, and the materials presented to the Planning Commission for their consideration, did not accurately reflect that the "Barn" was in fact a residence. Therefore, the Commission did not necessarily consider the extent to which the proposed facility complied with NCC 18.119.180 (limiting power emitted densities of NEIR [non-ionizing electromagnetic radiation] to ANSI C95.1-1992 or subsequent adopted standards for residences within 400 feet), or whether a variation from that standard was warranted. Further, it cannot be determined if the presence of a residence (instead of a "Barn") in close proximity to the proposed facility would have influenced the Commission's deliberations with respect to whether the facility in fact blended in with the surrounding existing natural and manmade environment in such a manner as to be effectively unnoticeable, or whether a variation to that standard was warranted. NCC 18.119.200(A)(9).

Because of this inaccurate information and resulting uncertainty, Planning staff recommends the use permit be remanded back to the Planning Commission for further consideration pursuant to NCC 2.88.090(C)

**Appeal Ground Number 4:** Appellant contends AT&T failed to comply with NCCC 18.119.180 by failing to submit required NIER calculations because the facility will be located in an inhabited area. [Staff notes that the NIER emitted power density restrictions apply within 400 feet of an "inhabited area." An "inhabited area" is defined under NCC 18.08.325 as "[A]ny residence, any other structure regularly occupied by people, or any outdoor area used by people on a regular basis."]

**Staff Response:** A NIER analysis was prepared by Sitesafe RF Compliance Experts, a qualified electrical engineering company. The analysis concludes that the project will comply with Federal Communication Commission standards. The study was reviewed by Staff but was not included in the staff report materials provided to the Commission because it indicates that the facility will not exceed Maximum Permissible Exposure (MPE) levels at any point surrounding the facility. The project plans attached to the study describe all nearby residences

and structures, including the appellant's home, as "existing buildings". Those plans do not show the winery on the appellant's property. However, since the study indicates that the facility will not generate any radio frequencies exceeding FCC standards, there appears to be no need to revise the study to evaluate residence-specific levels of non-ionized electromagnetic radio frequency exposure.

**Appeal Ground Number 3 (sic):** Appellant contends the use permit does not comply with NCC 18.119.030(F) as the proposed facility will be readily visible from Appellant's property.

**Staff Response:** NCC 18.119.180(A) provides: "No telecommunication facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and manmade environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the director or commission, as appropriate, is submitted showing a clear need for this facility and the infeasibility of co-locating it on one of these former sites."

As noted in Appeal Ground Number 3 above, the Planning Commission was unaware that the nearby "Barn" to the proposed facility was actually a residence. It is unknown whether this may have influenced the Commission in determining the extent to which the facility was effectively unnoticeable, and if not, whether the technical need for the facility clearly would have outweighed visibility factors sufficient to justify a variance. Because of this inaccurate information and resulting uncertainty, Planning staff recommends the use permit be remanded back to the Planning Commission for further consideration pursuant to NCC 2.88.090(C)

**Appeal Ground Number 4 (sic):** Appellant again notes that the "Barn" which is actually a residence is within 185 feet of the proposed facility, and was not identified as such to the Planning Commission. Appellant further asserts information regarding other outdoor areas adjacent to the proposed facility was inaccurate and the facility will not in fact be adequately screened from those views.

**Staff Response:** As noted in Appeal Ground Number 3 above, the Planning Commission was unaware that the nearby "Barn" to the proposed facility was actually a residence. It is unknown whether this may have influenced the Commission in determining whether the facility was effectively unnoticeable, and if not, whether the technical need for the facility clearly would have outweighed visibility factors. Because of this inaccurate information and resulting uncertainty as to the need for a variance, Planning staff recommends the use permit be remanded back to the Planning Commission for further consideration pursuant to NCC 2.88.090(C).

**Appeal Ground Number 5:** Appellant asserts the use permit issuance does not comply with NCC 18.119.200(A)(3).

**Staff Response:** NCC 18.119.200(A)(3) provides: "The facility is located more than four hundred feet from any inhabited area as this term is defined in Section 18.08.325 that is not occupied solely by the owner of the underlying property and his/her family or NIER calculations prepared by a qualified electrical engineer licensed by the state of California have been submitted showing that NIER levels there are less than ten percent of the NIER standard established by Section 18.119.180."

This section is not necessarily applicable to this appeal as it is a condition that must be met for the issuance of an administrative site plan approval, not a use permit. A use permit for a telecommunications facility can be issued even if does not meet the criteria for an administrative site plan approval. In fact, the NIER calculations submitted by AT&T show that the project will not generate any radio frequency levels exceeding FCC standards for Maximum Permissible Exposure.

However, given the inaccurate information that was presented to the Planning Commission as discussed, supra,

and Planning staff's recommendation the matter be remanded back to the Planning Commission, it is submitted this issue need not be addressed.

**Appeal Ground Number 7:** Appellant asserts that the telecommunications facility will cause a decrease in their property value, visitor experience and potential lost revenues.

**Staff Response:** Appellants assertions are speculative and unsupported by any evidence. While arguably any adjacent future land use could have some economic effect on Appellant, Planning staff believes this issue is moot based on its recommendation that the use permit issuance be remanded back to the Planning Commission for further consideration pursuant to NCC 2.88.090(C) because of the inaccurate information considered by the Commission with respect to the adjoining "Barn."

### **SUPPORTING DOCUMENTS**

- A . Appeal Form - Basis of Appeal
- B . Appellant Exhibits - Photographs and Commission Noticing Packet
- C . Appellant Exhibits - Commission Staff Report and Attachments
- D . Noticing Packet for Appeal Hearing
- E . Planning Commission Hearing Transcripts
- F . Radio Frequency Analysis Report

CEO Recommendation: Approve

Reviewed By: Molly Rattigan