

MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

RESOLUTION NO. 20-121

A RESOLUTION DENYING THE PRESBYTERY OF THE REDWOOD (AT&T) USE PERMIT AND DESIGN REVIEW

**10 BAYVIEW DRIVE, SAN RAFAEL
ASSESSOR'S PARCEL 186-132-26**

SECTION I: FINDINGS

1. **WHEREAS**, the applicant, Epic Wireless LLC, on behalf of AT&T Wireless and the property owner, is requesting Use Permit and Design Review approval to construct a new 33 feet five inches tall wireless communications facility (WCF) disguised as a bell tower on the grounds of the St. Luke Presbyterian Church lot located in San Rafael. The WCF entails building a new 12 foot by 12 foot wide and 33 foot five inches tall faux bell tower structure at the front of the church to house and camouflage nine-panel antennas (three sets of three antennas), 15 relay radio units (RRUs) and associated equipment cabinets. The proposed structure would be set back at least 65 feet from all property lines. The WCF and associated equipment would be installed within the proposed faux bell tower and would provide 4G and LTE wireless technology.

The property is located at 10 Bayview Drive, San Rafael, further identified as Assessor's Parcel 186-132-26.

2. **WHEREAS**, on May 28, 2020, the Marin County Deputy Zoning Administrator held a duly noticed public hearing to take public testimony and consider the project.

3. **WHEREAS**, the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15303, Class 3 of the CEQA Guidelines because the project entails the installation and operation of a new telecommunications facility which would not result in grading, tree removal, or other potentially significant impacts on the environment. Additionally, a Radio Frequency Emissions Compliance report prepared by Waterford Consultants, LLC., dated February 3, 2020, concludes that the proposed project would not result in any significant risks with respect to human exposure to radiofrequency fields emitted by the proposed and existing telecommunications facilities.

4. **WHEREAS**, the project is inconsistent with the goals and policies of the Marin Countywide Plan for the following reasons:

A. The Countywide Plan land use designation for the subject property is Single-family Residential. Although the proposed project would be consistent with the existing land use designation because telecommunication facilities are allowed uses under the corresponding zoning subject to the approval of a Conditional Use Permit, the proposed and revised projects do not represent the least intrusive design to accomplish the project's goals.

B. The proposed project is compatible with the residential land use designation for the project site and would not interfere with the existing use of the site (church).

However, the proposed project itself is inconsistent with the goals and policies contained in the TFPP. Specifically, the appellants failed to evaluate other design alternatives, for instance, a mono-pole structure or attachment to the existing church steeple as options that would potentially provide the least intrusive design.

- C. The proposed project would not result in substantial grading or the removal of existing vegetation. As documented in the project material, the project would occur in a previously developed area.
- D. As discussed in Section 5 below, the proposed project is inconsistent with the goals and policies of the Marin County Telecommunications Facilities Policy Plan (TFPP) because the project would result in impacts to views.
- E. Mandatory Use Permit findings cannot be made under Section 22.48.020 of the Marin Code to allow public utility and service uses necessary for public safety, convenience, and welfare, as discussed in Section 6 below.
- F. The project would provide critical emergency communications needs of the community.
- G. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services.

5. **WHEREAS**, the project is inconsistent with the Marin County Telecommunications Facilities Policy Plan (TFPP) and with the criteria for wireless communications facilities contained therein, as follows:

- A. The proposed facility would be located on a parcel currently used for a public institution (church) and already developed with a church, a sanctuary building, driveway with a parking lot, and other general site improvements. Existing improvements at this location, while visible from the properties to the north, do not obstruct views to the south (San Rafael Bay) or west (distinct geologic features, San Rafael Bridge, or distant cities to the west).

The project, as proposed, would be in front of the sanctuary building, thereby degrading and reducing available views of the properties to the north to varying degrees. Photographic images of the story-poles from various locations to the north demonstrate the degree of impacts to visual resources caused by the proposed project. Views to the south are the most affected, and the properties immediately to the north of the project site would experience the most significant levels of reduced views, while properties further north would experience reduced views to a lesser extent.

- B. The County's Telecommunications Facilities Policy Plan (TFPP) includes objectives, programs and policies intended to preserve and minimize impacts to scenic views, including Policy VIS 2.2, Program VIS 2.2.8, which mandates that new structures must be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality. The proposed 12 foot by 12 foot wide tower 33 feet tall or the

alternative 44 feet tall tower are inconsistent with the TFPP Policy VIS 2.1 because both alternatives result in visual impairments.

C. The TFPP states that wireless telecommunications facilities should be sited to avoid or minimize land use conflicts. The TFPP policies establish a general preference for non-residential sites for wireless facilities. TFPP policy LU 1.4 ranks location preferences in seven categories:

1. Industrial sites
2. Commercial sites
3. Public facilities sites
4. Agricultural sites
5. Mixed use sites
6. Open space and recreational sites
7. Residential sites

The preferred priority location for placement of wireless facility is based on sites, rather than zoning districts and uses. The site for the proposed wireless telecommunication facility would be consistent with the TFPP because such facilities are an allowed use within the residential land use designation. However, the proposed project itself is inconsistent with the goals and policies contained in the TFPP. Specifically, the appellants failed to evaluate other design alternatives, for instance, a mono-pole structure or attachment to the existing church steeple, as both options would potentially provide the least intrusive design. The Deputy Zoning Administrator found the project did not evaluate other technically feasible and potentially available design alternatives. Therefore, the denial is specific to this application and is based on aesthetics and design compatibility.

- D.** Based on the need to provide network coverage and capacity, AT&T Mobility engineers identify locations where the service gap currently exists. Based on the service gap analysis provided by the applicant, the proposed facility would allow AT&T to provide improved its services in areas where it has presently limited wireless coverage. However, the proposed project itself is inconsistent with the goals and policies contained in the TFPP.
- E.** As part of the application material, the applicant submitted Radio Frequency Emissions Compliance Report, prepared by Waterford Consultants, LLC., dated February 3, 2020, which concluded the project would not result in any significant risks concerning human exposure to RF emissions. Additionally, the antenna area would not be publicly accessible and, therefore, would not require mitigation to protect the public from exposure limits. Based on these factors, the proposed facility would be consistent with the RF emissions policies in the TFPP.
- F.** The facility would not create significant lighting impacts on surrounding areas because no exterior lighting is proposed for the site, other than those required by the Federal Telecommunications Act for safety purposes.
- G.** Vehicular access and parking for the proposed project site is provided from existing ranch roads on the property. No new road or parking area construction would be required for the operation of the facility.

- H. Noise levels associated with the operation of the facility would not exceed the ambient noise levels except during intermittent and short-term generator use during times of emergency and/or power failure. With exception to routine maintenance visits by a cellular site technician, the facility would not generate other traffic trips to the property; therefore, the proposed facility would neither generate significant levels of noise nor traffic.
- I. The primary visual character of the project site consists of views that are both immediate and distant in nature, including a view of San Rafael Bay, the San Rafael Bridge, distant cities, distinctive geologic features such as the West and Marin East islands, hillside terrain, wooded canyons, ridges or bodies of water.

The applicant has submitted a photo-simulation, depicting the proposed structure from the following vantage points of view: (1) on-site from the church's parking lot; (2) looking west from Point San Pedro Road; (3) looking east from Point San Pedro Road; and looking north from Beach Drive. Based on photo simulations report, views to the north would not be affected due to significant topographical change, and existing tree covers conceal the proposed structure when viewed from Point San Pedro Road or Beach Drive. However, no photo-simulation was provided from a northern perspective, either from private properties or from Bayview Drive.

The County's Telecommunications Facilities Policy Plan (TFPP) includes objectives, programs and policies intended to preserve and minimize impacts to scenic views, including Policy VIS 2.2, Program VIS 2.2.8, which mandate that new structures must be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality. The proposed 12 foot by 12 foot wide tower 33 feet tall or the alternative 44 feet tall tower are inconsistent with the TFPP Policy VIS 2.1 because both alternatives result in visual impairments.

6. **WHEREAS**, the proposed project is inconsistent with the mandatory findings to approve a Use Permit (Section 22.48.020 of the Marin County Code), as specified below.

- A. A wireless communication facility may be approved by Use Permit under Section 22.48.020 of the Marin County Code when it is found to be necessary for public health, safety, convenience, or welfare. The telecommunications facility is part of the AT&T Wireless communication network which provides wireless cellular and personal communication services to residents and businesses in Marin County and contributes to the overall public safety, convenience, and welfare. However, the design of the proposed project is incompatible with the neighborhood and would result in visual impairment from offsite locations.
- B. The applicant has submitted coverage maps, which show that there is low coverage for the surrounding area and there are no buildings or existing monopoles for co-location to achieve the required coverage results. The proposed facility would significantly increase the cellular coverage for the surrounding area

and benefit the local community and public services. However, the proposed project itself is inconsistent with the goals and policies contained in the TFPP.

Although the County accepts that the proposed project would fill in a gap in services, it does not accept that the proposed project's design constitutes the least intrusive means to accomplish the project, as discussed above, and the applicant has not submitted sufficient evidence to demonstrate that a mono-pine facility, or attachment to the existing church steeple, or replacement of the church steeple, would not be any less intrusive than the proposed project or that these design alternatives would be technically and physically infeasible.

- C. The project would not result in any significant public health risks concerning human exposure to radiofrequency radiation because the facility will operate well below the exposure limits of the American National Standards Institute and the Institute of Electrical and Electronic Engineers.
- D. Visual and aesthetic compatibility policies VIS 1 and 2 specify that telecommunications facilities should be sited and designed to avoid or minimize adverse visual effects. The TFPP also encourages stealth design to minimize visual effects. The project is not sited, nor designed, in a manner to avoid or minimize adverse visual impacts. The story-pole pole demonstrates that the proposed bell tower would be prominently visible from Bayview Drive (north) and the residences to the north, unlike the narrower church steeple located a mere few feet away from the proposed structure. In addition, views of to the south, southwest and southwest would be impaired.
- E. The proposed project would be incidental to the primary church use of the subject property.

7. **WHEREAS**, the Marin County Deputy Zoning Administrator finds that the proposed project does not conform to the requirements of Design Review under Section 22.42.020 of the Marin County Zoning Code for the following reasons:

- A. The project is would not avoid or minimize visual impacts to the San Rafael Bay, the San Rafael Bridge, distant cities, distinctive geologic features such as the East and West Marin Islands, Marin Islands National Wildlife Refuge, hillside terrain, wooded canyons, ridges or bodies of water. Photo simulations submitted by the applicant demonstrate that views to the north would not be affected due to significant topographical change while no photo-simulation has been provided views to the south, southwest and southeast from a northern perspective, either from private properties or from Bayview Drive. The story-poles demonstrate that the proposed bell tower would be prominently visible from Bayview Drive (north) and the residences to the north, thereby impairing available views.
- B. The proposed project is inconsistent with the goals and policies contained in the TFPP. Specifically, the appellants failed to evaluate other design alternatives, for instance, a mono-pole structure or attachment to the existing church steeple both of which would potentially a less intrusive design than the proposed project. The Deputy Zoning Administrator found the project did not evaluate other technically feasible and potentially available design alternatives. Therefore, the denial is specific to this application and is based on aesthetics and design compatibility.

- C. The least preferred location, as set forth in the County's Telecommunications Facilities Policy Plan, is a residential site and, therefore, it is particularly important that the design be compatible with the surrounding residential community. The applicant's own photo-simulations and Alternative Site Analysis failed to provide for other possible designs such as monopole-type installations on the lowest point of the site, or attachments to the existing steeple. In addition, the revised project is taller, at 44 feet in height, and demonstrates impairments to views, and does not represent a better integration to the existing structure.
- D. Visual and aesthetic compatibility policies VIS 1 and 2 specify that telecommunications facilities should be sited and designed to avoid or minimize adverse visual effects. The TFPF also encourages stealth design to minimize visual effects. The project is not sited, nor designed, in a manner to avoid or minimize adverse visual impacts. The story-pole poles demonstrates that the proposed bell tower would be prominently visible from Bayview Drive (north) and the residences to the north, unlike the narrower church steeple located a few feet away from the proposed structure. Views to the south and southwest would also be impaired.

SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the Deputy Zoning Administrator hereby denies the project described in condition of approval one is authorized by the Marin County Deputy Zoning Administrator and is subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

SECTION III: APPEAL RIGHTS

NOW, THEREFORE, BE IT RESOLVED that this decision is final unless appealed to the Marin County Planning Commission. A Petition for Appeal and the required fee must be submitted in the Community Development Agency, Planning Division, Room 308, Civic Center, San Rafael, no later than eight business days from the date of this decision (Tuesday, June 9, 2020).

SECTION VI: ADOPTION

ADOPTED at a regular meeting of the Deputy Zoning Administrator of the County of Marin, State of California, on the 28th day of May 2020.

Michelle Levenson

Michelle Levenson
MARIN COUNTY DEPUTY ZONING ADMINISTRATOR

Attest:

Michelle Reed

Michelle Reed
DZA Recording Secretary