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June 17, 2021

LETTER TO PLANNING COMMISSION OPPOSING CELL TOWER PROJECT

VIA ELECTRONIC MAIL

Planning Commission
c/o Marina Herrera, Project Planner
Permit & Resource Management Department, Planning Division
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

Re: Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing June 17, 2021, agenda item 1)

Honorable Commissioners:

I represent SBA Steel, LLC ("SBA"), which operates a cell tower at 4291 Santa Rosa Avenue, about 750 feet northwest of the new AT&T cell tower proposed in the above case.

My client opposes all three design alternatives proposed for this project because of its adverse impacts on aesthetics, the environment and neighboring properties, and because a visually intrusive tower is not needed in the first place: AT&T can obtain the coverage it needs easily, promptly and cost-effectively by simply co-locating its equipment on the existing SBA tower, with some relatively minor alterations.

Further, County staff should not have noticed this hearing in the first place. The planning commission only has jurisdiction over the appeal from the preliminary design recommendation by the Design Review Committee. The Commission has no jurisdiction to hear the permit application itself. That is the province of the Board of Zoning Adjustments.

This project adds nothing of value to the County. And it subtracts a lot. That math argues for the Commission to override the DRC recommendation and recommend a "no project" alternative. As to the permit application itself, if the Commission considers the application at all, it should deny the permit outright for the same reason. At a minimum, it should continue the hearing until all of the alternatives, including colocation on the SBA tower, are considered.

A. <u>The Planning Commission Has No Jurisdiction Over the Permit Application and Should Decline to Hear or Act Upon It.</u>

According to the notice of public hearing, the Commission is to hear two things at today's hearing: (1) An appeal from the preliminary design recommendation of the Design Review Committee and (2) the use permit application itself. In essence, the Commission is being asked to make a design recommendation <u>to itself</u> and then, simultaneously, to take action on the underlying permit.

Members of the Commission may wonder whether there is any precedent for such a two-part decision. There isn't, because <u>it is not authorized by the Sonoma County code</u>.

Certainly the Planning Commission is the proper body to hear the appeal of the design review. (See SCC sec. 26-82-050(e).) However, the planning commission has no jurisdiction to act on the use permit application. That is solely within the jurisdiction of the province of the Board of Zoning Adjustments. (SCC sec. 26-92-070.) Indeed, County staff initially noticed the public hearing of the use permit application to the BZA for June 10, 2021, and only withdrew the item from the BZA agenda because SBA had filed an appeal of the design review. (See staff report at pg. 10.)

There is a code section that allows the Planning Commission to act on two "related applications" for the same project, when one of them is under the jurisdiction of planning commission and the other under the jurisdiction of the BZA. (SCC sec. 26-92-060(a).) Thus, when one project involves both a rezoning and a variance, for example, the Planning Commission can act on both. However, there are not two applications here. There is only one application, for a use permit, which is squarely within the jurisdiction of the BZA. There is also only one application number, with the prefix "UPE".

As part of the processing of this single application, design review was conducted by the DRC, and this resulted in a "preliminary recommendation" about design to the BZA. The Planning Commission is involved only because SBA appealed the design review decision.

In an effort to spare this Commission from a needless and legally unauthorized proceeding, we presented this matter to County staff and County counsel well in advance of this hearing. The day after receiving the notice of public hearing, we explained the relevant code provisions in a lengthy email directed to both County staff and County counsel. We received two brief replies from chief deputy county counsel Jennifer Klein, and we responded in kind. Ms. Klein said that the Planning Commission was hearing both the design review appeal and the underlying permit application pursuant to the same code section we cite above, concerning "related applications." She refused to explain why she believes there are two "related applications" here, and in the end told us we would have to raise this argument to the Commission.

Our correspondence with Ms. Klein is attached hereto as Exhibit A.

With all due respect to the Commissioners, the Planning Commission lacks authority to act on the underlying permit application here. Any action on the permit would be null and void and subject to challenge in court, whether by SBA, the applicant or other project neighbors. The Commission should avoid this legal uncertainty by simply refusing to conduct a public hearing on the application.

Indeed, even if the Planning Commission believes it has authority to act on the underlying application, it is not required to exercise this authority; such exercise is merely optional. The code section at issue specifically states that "(a) The Sonoma County planning commission may, at the same meeting that it acts upon an application within its jurisdiction, act on a related application which would otherwise be decided by the board of zoning adjustments." (See SCC sec. 26-92-060(a) (emphasis supplied).) County staff also strongly implies, if not stating outright, that the Commission has the option to not review the use permit application at all. It states:

> "Permit Sonoma recommends that the Planning Commission concurrently hear the DRC appeal and review the use permit. Concurrent scheduling will allow all parties an opportunity to be heard and voice objections, and enable the County to meet its current shot-clock deadlines." (Staff report at pg. 2 (emphasis supplied).)

Thus, whether or not the Commission believes it has the discretion to review or act on the underlying application, it should refuse to do so.

B. A June 30 "Shot Clock" Deadline Does Not Justify Conducting an Unauthorized Hearing, Especially Since the Deadline Will Be Breached Anyway.

As set forth above, County staff emphasizes in its staff report that so-called "shot clock deadlines" are driving its recommendation that the Planning Commission hear both the design review appeal and the underlying use permit application. Elsewhere, the staff report notes: "Due to federal regulations, telecommunication projects are subject to processing deadlines known as the 'shot clock.' Failure to make a final decision within the shot clock time frames can result in deemed approval of a project. The current shot clock deadline for this project is June 30, 2021." (Staff report, pg. 2 (emphasis supplied).)

Clearly, staff is concerned that if the Commission fails to act on the project now, it will be eventually deemed to be approved pursuant to the effect of the June 30 "shot clock" deadline. However, the possibility that a "shot clock" deadline would be violated by separate hearings of the Planning Commission and the BZA does not justify this Commission violating the code itself by conducting a combined – but legally unauthorized – hearing.

Moreover, the Commission should bear in mind that even if it does hearing the use permit application, the June 30 "shot clock" will almost certainly be breached anyway if the project is approved. SBA intends to file an appeal of any project approval to the Board of Supervisors.

(See SCC sec. 26-92-160.) This appeal can be filed at any time until 10 days after the planning commission's action, which in this case would be June 27, 2021. (Id.) Further, the Board of Supervisors hearing on the appeal will require a minimum of 10 days' notice to the public. If the appeal is filed on June 21 or later, the Board of Supervisors cannot possibly receive the appeal and then schedule a noticed public hearing on the project before June 30, 2021.

Of course, the likely effect of all of this is that the applicant will agree, perhaps prior to, or during, the hearing of the Planning Commission, to extend the "shot clock" to allow sufficient time for the separate hearings of the Planning Commission and BZA, and any appeal to the Board of Supervisors, to be heard. If the applicant refuses to do so, the Planning Commission may simply deny the use permit application on any number of grounds. This would qualify as a final action prior to the expiration of the "shot clock" – unless the applicant itself appeals to the Board of Supervisors, in which case it would cause the "shot clock" to be breached by its own actions, thereby likely sparing the County from any automatic approval of the project pursuant to federal "shot clock" regulations.

C. <u>The County is Not Required to Approve Any Cell Tower at This Location.</u>

The County isn't required to approve a cell tower. The use permit being considered is a discretionary decision, and as such the permit can be denied based upon proper findings. This is especially so here, because a denial would not deprive AT&T of the needed coverage due to the availability of a feasible colocation site nearby.

Under section 26-88-130(a)(3) of the County code, a freestanding telecommunications facility must meet the following criteria, among others:

> (ii) Facility towers, antennas and other structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve compatibility with neighboring residences and the character of the community to the extent feasible considering the technological requirements of the proposed telecommunication service.
>
> (iii) Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized.

These requirements are effectively mandatory findings. And, when this project is properly analyzed in comparison to alternative sites, there is more than adequate grounds for the planning commission to determine that one or both these findings cannot be made.

D. <u>The Applicant is Required to Prepare an Alternative Site Analysis That Includes Potential Colocation Sites and Potential Design Alternatives.</u>

The County code requires AT&T to analyze alternative means of achieving its coverage objectives and establish that the new tower is the only technically feasible method of providing

the needed service. Section 26.88.130(a)(3)(xiv)(F) states, in relevant part:

> (F) The alternatives should include a mix of service strategies which incorporate existing, attached, and/or other freestanding facilities. The alternatives analysis for a facility proposed within a designated scenic resource area and/or a residential zone (AR, RR, R1, R2, R3, or PC with a UR or RR general plan land use designation) shall include any feasible alternatives outside these respective areas. They should also be designed to offer clear tradeoffs involving:
>
> 1. The level of service provided;
>
> 2. The number of towers;
>
> 3. Variety in tower heights and silhouettes;
>
> 4. Potential visual impacts;
>
> 5. Residential proximity and compatibility;
>
> 6. Proximity to service area;
>
> 7. Other applicable potential environmental impacts.

This provision effectively requires consideration of both design alternatives (such as the three alternatives before the DRC) <u>and</u> alternative sites, such as the nearby SBA tower.

E. <u>The Commission Should Deny the Project, or ContinueThe Hearing, to Allow AT&T to Complete Negotiations on an Agreement to Co-Locate on an SBA Tower Just 750 Feet Away.</u>

AT&T wants this Committee to believe that the project is inevitable and the only question is which form the project should take – whether monopine, water tank or monopole. However, given the undisputed negative aesthetic impacts of <u>any</u> new 86 to 96 foot tall tower in this prominent location, the lack of options to mitigate those impacts, and the fact that <u>another nearby tower is readily available to AT&T</u>, the best project alternative is <u>no project at all</u>. Thus, the Commission should deny the project outright.

What will happen if the project is denied outright? AT&T will achieve its service objectives by what is commonly known as "co-location," i.e., by putting its equipment on someone else's existing tower. Here, AT&T can easily locate its equipment on the existing cell tower owned by SBA at 4291 Santa Rosa Avenue, which is about 750 feet away.

AT&T site is ~750 feet from existing SBA tower

at 4291 Santa Rosa Avenue

The SBA tower presently has a tenant, but it can accommodate all of the proposed AT&T equipment and at the same height, with minimal modifications, all of which can be authorized pursuant to a simple modification of SBA's conditional use permit. The modifications would include: (1) an extension of between 5 and 10 feet in height (from the present 77 feet to between 82 and 87 feet total height); (2) a modest expansion of the ground footprint to accommodate AT&T's equipment; and (3) increase of panel antennas from six to nine.

If AT&T were to co-locate on the SBA tower, it would be pursuant to a lease with SBA. Such leases are standard procedure: AT&T presently leases towers from SBA all over the nation and in many locations in California. In fact, in just the last 18 months, AT&T has signed 39 new leases with SBA, generally using the same form lease.

Initially, in its application materials, the applicant acknowledged the nearby SBA site, but attempted to satisfy the alternatives analysis requirement with a serious of false statements to the effect that SBA's ground lessor was unwilling and/or unable to accommodate another carrier at the site and that the site itself could not accommodate the necessary improvements. The applicant also presented two coverage maps, showing that placement of equipment at 63 feet on the SBA tower (rather than at 82 feet on the proposed new tower) would provide somewhat less coverage.

As is readily apparent from the aerial view of the property where the SBA tower is located, the existing compound – occupied by a towing company – is a completely paved parcel in excess of one acre in size. As such, it has ample room to accommodate additional equipment at the ground level. Further, SBA's ground lessor has confirmed that there is no physical impediment to colocation. Finally, while the SBA tower is currently 77 feet tall, and the available position on the tower is at about 63 feet, even AT&T's own coverage maps show the amount of coverage only slightly less and not sufficient to justify rejecting the SBA site out of hand. Even this slight reduction in coverage would be mitigated if the existing tower is increased in height to between 82 and 87 feet by way of a modification to SBA's use permit.

The applicant did not take the SBA site seriously until after the first Design Review Committee hearing in October 2020, when AT&T apparently realized that it would not obtain a slam-dunk approval from the County. Finally, on December 14, 2020, AT&T filed with SBA a formal application for co-location, in accordance with SBA's internal policy. After that, SBA began the process of negotiating with the owner of the land where its tower is located, in order to secure additional ground area for the AT&T equipment.

Negotiations with the ground owner/lessor took about three months, and took place in early 2021. Along the way SBA kept the applicant informed about the progress of these negotiations and how the amended ground lease would likely affect the lease pricing to be offered to AT&T. About three weeks ago, on April 2, 2021, SBA and the ground owner finally arrived at an understanding as to the primary ground lease terms. That same day, SBA notified the applicant of this fact. On April 5, 2021, based upon the understanding with the ground lessor, SBA advised the applicant that ground rent would be $3,650 per month.

On April 15, 2021, the ground lessor wrote a letter to the Design Review Committee stating that "<u>we have come to agreement with SBA on the primary terms of an amendment to our ground lease to accommodate the AT&T equipment. We now expect to arrive at a mutually acceptable agreement on all terms within the next several weeks</u>." **A copy of this letter is attached as Exhibit B.**

Unfortunately, while these negotiations with AT&T and the ground lessor were underway, it appears that AT&T used a brief delay in reaching agreement as an opportunity to declare that co-location was "infeasible," and on that basis is taking its own project back to the Design Review Committee.

All that remains now is paperwork. SBA has presented the ground lessor with a draft lease and is presently in negotiations over minor revisions to the lease. In the meantime, SBA in early April 2021 sent a draft overall lease to AT&T based upon the template generally used by the parties at locations across the nation. On May 11, the applicanttold our leasing manager: "We are still reviewing. I will send you an update when I have more information." If the parties are properly motivated – including by this Commission – the process of reviewing and signing these leases can be completed in several weeks. After that, AT&T would apply for the minor modifications to the SBA conditional use permit necessary to allow the additional equipment.

F. <u>AT&T Wants to Pay $850 Less Per Month for Co-Location, But That is Not Sufficient Justification to Saddle the County With a New 86-Foot Tower.</u>

Even though negotiations between AT&T and SBA are at an advanced state, the applicant and AT&T's attorney have each made numerous vague allegations in the record to the effect that e co-location is not "feasible" for economic reasons. They would like County staff and its decisionmaking bodies to accept these self-serving statements without any scrutiny at all.

Remarkably, staff does appear to have accepted these assertions without scrutiny. It asserts in the staff report that "the applicant has submitted evidence demonstrating that this site is not available because it has been unable to obtain approval from the tower operator (SBA Steel) or the ground landlord for the colocation." (Staff report at pg. 8.) Yet this is simply untrue, especially in light of developments since early April 2021.

The applicant's most recent allegations about feasibility are in a June 9, 2021, letter from AT&T's attorney, Amanda Monchamp of Monchamp Meldrum LLP. (See staff report, Attachment 4-A, pg. 2 of letter, pg. 38 of PDF.) After describing various negotiations with SBA, Ms. Monchamp acknowledges that in early April 2021, SBA provided a firm rental quote. However, she contends that "the quote was far more than AT&T would pay for the proposed site," and that "AT&T inquired as to some key lease terms and SBA offered very unfavorable response on numerous key terms." In conclusion, Ms. Monchamp states that "Given how long it has taken just to get a quote, the parties are not very close to an agreement and AT&T has concluded that negotiation of a lease for a co-location at the SBA site is infeasible."

AT&T's continuing claim of "infeasibility" is self-serving at best.

In case there is any question whether SBA is offering reasonable terms to AT&T, the rental rate offered to AT&T on April 5, and subsequently in the proposed draft lease, is <u>$3,650.00 per month</u>, with an annual escalation of 2.5%. As is typical in the industry generally (and with AT&T leases of SBA towers in particular) SBA offers an initial lease term of 5 years, which gives AT&T the option to terminate the lease any reason at the close of the initial 5 year term. In addition to this, AT&T would have four 5-year renewal options, which gives it the option to renew the lease (or not) in 5-year increments.

Although the June 9 letter from AT&T's attorney is ambiguous about the actual amounts at issue, in a previous letter submitted to the record on or about March 26, 2021 ("Response To Letter in Opposition, AT&T Mobility") the applicant itself stated that the $3,900 per month (which was the "worst-case" pricing being considered as of that date) "greatly exceeds the average area rent of $2,800."

AT&T has offered no basis for its estimate of the "average area rent" for cell towers. Moreover, the "average" rent for this area does not reflect the circumstances in this particular location. In particular, it does not take into account the fact that SBA must pay the ground owner a substantial sum in order to gain permission to expand the ground area to accommodate AT&T.

However, even if the average area rent were $2,800, as AT&T asserts, the implication that co-location at the SBA tower is "infeasible" because this tower costs $850 per month more than the average tower in the area is absurd on its face. The rent proposed by SBA is similar to the rent for a small single family home. AT&T makes no showing that paying this amount would make the tower economically infeasible, and it is hard to imagine how it could. The County is not obligated to approve an unsightly and permanent industrial structure more than 85 feet tall simply so that AT&T – a publicly traded company worth in excess of $200 billion – can save $850 per month.

G. This is a Highly Obtrusive Structure in a Heavily Traveled, Scenic Area.

The applicant proposed three alternatives to the Design Review Committee: (1) an 86-foot tall, undisguised "monopole"; (2) an 88 to 89 foot faux "water tank" design; and (3) a 96-foot tall disguised "monopine" design. Any of these would be an enormous structure – as tall as a 9-story building and one of the tallest structures in the County. The "water tank" design would be perhaps 20 feet wide, and the "monopine" design would be almost as wide at its base.

The proposed tower is in a highly visible location. It would be just 82 feet from Santa Rosa Avenue; about 200 feet from the Santa Rosa Avenue exit of Highway 101; and 300 to 400 feet from the driving lanes of Highway 101. Highway 101 is heavily traveled: In 2017, along this segment there were 127,100 trips on the average day, and 9,900 trips per hour at peak hour. (See https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017/route-101.) In the staff report, staff notes: "Based on Sonoma County's Visual Assessment Guidelines, staff has determined that the overall visual sensitivity of the site is "High" as the project is located within a Scenic Corridor and a Scenic Landscape Unit." (Staff report at pg. 8.)

The project parcel and surrounding parcels are almost completely flat, with Sonoma Mountain in the distance. Other than power poles, there are no existing structures and no vegetation higher than 30 feet in the immediate vicinity. Nor does the applicant propose any new vegetation that would camouflage the tower. In other words, from all four sides there is not a single thing that would draw the viewer's eye away from the tower.

H. The Committee Should Give Great Weight to the Project's Impact on Users of the North Rohnert Park Trail.

Just 100 feet north of the tower site is a public nature trail called North Rohnert Park Trail, which runs along a canal operated by the Sonoma County Water Agency. The trail runs from Roberts Lake Road, east approximately 1.5 miles to Snyder Lane. Other than low brush and vegetation, there are no obstructions along the trail that would block views of a cell tower.

Section 26-88-130(a)(3)(iii) of the County code requires that "[p]otential adverse impacts upon nearby public use areas such as parks or trails shall be minimized." Yet whether it is an undisguised 86-foot tall tower, an 88-foot tall faux "water tank," or a 96-foot tall "monopine," the project will forever alter the experience of using this nature trail.

N. Rohnert Park Trail, 100 feet north of site

I. <u>The Commission Cannot Act on the Design Review Appeal or the Underlying Application Because the Staff Report Ignores Two of the Three Alternatives Considered by the Design Review Commitee.</u>

The Design Review Appeal requires the Planning Commission to review, and reconsider, the preliminary recommendation made by the Design Review Committee on May 19, 2021. Although the preliminary recommendation by the DRC was the 96-foot tall "monopine" design, this recommendation was made only after comparing the monopine design with two other designs – the "monopole" and the "water tank". Accordingly, the DRC's agenda packet for the May 19 hearing contained significant discussion of all three alternatives in the staff report, followed by plans for all three alternatives, simulations of all three alternatives and a visual analysis which – though utterly incomplete – did discuss all three alternatives in some detail. (See 5/19/21 agenda packet at https://share.sonoma-county.org/link/6mhArY5hHsI/UPE19-0083%20DRC%20Complete%20Packet%2020210519.pdf

Remarkably, the staff report to the Planning Commission provides none of this information, except as it relates to the "monopine" design. There is literally zero discussion of

the "water tank" design or the "monopole" design in the staff report itself, except to mention that the two designs were considered by the DRC. (Staff report at pg. 9.) The only plans or elevations in the agenda packet are of the "monopine" design; there are no plans or elevations of either the "monopole" or "water tank" design. (See Attachment 5, at pp. 67-76 of PDF.) The photo simulations provided by the applicant contain only four views showing the "monopole" design, and zero views of the "water tank" design. (See Attachment 4A, at pp. 40-43 of the PDF; Attachment 6, at pp. 77-95 of the PDF.) The "visual analysis" prepared by the applicant, including both the narrative and the numerous simulations portrayed therein, is focused entirely on the "monopine" design, and completely ignores both the "monopole" and the "water tank" designs. (See Attachment 4A, at pp. 44-66 of the PDF.)

Although there are numerous simulations and discussion of the monopole design and the water tank design in correspondence submitted by our office over recent months, none of this is discussed by the applicant or staff, either in the staff report, or in the materials submitted with the agenda packet. Perhaps most importantly, there is no formal "visual analysis" concerning these alternatives.

The basis for SBA's appeal of the DRC's design review was, among other things, the inadequacy of the materials describing the other alternatives to be considered. For example, SBA contended that the DRC could not properly compare alternative designs because (a) the water tank simulations and elevation plans bore no resemblance to each other (appeal ground #4); and (b) there were no section plans, materials plans or other detail plans in the record showing the actual design of the water tank alternative design (appeal ground #7). By omitting any of the relevant materials that actually were considered by the DRC, staff has precluded the planning commission from adequately considering these grounds for the appeal, and from determining whether the DRC's recommendation of a "monopine design" was proper under all the circumstances.

The omission of information about key project alternatives also precludes the planning commission from acting on the underlying permit, if it even decides to do so at all.

J. <u>The Design Review Committee Lacked Sufficient Design Information to Recommend the "Monopine" Alternative, and this Commission Lacks Sufficient Design Information to Approve That Alternative.</u>

The Design Review Committee recommended the "monopine" alternative despite the fact that it had insufficient information about that alternative to make such a recommendation. The plans submitted with the agenda packet for the Planning Commission are the same as those presented to the DRC. And yet now, the stakes are higher. Rather than being asked to simply affirm a "preliminary recommendation" by the DRC, this Commission is also being asked to <u>approve the project once and for all</u>.

Without a full set of plans and simulations before it, the Commission has no option but to reverse the DRC decision and deny the underlying permit application.

First, the simulations of the monopine alternative design presented by the applicant and the elevation plans of such design bear no resemblance to each other. The simulations show the panel arrays – normally the most prominent feature on a cell tower – as almost completely concealed. Yet, the City's approval will not be tied to simulations. The permit is tied entirely to the plans submitted to the City with the application. And the elevations tell a much different story: They indicate that the panels will be extremely visible from all four sides: North, East South and West. (Staff report, Attachment 5, Sheets A-4.1, A-4.2, pp. 75-76 of PDF.)

Second, even if the Commission were satisfied with the way the tower is depicted in the elevations, one cannot even rely on those because they contain a very important qualifying note: "NOTE: BRANCHES SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. NOT TO SCALE." (Id.) If you don't know the scale of the branches, you don't know the scale of the tree.

Third, there are no plans at all showing the detail of the branches – how many, how dense, how many, or how long the branches are in relation to the panels. A note on the elevation drawings says: "NOTE: AT&T TO MAINTAIN BRANCH DENSITY OF (3) BRANCHES PER LINEAL FOOT." (Staff report, Attachment 5, Sheets A-4.1, A-4.2, pp. 75-76 of PDF.) However, it is impossible to interpret what this means. Where is the lineal foot to be measured? At all points on the exterior of the approximately 100 foot tall structure? On all points in the interior? Does this apply only to lineal feet measured horizontally, or also vertically? Moreover, what is a "branch" on a fake tree? Is it a single finger of material, or is it more like a tree branch, with secondary and tertiary fingers leading off of it?

Fourth, another note on the elevation drawings says "NOTE: AT&T TO INSTALL "NEEDLE SOCKS" ON ALL PROPOSED PANEL ANTENNAS & RRH UNITS." Does any of the Commissioners really know what a "needle sock" is? Does the staff? Is there a commonly understood meaning of the size, texture, and shape of a "needle sock?"

Fifth, the plans contain no section drawings at all. Sections could help to show how the fake branches, "needle socks" or other aspects of the design affect visibility of the array or the general appearance of the tree. Without them, the reviewer is left relying only on conceptual elevations, heavily qualified words on the elevation plan, nonbinding simulations ... and her/his imagination.

Sixth, no materials samples showing color or texture have been submitted to the Planning Commission for its review. The applicant has represented, and staff has repeated in the staff report, that the monopine design will be a "dark olive green." (Staff Report at pg. 8.) However, there is not a single materials sample or color sample reflecting what that color actually is.

Seventh, the elevations contain another note stating "MONOPINE TO BE STRUCTURALLY ENGINEERED FOR A TOTAL OF (3) WIRELESS CARRIERS." Yet, the elevations only show a single array, which is enough for a single carrier. Shouldn't the plans show multiple carriers if there might be multiple carriers?

This is a 96-foot tall "monopine" structure, in a scenic area just 82 feet from the public roadway. Yet without complete and accurate plans, neither the Commission nor the public can evaluate how it would look. The lack of detailed plans also means that once the permit is issued and the structure is built, the County and the public will have far less to measure it against.

K. <u>The Commission Should Not Ratify the Design Review Committee Recommendation or Approve a "Water Tank" Design Without Reviewing Detailed Design Drawings</u>.

Much as the applicant has not submitted detailed plans for the "monopine" design, it also has not submitted such plans for the "water tank" design, even to the Design Review Committee. Only elevation drawings and photo simulations of the "water tank" design were submitted to the DRC. To the extent that the Planning Commission considers the "water tank" design – whether in connection with the design review appeal or the review of the underlying permit – there is not enough information even in the DRC record for the Commission to arrive at a decision.

First, the simulations of the "water tank" design presented to the DRC bear no resemblance to the elevation drawings. The simulations show a great deal more structure and other elements in the lattice support structure from the base of the tank to the ground, which is itself about 70 feet tall. This begs the question: Do the elevations actually reflect what is intended?

Second, the simulations of the water tank don't show the enclosed area at the base of the structure, which is at least 6 feet high and about 30 feet wide, and is clearly shown on the elevations. In fact, in the simulations there is virtually nothing visible at the base.

Third, there are no section drawings or other detailed plans showing the design of the water tank alternative. This is an enormous and somewhat complicated structure – 89 feet tall and 18 feet wide, just 82 feet from the roadway and 200 feet from the 101 freeway. Although described as resembling an "agricultural structure," there is a real risk that it will look more like an industrial structure if not properly and carefully designed. Therefore, section drawings and detailed plans are essential.

Fourth, as with the monopine alternative, there are no materials samples showing color or texture in the record before the DRC. Obviously, it is imperative that a faux "water tank" actually appear to be a real water tank. The best way to do this is to present decisionmakers with materials samples, especially for exterior finishes, that would demonstrate a natural appearance.

In sum, the photo simulations and a few elevations are far short of what is necessary for the Planning Commission to evaluate even the design review appeal, much less to review the underlying permit application itself. The Commission should not ratify the DRC's recommendation or approve a 96-foot tall tower without a full set of design drawings for the water tank alternative.

L. A "Water Tank" Design Would be a Particularly Jarring Addition to the Landscape, and Would Require a Variance.

The applicant's simulations for the alternative "water tank" design demonstrate that the design would involve construction of a cylindrical barrel-shaped structure, perhaps 20 feet in wide, with walls and a roof, supported by legs. At 88 feet, it would be the equivalent of 9 stories in height. The structure might also be lit from below.

Initially, it should be noted that an actual 88-foot tall water tank would not be allowed by the County zoning ordinance without a height variance. The fact that in this case what appears to be a "water tank" is actually a telecommunications tower does not change the need for the tank structure to comply with the zoning ordinance. Therefore, a variance is required.[1]

Even if the faux "water tank" could be permitted as a cell tower without a variance, it should not be. Such a structure would be a massive and stark intrusion in the middle of a scenic vista interfering with views of Sonoma Mountain. Moreover, there is little evidence to suggest that passersby would actually be fooled into believing that the structure is actually a water tank at all.

First, as discussed above, the Commission has not received sufficient design drawings or materials samples to help it decide whether the structure would look like "actual" water tanks.

Second, the applicant has submitted no evidence that water tanks of a similar height and design are already common in this area; without such evidence, it should be assumed that they are not.

Third, even if the County were to conclude that a faux water tank was an acceptable intrusion into the built environment, it would be extremely difficult for the County to ensure that this remains true in the long term. A "water tank" is a structure with walls, a roof, and lighting, all of which must be constantly maintained. In this punishing environment, characterized by constant sun, heat and high winds, the maintenance of an unmanned 88-foot tall structure could become a major headache.

Fourth, without detailed conditions providing for maintenance by the owner – and strictly mandating removal of the structure if it falls into disrepair – the faux water tank could have severe long-term negative effects on the aesthetics of the area.

---

[1] AT&T has submitted a letter from its attorney, Amanda Monchamp of Monchamp Meldrum LLP, contending that "[t]he County's zoning regulations are based on use, not appearances," and that on that basis a fake and 88-foot tall "water tank" can be approved as a cell tower long as there is a cell tower inside. If this were the law, there would be no end to the resulting mischief. Any form of structure – no matter how elaborate, how wide or deep, or how unsightly – could be permitted virtually by right simply because it encases a cell tower. The County would face proposals not just for fake trees and fake "water tanks," but for fake buildings of all sorts. Since no variance would be required for these structures, the County would be largely powerless to stem the tide.

M. <u>AT&T Will Conclude its Co-Location Negotiations With SBA Once it Gets the Message That the County is Unlikely to Approve the Project.</u>

The present application falls neatly into a recent pattern, and it will be resolved in a predictable way if the County simply conducts a searching review of the application and sends the message to AT&T that it doesn't want a duplicative cell tower in this area.

Unfortunately for municipalities who seek to minimize the number of new cell towers, AT&T has embarked on a strategy all across the country in which it proposes new towers very close to existing SBA towers, even when SBA can easily accommodate AT&T's equipment. AT&T's apparent goal is to avoid the expense of leases with SBA.

In California and elsewhere, SBA has recently begun appearing in these proceedings to oppose the proposed new AT&T towers. The grounds for SBA's opposition are typically that (a) the project will have unmitigatable adverse aesthetic impacts, and (b) the applicable local ordinance encourages (or even requires) AT&T to co-locate on a nearby available tower rather than build a duplicative new tower.

What happens in these cases? AT&T invariably argues to the city or county staff and decisionmakers that it is "infeasible" to co-locate on the SBA tower, citing to various ambiguous (or outright untrue) reasons. The city or county decisionmakers then learn that SBA is willing – and, in fact, quite eager – to lease its facility to AT&T. Once this fact gets out in the open, staff and/or the decisionmaking bodies generally begin to express reluctance to approve the project. Eventually, AT&T faces up to this reluctance, and gives in and begins lease negotiations with SBA to locate on its tower.

In recent months this exact pattern has played out in four California cities:

(1) Desert Hot Springs
(2) Dana Point
(3) Tehachapi
(4) Palm Desert

In the first three of these cities, before the planning commission could even act on the project AT&T either withdrew its application or put it on hold to allow for negotiations with SBA about leasing its nearby tower. In the fourth instance – Palm Desert – AT&T took its application all the way to the City Council, which voted to deny the project. Just hours before the City Council was scheduled to adopt findings supporting the denial, AT&T withdrew its application. Once the dust settles in Palm Desert, SBA fully anticipates that AT&T will commence negotiations there as well. It has no other option, after all.

The County here faces precisely the same situation as these other cities. If it approves this project, it will have two duplicative towers just 750 feet apart. If it denies the project – or if it merely sends a firm message that the project is likely to be denied – AT&T will go to its "Plan

B," which is to complete negotiations with SBA to lease its existing tower.

If the County decisionmakers – including this Commission – stand their ground, the residents of the County will be the winners. They will end up with the same cell coverage they would have had from a new freestanding tower, but with one less tall, unsightly and intrusive industrial structure in an otherwise scenic area.

N. <u>Conclusion.</u>

We ask that your Commission:

1. As to the appeal from the preliminary recommendation of the Design Review Committee, <u>grant</u> the appeal and EITHER

   (a) make a new design recommendation to the Board of Zoning Adjustments;

   OR

   (b) continue the hearing to allow for the submittal of further information necessary to make or such a recommendation.

2. As to the underlying permit application, EITHER

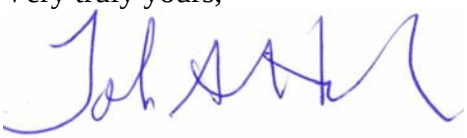
   (a) <u>Decline to decide</u> the permit application and send the application to the Board of Zoning Adjustments for hearing and decision;

   OR

   (b) <u>Deny</u> the permit application.

Thank you for your kind consideration of our comments on this project.

Very truly yours,



John A. Henning, Jr.

EXHIBIT A

John A. Henning, Jr.

From: John A. Henning, Jr. <jhenning@planninglawgroup.com>
Sent: Monday, June 14, 2021 4:24 PM
To: 'Jennifer Klein'
Cc: 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

As I explained in my June 8 email to Ms. Herrera, the code section you have cited does not confer jurisdiction to the Planning Commission because it requires multiple "related applications," and there is only one application here. The code section states, in relevant part (with emphasis supplied):

Sec. 26-92-060. - Concurrent processing of related applications.

Where a development project requires multiple approvals from different decision making bodies authorized to act under this chapter and Chapter 25 or 26C of the Sonoma County Code, notwithstanding anything else contained in this chapter and Chapter 25 or 26C to the contrary, the following administrative rules shall be applied to achieve concurrent processing of related applications:

(a) The Sonoma County planning commission may, at the same meeting that it acts upon an application within its jurisdiction, act on a related application which would otherwise be decided by the board of zoning adjustments.

For this code section to apply there must be (a) two or more "related applications" for the same project; and (b) at least one "application" already within the jurisdiction of the planning commission. When both of these circumstances exist the planning commission "may," at the same meeting, act upon a separate "related application" that would otherwise be decided by the BZA.

Thus, for example, if a project involves an application for a conditional use permit (to be decided by the BZA) and a related application for a rezoning (to be decided by the planning commission), the planning commission "may," at the same meeting, act upon both related applications.

As I stated in my June 8 email to Ms. Herrera, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA. As evidence of this, there is only one application number, i.e., "UPE19-0083".

It may be tempting to define "design review" as a separate "application," but to my knowledge in this case there was no separate "application" for design review filed by the applicant. Hence, unlike cases with the prefix "ADR" or "DRH" – reflecting separate design review applications – here there was no design review application number. Instead, staff determined administratively that design review should be conducted and presented the use permit application to the Design Review Committee for review. At most, this process led to a "preliminary recommendation" by the DRC to the BZA. Both Marina Herrera, the project planner, and Luke Bowman, your Deputy County Counsel, have emphasized this fact in their respective emails to me concerning the appealability of the DRC decision.

It may also be tempting to contend that the DRC decision was an "approval" of the project and that on that basis alone it comes within the ambit of 26-92-060(a). Initially, it is questionable whether a "preliminary recommendation" by the DRC qualifies as an "approval" at all, and Mr. Bowman's strenuous argument in his May 27, 2021, email to me that the DRC did not make a "decision" at all strongly contradicts any notion that the DRC rendered an "approval." However,

even if the DRC decision was an "approval," that alone would not trigger section 26-92-060(a), because the there was no "application" made for design review.

First, the very title of the code section at issue is "Concurrent processing of related applications." Not related "approvals."

Second, as quoted above, the first sentence of section 26-92-060 states, in relevant part: "Where a development project requires multiple approvals from different decision making bodies . . . the following administrative rules shall be applied to achieve concurrent processing of related applications". Under this language, the mere fact that a project requires "multiple approvals from different decision making bodies" is not sufficient to transfer jurisdiction from the BZA to the planning commission. Rather, the administrative rules to be applied (including the rule at issue, set out in subsection (a)) "shall be applied to achieve concurrent processing of related applications".

In sum, for section 26-92-060(a) to apply at all, there must be "related applications," not just "multiple approvals from different decision making bodies." There are not related applications here, so the provision allowing transfer of jurisdiction to the planning commission does not apply.

I urge you to reconsider the path you are presently on. My client has an absolute right under the County code to have the application heard by the Board of Zoning Adjustments. If the planning commission acts on the underlying use permit application rather than the BZA, its action would be null and void and any approval of the application would be subject to legal challenge in court, regardless if it is later ratified by the Board of Supervisors on appeal.

I await a meaningful reply to the above points.

Best,

John

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202
Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: Jennifer Klein [mailto:Jennifer.Klein@sonoma-county.org]
Sent: Monday, June 14, 2021 1:34 PM
To: 'John A. Henning, Jr.'
Cc: Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Dear Mr. Henning:

The County intends to move forward with concurrent processing and review by the Planning Commission as scheduled in accordance with section 26-92-060(a).

Regards,

Jennifer C. Klein
Chief Deputy County Counsel
County of Sonoma
575 Administration Drive, 105A
Santa Rosa CA 95403
Tel. (707)565-2421
Dir. (707)565-6007
Fax (707)565-2624

From: John A. Henning, Jr. <jhenning@planninglawgroup.com>
Sent: Monday, June 14, 2021 1:05 PM
To: Jennifer Klein <Jennifer.Klein@sonoma-county.org>
Cc: Marina Herrera <Marina.Herrera@sonoma-county.org>; Elaine Murillo <Elaine.Murillo@sonoma-county.org>; Hannah Spencer <Hannah.Spencer@sonoma-county.org>; Cecily Condon <Cecily.Condon@sonoma-county.org>; Scott Orr <Scott.Orr@sonoma-county.org>; Luke Bowman <Luke.Bowman@sonoma-county.org>
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

EXTERNAL

Ms. Klein –

I continue to await some explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit application rather than the Board of Zoning Appeals.

Please reply at your earliest opportunity, as the Planning Commission hearing is this Thursday.

Thank you.

Regards,

John Henning

_____

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202
Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: John A. Henning, Jr. [mailto:jhenning@planninglawgroup.com]
Sent: Thursday, June 10, 2021 1:03 PM
To: 'Jennifer Klein'

Cc: 'Marina Herrera'; 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Scott Orr'; 'Luke Bowman'
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Ms. Klein –

I recognize that we can appeal any Planning Commission decision to the Board of Supervisors. However, this right of appeal does not protect my client's rights, and it does not respond to my previous communication to Ms. Herrera. Regardless of any appeal rights my client may have, the Board of Zoning Adjustments has original jurisdiction over the permit, and my client and other members of the public have the right to present their case to the BZA first. I would appreciate your replying with an explanation of the legal authority by which you believe that the Planning Commission has jurisdiction over this permit rather than the BZA.

Thank you.

Regards,

John Henning

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202
Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: Jennifer Klein [mailto:Jennifer.Klein@sonoma-county.org]
Sent: Thursday, June 10, 2021 12:54 PM
To: John A. Henning, Jr.
Cc: Marina Herrera; Elaine Murillo; Hannah Spencer; Cecily Condon; Scott Orr; Luke Bowman
Subject: Re: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Dear Mr. Henning,

If you object to the Planning Commission's action on the appeal or the permit, then you may appeal either or both to the Board of Supervisors.

Best Regards,
Jennifer Klein
Chief Deputy County Counsel

Sent from my iPhone

On Jun 10, 2021, at 12:02 PM, John A. Henning, Jr. <jhenning@planninglawgroup.com> wrote:

EXTERNAL

Marina –

I have received no reply to my email below. Would you please advise when I will hear from someone at the County about this?

Thanks.

Best,

John Henning

_____

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202
Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: John A. Henning, Jr. [mailto:jhenning@planninglawgroup.com]
Sent: Tuesday, June 08, 2021 3:15 PM
To: 'Marina Herrera'
Cc: 'Elaine Murillo'; 'Hannah Spencer'; 'Cecily Condon'; 'Marina Herrera'; 'Jennifer Klein'; 'Scott Orr'; 'Luke Bowman'
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Marina –

Thank you for your reply. We received a courtesy notice of the Planning Commission hearing by email yesterday. We are pleased that the Planning Commission is hearing our appeal of the recommendation from the Design Review Committee. However, I do not understand by what authority the Planning Commission would hear the underlying use permit application, rather than the Board of Zoning Adjustments.

Under section 26-92-070 of the code use permits are to be issued by the Board of Zoning Adjustments, except in the PC district.

When there are multiple "applications" for the same project and the planning commission has jurisdiction over one of them, section 26-92-060(a) confers jurisdiction to the planning commission over a related application that would otherwise be heard by the BZA. However, there are not multiple applications here. There is only a single application for a use permit, which is considered first by the DRC (for the limited purposes of a design recommendation) and then by the BZA.

Other than the above-referenced code section, I am unaware of any provision of the code by which the planning commission can assume jurisdiction over a single application that would otherwise be heard by the BZA. (Contrast this with the express provisions granting the Board of Supervisors authority to

assume “original jurisdiction” over an application under section 26-92-155, or over multiple related applications or approvals pursuant to that section and section 26-92-060(c).) Even if there were such a provision, the planning commission has not met to discuss the question of whether jurisdiction is properly assumed in this case, as the Board of Supervisors would be required to do to exercise its original jurisdiction over related approvals.

I am also unaware of any provision by which the County staff, the Planning Director or County Counsel can divest the BZA of jurisdiction over an application and confer such jurisdiction to the Planning Commission.

Please reply to explain your position on this to me as soon as possible.

Pending your reply, my client strenuously objects to this case being heard by the Planning Commission for anything other than the appeal of the Design Review Committee’s decision, and further insists that the BZA hear the underlying use permit application after the design review appeal has been heard by the Planning Commission and a proper design recommendation has been made by the Planning Commission to the BZA.

I am copying the same people who were included in recent correspondence about our appeal to the Planning Commission, in case any of them can respond.

Thank you.

Regards,

John Henning

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202
Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: Marina Herrera [mailto:Marina.Herrera@sonoma-county.org]
Sent: Tuesday, June 08, 2021 1:53 PM
To: 'John A. Henning, Jr.'
Cc: Elaine Murillo
Subject: RE: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

John,

The project has been removed from the 6/10 BZA Agenda and has been rescheduled for the 6/17 Planning Commission to address both the appeal and the use permit. You will be receiving notice of this meeting.
Stay safe, be well & talk soon,

Marina Herrera
Planner III
www.PermitSonoma.org
County of Sonoma
2550 Ventura Avenue, Santa Rosa, CA 95403
Direct: 707-565-2397 |
Office: 707-565-1900 | Fax: 707-565-1103

Due to the Public Health Orders, online tools remain the best and fastest way to access Permit Sonoma's services like permitting, records, scheduling inspections, and general questions. You can find out more about our extensive online services at PermitSonoma.org.

***OFFICE HOURS**: The Permit Center has reopened with limited capacity and modified hours. Monday, Tuesday, Thursday, Friday: 9:00 AM – 1:00 PM; Wednesday, 12:00 PM – 4:00 PM.*

Thank you for your patience as we work to keep staff and the community safe.

From: John A. Henning, Jr. <jhenning@planninglawgroup.com>
Sent: Monday, June 7, 2021 2:28 PM
To: Marina Herrera <Marina.Herrera@sonoma-county.org>
Cc: Elaine Murillo <Elaine.Murillo@sonoma-county.org>
Subject: FW: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

EXTERNAL

Marina –

I received the courtesy notice for the BZA hearing on June 10 (attached) and yet there is no mention of this item on the agenda located at https://share.sonoma-county.org/link/hAWXH5q1byM/20210610%20BZA%20Agenda.pdf and https://sonomacounty.ca.gov/Board-of-Zoning-Adjustments/Calendar/Board-of-Zoning-Adjustments-Meeting-June-10-2021/ .

Would you please confirm whether this item has been removed from the agenda?

I am copying Elaine Murillo as well, in case she can respond.

Thank you.

Best,

John Henning

_____

John A. Henning, Jr.
Attorney at Law
125 N. Sweetzer Ave. Unit 202

Los Angeles, CA 90048

Ph. (323) 655-6171
Fax (323) 655-6109
jhenning@planninglawgroup.com

From: Elaine Murillo [mailto:Elaine.Murillo@sonoma-county.org]
Sent: Friday, May 28, 2021 9:14 AM
To: Gina Belforte; Jacquelynne Ocana; Sean Hamlin; Scott Orr; Cecily Condon; Jennifer Klein; Sita Kuteira; Christa Shaw; Ivan Jimenez; 'mkim@completewireless.net'; 'JWoolf@sbasite.com'; 'jhenning@planninglawgroup.com'
Cc: Marina Herrera
Subject: UPE19-0083; 4515 Santa Rosa Avenue, Santa Rosa - BZA Legal Notice

Good Morning,

Please see attached BZA Legal Notice for project referenced in the project line above.
If you have any questions please feel free to contact the project planner at Marina.Herrera@sonoma-county.org.

Thank you,

Elaine Murillo
Administrative Assistant
County of Sonoma
2550 Ventura Avenue, Santa Rosa, CA 95403
Direct: 707-565-1935 **|**
Office: 707-565-1900 **|** Fax: 707-565-1103
www.PermitSonoma.org

<image001.jpg>

Due to the Public Health Orders, online tools remain the best and fastest way to access Permit Sonoma's services like permitting, records, scheduling inspections, and general questions. You can find out more about our extensive online services at PermitSonoma.org.
The Permit Center has reopened with limited capacity and modified hours. Monday, Tuesday, Thursday, Friday: 9:00 AM – 1:00 PM; Wednesday, 12:00 PM – 4:00 PM.

Thank you for your patience as we work to keep staff and the community safe.

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EXHIBIT B

333 SANTA ROSA, LLC

April 15, 2020

Design Review Committee
c/o Marina Herrera, Project Planner
County of Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403
Marina.Herrera@sonoma-county.org

RE: Case No. UPE-19-0083 (cell tower at 4515 Santa Rosa Ave., Santa Rosa) (Design Review Committee hearing date April 21, 2021)

Honorable Committee Members –

I am the manager of 333 Santa Rosa LLC, the owner of the real property located at 4291 Santa Rosa Avenue, Santa Rosa, CA. Our property is the site of the existing SBA telecommunications tower that is approximately 750 feet away from the proposed project referenced above.

On February 11, 2021, I sent a letter to your Committee in which I stated that we were not interested in leasing any additional space on our property to SBA for the expansion of the existing cell site to accommodate AT&T.

Since that time, we have come to agreement with SBA on the primary terms of an amendment to our ground lease to accommodate the AT&T equipment. **We now expect to arrive at a mutually acceptable agreement on all terms within the next several weeks.** As I understand, it, once a ground lease is signed there would be no significant impediment to SBA and AT&T reaching agreement on an overall lease for the site.

In light of this, any statements made by the applicant, Complete Wireless Consulting, Inc. – whether in the original application materials or in more recent communications to the County – indicating that it would be infeasible for AT&T to co-locate its equipment on our property, do not appear to be supported.

• 3940 LAUREL CANYON BOULEVARD. STUDIO CITY. CA 91604 •
TELEPHONE: 310.204.3323 • FAX: 888.333.1968
333INVESTMENTS@GMAIL.COM

Indeed, notwithstanding any statements to the contrary in the project application, expanding the ground equipment lease area and associated construction will not displace any structures, parking or other aspects of the existing operation on the property, which is a towing company that has plenty of room for its operations. Although another carrier might require a new ground lease, the addition of equipment to the ground area or the tower would not require the removal of parking, and it would not impact business during construction. Further, the towing company's lease is expressly subject to our lease with AT&T and allows us as the property owner to freely expand the ground lease area without further consent from the tenant.

I hope that this letter clarifies our position on this project. Should you have any questions, please contact me at 310.204.3323.

Best Regards,

Andrew Geller
Manager