

RESOLUTION NO. RES-2024-037

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA DENYING AN APPEAL AND UPHOLDING THE DECISION OF THE PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT FOR A WIRELESS TELECOMMUNICATIONS TOWER AND ASSOCIATED GROUND EQUIPMENT - LOCATED AT 244 COLGAN AVENUE, APN: 044-011-053 - FILE NUMBER PRJ23-009 (CUP23-043)

WHEREAS, on July 19, 2023, Conditional Use Permit and Design Review applications were submitted requesting the approval of a new 69-foot tall wireless telecommunication tower with supporting ground equipment, surrounded by a 7-foot, 2-inch tall chain-link fence, to be located at 244 Colgan Avenue, also identified as Sonoma County Assessor's Parcel Number 044-011-053 (Project); and

WHEREAS, Under the Telecommunications Act of 1996 (the "Act"), Federal law requires that requests to authorize the installation of wireless communications equipment must be acted upon in a "reasonable period of time," which was later determined to be 150 days; and

WHEREAS, the federal government has largely preempted local government regulation in the area of Radio Frequency (RF) emissions, making the Federal Communications Commission (FCC) the federal agency responsible for setting nationwide guidelines for safe RF levels, and severely limiting local authority to regulate RF emissions or to deny an application to install wireless service facilities based on concerns about RF emissions; and

WHEREAS, federal law specifically provides that "no state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions" (47 U.S.C. §332(c)(7)(B)(iv)); and

WHEREAS, federal courts have also held that the FCC has exclusive jurisdiction over RF interference issues and thus local zoning ordinances and permit conditions cannot regulate RF interference (*Southwestern Bell Wireless v. Johnson County Board of County Commissioners*, 199F. 3d 1185 (10th Cir. 1999)); and

WHEREAS, on November 17, 2023, a Notice of Application was mailed to surrounding property owners and occupants within 600 feet of the project site notifying recipients of the requested Project; and

WHEREAS, on November 17, 2023, the applicant accepted City staff's request for a Tolling Agreement that would extend the review timeframe and shot clock of this project from November 28, 2023, to January 15, 2024, to allow this project to be scheduled for the two required Public Hearings; and

WHEREAS, a public hearing was scheduled for the December 14, 2023 Planning

Commission meeting for consideration of the requested Conditional Use Permit, however, in order to allow time to address concerns raised by the community, the applicant requested that the Commission continue the item to the regular meeting of January 11, 2024, and the applicant also agreed to extend the review timeframe and shot clock of the project from January 15, 2024, to February 2, 2024; and

WHEREAS, on December 21, 2023, the applicant requested that the Design Review Board similarly continue the public hearing to a date certain of January 18, 2024; and

WHEREAS, on January 11, 2024, the Planning Commission held a public hearing on the Conditional Use Permit at which all those wishing to be heard were allowed to speak or present written comments and other materials; and

WHEREAS, the Planning Commission considered the application, the staff reports, oral and written, the General Plan and zoning on the subject property, the testimony, written comments, and other materials presented at the public hearing and approved a Conditional Use Permit for the wireless telecommunication tower with supporting ground equipment, to be located at 244 Colgan Avenue; and

WHEREAS, on January 18, 2024, the Design Review Board held a duly noticed public hearing on the application at which all those wishing to be heard were allowed to speak or present written comments and other materials, and approved a Major Design Review Permit for the 69-foot tall telecommunications tower and associated 7-foot 2-inch tall fence, with the added conditions that the chain link fence enclosure include brown slats and that the telecommunications tower be constructed as a monopole, and not a “monopine,” with no faux foliage; and

WHEREAS, on January 22, 2024, an Appeal of the Planning Commission’s action was filed by Paul-Andre Schabracq, Sidnee Cox and Kim Schroeder (Appellants), seeking review by the City Council, pursuant to City Code Chapter 20-62; and

WHEREAS, the appeal period for the Design Review Board’s action on the Design Review application closed on January 29, 2024 with no appeal filed, and as such the approval of the design of telecommunications tower and fence, with the added conditions of approval, is final; and

WHEREAS, on January 24, 2024, the applicant accepted City staff’s request for a Tolling Agreement that would extend the review timeframe and shot clock of this project from February 2, 2024, to March 27, 2024, to allow this project to be scheduled for a City Council meeting; and

WHEREAS, on March 26, 2024, the Council of the City of Santa Rosa held a duly noticed public hearing and considered the Appeal of the Planning Commission action of approving a Conditional Use Permit for a wireless telecommunications facility and associated ground equipment, located at 244 Colgan Avenue, all comments made at the public hearing, and all other information in the administrative record.

NOW, THEREFORE, BE IT RESOLVED, that after consideration of the reports, documents, testimony, and other materials presented, and pursuant to City Code Section 20-52.050 (Conditional Use Permit), the City Council of the City of Santa Rosa finds and determines:

- A. The proposed use is allowed within the IL (Light Industrial) zoning district and complies with all other applicable provisions of this Zoning Code and the City Code in that the project complies with application requirements and development standards as set forth in City Code Chapters 20-24 (Industrial Zoning Districts) and 20-44 (Telecommunication Facilities). Specifically, the tower and all related equipment will be placed adjacent to an existing industrial structure, shielding the equipment from public view, the equipment will be placed behind a 7-foot 2-inch tall chain-link fence with solid slats. Further, Section 20-44.060 of the Zoning Code regulates the location of telecommunication towers by requiring an alternative site analysis, a separation between facilities, a good faith effort in achieving colocation, minimum roads and parking areas as necessary to serve the facility, and operation in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER). The applicant has provided analysis of fourteen alternative sites for the necessary coverage, all of which were ruled out due to an inability of the sites to address service coverage gaps, and the site has been found to have the necessary access through existing roads. Further, an Electromagnetic Energy (EME) Exposure Report, prepared by OSC Engineering, Inc., dated May 19, 2021, concluded that the proposed placement of the tower at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations. Zoning Code Section 20-44.060(F)(18) specifically prohibits all major telecommunication facilities from locating in any residential zoning district, and Section 20-44.060(F)(19) requires a 75-foot setback from a major facility to any habitable structures. The proposed facility would be located in the IL Zoning District, and would be over 200 feet from the nearest habitable structure; and

- B. The proposed telecommunications tower is consistent with the General Plan land use designation of Light Industry, in that this designation is intended for areas for manufacturing and distribution activities with potential for creating nuisances, along with accessory offices and retailing, and installation of the proposed telecommunications facility implements a variety of overarching General Plan goals by creating a functional place for those who live and work within the City. While there are no goals or policies that speak directly to telecommunications facilities, cellular phone service has become an integral part of personal and business communication. As such, installation of the proposed telecommunications facility implements a variety of overarching General Plan goals by creating a functional place for those who live and work within the City. Specifically, the Economic Vitality element of the General Plan 2035 calls out the emergence of telecommunications companies, among other industries, as contributing to the dynamic regional economy. The General Plan also includes goals and policies related to ensuring the availability of emergency communications facilities in the event of a disaster; and

- C. The design, location, size, and operating characteristics of the proposed activity would be

compatible with the existing and future land uses in the vicinity in that the base of the cell tower and all related equipment will be screened from public view, behind an existing industrial building to minimize visual impacts as much as possible. The proposed height of the tower is necessary to maintain adequate height for function while allowing future collocation of the site; and

- D. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints in that the existing site is both developed and surrounded by existing industrial and commercial development with adequate access to the proposed use and once in operation, the telecommunications facility does not require frequent visits by employees, thus not intensifying the use of the site; and
- E. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zoning district in which the property is located in that the project included an Electromagnetic Energy Report, prepared by Waterford Consultants, LLC, received on July 26, 2023, which concluded that the proposed placement of the telecommunications tower at the subject site will not result in exposure of the public to excessive levels of radio-frequency energy as defined in the FCC Rules and Regulations; and
- F. The proposed project has been reviewed in compliance with the California Environmental Quality Act (CEQA):

Pursuant to CEQA Guidelines Section 15303, the cellular tower and related equipment qualify for a Class 3 Categorical Exemption, which exempts the construction of new small structures in that telecommunication towers are considered small structures that are similar to this Project. No exceptions to the exemptions apply and there is no reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances (CEQA Guidelines Section 15300.2).

Pursuant to CEQA Guidelines Section 15183, the proposed use is also statutorily exempt from CEQA as it is consistent with General Plan 2035, for which an Environmental Impact Report was certified by Council in 2009.

BE IT RESOLVED, pursuant to City Code Section 20-44.060 (Commercial Transmission Tower Location), the City Council of the City of Santa Rosa finds and determines:

- G. The proposed site results in the least potentially adverse impacts than any feasible alternative site. Verizon Wireless has prepared a comprehensive alternatives analysis evaluating fourteen alternative sites. Two potential collocation sites were identified in the greater vicinity, but those nearby T-Mobile and AT&T rooftop facilities are on buildings too low in height and/or too distant to serve the service gap. Nearby non-residential buildings are of insufficient height to elevate antennas to the height required for service. As to new tower alternatives, the proposed facility is ideally located in an industrial zone near the center of the service gap and is over 300 feet from

residences. Other tower locations evaluated are either closer to residences or too distant to serve the gap.

- H. The applicant has provided a written explanation why the subject facility is not a candidate for co-location. Verizon Wireless originally proposed a tower camouflaged as a 69-foot pine tree. The Design Review Board approved the proposed facility with a condition to install a 69-foot slimline monopole. Much of the monopole and ground equipment will be screened from view by nearby buildings and trees. There will be vertical space on the monopole for future co-location of antennas by another wireless carriers. Verizon Wireless has submitted a comprehensive RF engineer's justification statement which serves as technical evidence of the need for the proposed facility.
- I. All commercial telecommunications facilities shall be served by the minimum roads and parking areas necessary. The proposed facility and its access route across the property will be located on previously-disturbed areas, and no new road or parking will be required.
- J. Commercial telecommunications facilities shall be operated in compliance with the Federal Communication Commission's (FCC) human exposure standards for non-ionizing electromagnetic radiation (NIER), and the applicant for commercial telecommunication facilities shall be responsible for demonstrating that the proposed facility will comply with this standard. Verizon Wireless has submitted reports from a licensed engineer confirming compliance with the FCC's radio frequency exposure limits. In a Radio Frequency Emissions Compliance Report, prepared for Verizon Wireless by David H. Kiser, Electrical Engineer, Waterford, dated May 24, 2023, Mr. Kiser confirmed the Radio Frequency Exposure Assessment report to be accurate.

BE IT FURTHER RESOLVED that this Conditional Use Permit is subject to all applicable provisions of the Zoning Code, including Section 20-54.100 (Permit Revocation or Modification).

BE IT FURTHER RESOLVED that the Council hereby denies the Appeal and upholds the decision of the Planning Commission to approve a Conditional Use Permit for a wireless telecommunication tower with associated ground equipment, to be located at 244 Colgan Avenue, is approved, subject to each of the following conditions:

DEPARTMENT OF COMMUNITY DEVELOPMENT

GENERAL:

1. Compliance with the latest adopted ordinances, resolutions, policies, and fees adopted by the City Council at the time of building permit review and approval. All fees must be paid prior to issuance of a building permit.
2. All work shall be done according to the final approved plans dated October 18, 2023, unless otherwise amended by the Planning Commission or the Design Review Board.

3. The address shall be displayed in a prominent location on the street side of the property. The numbers shall be no less than 6-inches in height and shall be of a contrasting color to the background to which they are attached. The address shall be illuminated during hours of darkness per City "Premises Identification" requirements.
4. Construction hours shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. Saturday. No construction is permitted on Sunday and holidays.

EXPIRATION AND EXTENSION:

5. This Conditional Use Permit shall be valid for a two-year period. If construction has not begun or if an approved use has not commenced within two (2) years from date of approval, this approval shall automatically expire and shall be invalid unless an application for extension is filed prior to expiration.
6. If implemented within the initial approval period in accordance with all conditions of approval, this Conditional Use Permit shall be valid for the duration of use.

PLANNING DIVISION:

7. The building materials, elevations, and appearance of this project, as presented for issuance of a building permit, shall be the same as that approved by the Design Review Board on January 18, 2024, Resolution No. DRB-2024-002. Any future additions, expansions, remodeling, etc., will be subject to review and approval of the Planning Division.
8. Compliance with City Graffiti Abatement Program Standards for Graffiti Removal (City Code 10-17.080),
9. When the telecommunication facility (monopole and supporting equipment) becomes obsolete or is no longer used, the telecommunications facility shall be removed at the operator's expense.
10. **PROJECT DETAILS:**
 - A. All project details shall be in accordance with the restrictions and limitations of the City Zoning and Uniform Building Codes, as well as the City's Design Review Guidelines.
11. **LIGHTING:**
 - A. All exterior lighting shall be shown and specified on the plans submitted for issuance of a building permit in accordance with the Design Review approval.

- B. Light sources shall be concealed from public view.
- C. All lighting shall be directed toward the subject property and away from adjacent properties.
- D. The mounting height of lighting fixtures in parking and storage areas shall not exceed 16-feet in height. Lower mounting heights are encouraged.

12. SIGNING:

- A. No exterior signs, banners, or the like are approved with this permit. A planning sign permit application is required for all signs.

ENGINEERING DIVISION:

- 13. Compliance with Engineering Development Services Exhibit A, dated October 20, 2023, attached hereto and incorporated herein.

BE IT FURTHER RESOLVED that the Council finds and determines this entitlement to use would not be granted but for the applicability and validity of each and every one of the above conditions and that if any one or more of the above said conditions are invalid, this entitlement to use would not have been granted without requiring other valid conditions for achieving the purposes and intent of such approval.

IN COUNCIL DULY PASSED this 26th day of March, 2024.

AYES: (5) Mayor N. Rogers, Vice Mayor Stapp, Council Members MacDonald, Okrepkie, C. Rogers

NOES: (1) Council Member Alvarez

ABSENT: (1) Council Member Fleming

ABSTAIN/RECUSE: (0)

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
City Attorney

Exhibit A - Engineering Development Services Exhibit A, dated October 20, 2023

**CITY OF SANTA ROSA
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
ENGINEERING DEVELOPMENT SERVICES DIVISION**

**EXHIBIT "A"
October 30, 2023**

**VERIZON WIRELESS – TELECOMMUNICATION FACILITY
244 COLGAN AVENUE
PRJ23-009 (DR23-023 & CUP23-043)**

- I. Developer's engineer shall obtain the current City Design and Construction Standards and the Community Development Department's Standard Conditions of Approval dated August 27, 2008 and comply with all requirements therein unless specifically waived or altered by written variance by the City Engineer.

- II. Per City Code Section 18-12.015 (C), all properties including commercial and industrial parcels shall be subject to public improvement requirements when the value of any proposed building or site improvement exceeds \$200,000.00. A formal review of the valuation will commence during review of the building permit application. If the valuation is determined to be above the \$200,000 threshold, the project may be required to install or modify public improvements such as sidewalks, curb and gutter, pedestrian ramps, driveway approaches, planter strips and bike lanes. Additional right-of-way and easement dedications may also be required to support the current or future expansion of the roadway in order to meet adopted City Standards, General Plan requirements or area specific plans. Contact the Engineering Division of the Planning and Economic Development Department at 707-543-3200 to discuss specific requirements.**

- III. In addition, the following summary constitutes the recommended conditions of approval on the subject application based on plans stamped received on **October 18, 2023**:

PUBLIC STREET IMPROVEMENTS

1. An encroachment permit shall be obtained from the Planning and Economic Development Department Prior to performing any work within or adjacent to the public right-of-way. Any improvements proposed or required, within the public right shall be reviewed and approved with the Encroachment Permit application. Only Construction plans submitted with the Encroachment Permit Application are final plans and shall be approved for construction. Contact Engineering Development Services at 543-3200, located at 100 Santa Rosa Avenue, Room 5, as soon as possible to begin Encroachment Permit application processing. Encroachment Permit application processing may take 4-6 weeks. Submit plans showing all work in the public right of way, or in public easements, including all work on public utilities (water meter boxes, sewer lateral cleanouts, backflow devices, etc.)

2. An Encroachment Permit shall be obtained for any crane staging being set up in Colgan Avenue or in any easement corridors on the Costco Wholesale Corp lot to the south. A traffic control plan shall be submitted identifying any staging area needed for a crane, any anticipated lane closure schedules and traffic detours if the staging area is located near public streets. All traffic control restrictions will be incorporated in the issuance of the Encroachment Permit.
3. No street parking of temporary facilities and/or construction equipment is permitted on Colgan Avenue without an Encroachment permit.
4. If damage occurs to facilities located in the Right of Way then the Contractor shall submit a "Public Street Improvement Plan" as prepared by a Civil Engineer to Engineering Development Services for review and contractor shall obtain an encroachment permit prior to performing any repair within the public Right of Way.
5. The applicant shall replace any broken or cracked concrete/other improvement within the City Right of Way caused by the Contractor or his agents, to the nearest expansion joint on each side along the property frontage per City standard detail.
6. Upon completion of the proposed use, the site will be restored to the same or better conditions as was present prior to the conditional use temporary facilities.

STORMWATER COMPLIANCE

7. Note on the plans submitted with the building permit application that "no debris, soil, silt, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, shall be allowed to enter into or be placed where it may be washed by rainfall into the storm drain system. When operations are complete, any excess material or debris shall be removed from the work area."
8. Contractor shall not use the sanitary sewer system or storm drainage system to release construction water from the site unless they have a valid discharge permit to do so. Application for Industrial construction water discharge permit can be obtained from the City of Santa Rosa Environmental Compliance Department. Contact Renee Gundy at 707-543-4368.
9. Oils, chemicals and/or equipment fluid spills shall be cleaned up with absorbent materials per OSHA requirements.

BUILDING – (from Michael Enright dated August 9, 2023)

10. Provide a geotechnical investigation and soils report with the building permit application. The investigation shall include subsurface exploration and the report shall include grading, drainage, paving and foundation design recommendations.

11. Obtain building permits for the proposed project.

FIRE – (from Mike Johnson dated August 17, 2023)

12. Ensure any signage (warnings, contact information, emergency shutoffs, etc) for the equipment are legible.

13. The facility will need to submit plans to the Fire Department for the installation of the above ground storage tank associated with the generator.

14. Facility will need to register into the California Environmental Reporting System (CERS) and the CUPA Program for the storage or use of hazardous materials or waste.



10/30/2023

CLEVE GURNEY - EDS ASSOCIATE ENGINEER