

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO

Resolution 2020-_____

A RESOLUTION OF THE SAN BENITO COUNTY BOARD OF SUPERVISORS TO UPHOLD THE ADOPTION OF PLANNING COMMISSION RESOLUTION 2020-08, REGARDING COUNTY PLANNING FILE PLN180025, AND DENY THE SUBSEQUENT APPEAL BY STEPHEN DOBLER

WHEREAS, the subject property, 10 Flint Road (Assessor's Parcel 018-160-027), is located in unincorporated San Benito County, California, 4 miles west of the center of Hollister and 3½ miles east of the center of San Juan Bautista and contains 10 acres with an orchard and agricultural packing facilities, and owned by Anthony J. Botelho and Susan Botelho; and

WHEREAS, John Merritt, Horizon Tower, LLC, filed an application the use permit application PLN180025 on June 12, 2018, to install a new wireless telecommunications facility composed of a 95-foot-tall tower on a 2,400-square-foot lease area (60 feet by 40 feet) to support two omnidirectional antennas for transportations communications, two microwave dishes, and three future wireless telecommunications carriers; and

WHEREAS, initial use of the facility is intended to provide truck transportation with wireless communication serving needs for reliability along and near the interregional transportation corridor of State Route 156; and

WHEREAS, the subject parcel has a General Plan land use designation of Agriculture (A) and a zoning designation of Agricultural Productive (AP), the latter allowing radio transmission and related structures under a conditional use permit per San Benito County Code §25.07.022; and

WHEREAS, the Planning Commission of the County of San Benito held a duly noticed public hearing at its regularly scheduled meeting of June 17, 2020, on which date the Planning Commission heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing was given ample opportunity to hear and be heard with respect to any matter related to the project; and

WHEREAS, the Planning Commission hearing was publicly noticed over 10 days in advance of the hearing by publication in the June 5, 2020; Hollister *Free Lance* newspaper; mailing to owners of property within 300 feet of the subject property's boundaries; and posting in publicly accessible locations at County offices; and

WHEREAS, the Planning Commission of the County of San Benito, in its independent judgment, found the proposed activity to qualify for an exemption from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Class 3 of Categorical Exemptions (California Code of Regulations §15303, New Construction or Conversion of Small Structures), provided compliance with conditions of approval; and

WHEREAS, at the conclusion of the public testimony, the Planning Commission closed its public hearing, deliberated, considered the merits of the proposal and evidence in the record, and adopted Planning Commission Resolution 2020-08 to approve the project subject to conditions of approval; and

WHEREAS, Planning Commission Resolution 2020-08 cited County General Plan policies that the proposal would support, including Policy ED-3.4 (wireless facilities as economic development priority), Policy LU-3.6 (support to agriculture), Policy PFS-9.1 (facilitation of the public's use of telecommunications technology), Policy PFS-9.6 (potential co-location by three wireless service providers at the facility beyond the initial user), and Policy PFS-9.10 (extension or boosting of rural broadband service); and

WHEREAS, Planning Commission Resolution 2020-08 further cited the tower's initial omnidirectional antennas' potential to serve communication needs for local and interregional truck transportation and benefit the operators and customers of these trucking services; and

WHEREAS, Planning Commission Resolution 2020-08 further cited the proposed new wireless telecommunications facility potential to expand services to locations where existing facilities in the area are limited by terrain and distance; and

WHEREAS, Planning Commission Resolution 2020-08 further acknowledged that, in accordance with County Code §7.11.004(H), the proposed omnidirectional antennas and microwave dishes would not add obtrusive visual impact beyond the presence of the maximum three groupings of antennas for wireless telephone and broadband internet service; and

WHEREAS, within the time and manner prescribed by law, Stephen Dobler, on behalf of Dobler Ranches ("appellant"), filed an appeal to the Board of Supervisors to contest the Planning Commission's June 17, 2020, decision; and

WHEREAS, the appellant cited effects on aesthetics, health, and property value, in addition to assertion of the tower's unnecessary for the purpose of signal strength and quality, as objections; and

WHEREAS, the administrative record was forwarded and made available to the Board of Supervisors, including but not limited to the staff report, relevant communications, and any other relevant documents in the County Resource Management Agency Planning files regarding the project; and

WHEREAS, the Board of Supervisors on August 4, 2020, conducted a duly noticed public hearing regarding the appeal of the Planning Commission decision of June 17, 2020, and at the hearing the Board heard and received all oral and written testimony and evidence that was made, presented, or filed, and all persons present at the hearing were given an opportunity to hear and be heard with respect to any matter related to the appeal; and

WHEREAS, at the conclusion of the public testimony, the Board of Supervisors closed its public hearing, deliberated, and considered the merits of the proposal,

NOW THEREFORE BE IT RESOLVED by the Board of Supervisors that, based on the evidence presented for appeal before the Board of Supervisors, on the findings and determinations by the Planning Commission and the Board of Supervisors, and on the entire record of these proceedings, the Board further finds the following regarding the issues raised by the appellant:

1. **On tower facility aesthetics:** The appellant notes visibility to the highway corridor and potential shadow cast on San Juan School, a historic resource.
 - **Response:** The tower and its functional appearance would be visible to the highway corridor 500 feet to its south but set among similarly functional agricultural buildings and overhead utility poles. State Route 156 has not been officially designated as a scenic highway by the State of California or by San Benito County. While County Code §7.11.007(G) few realistic options exist for design to disguise the tower and its functions. The San Juan School house is one quarter-mile west-southwest of the tower, which would briefly cast a narrow shadow upon or near the house only in the early morning during brighter summer months.

2. **On human health:** The appellant expresses concern of health effects to agricultural employees housed within 600 feet of the tower.
 - **Response:** Federal law limits consideration of health effects from radio-frequency energy under Telecommunications Act of 1996, Section 704 (47 United States Code §332(c)(7)(B)(iv)). Under this law, proposals for these facilities are not to be decided on the basis of environmental effects from radio frequency emissions provided the equipment is compliant with Federal Communications Commission regulations on these emissions. County Code §7.11.012 states that wireless facilities, whether individually or together with other facilities, are prohibited from exceeding FCC-adopted guidelines for permissible human exposure to electromagnetic radiation, with radio frequency and microwave radiation being non-ionizing. The applicant attests in writing to compliance with the FCC guidelines, however the applicant is unable to specify the transceiver equipment, frequencies, and power levels for radio system for interregional truck transportation operators and customers of these trucking services. A condition of approval shall be required that a report be submitted by an independent licensed radio frequency engineer attesting to compliance with FCC guidelines prior to issuance of a building permit. In addition, the employee dwelling would be beyond the County Code §7.11.005 500-foot minimum distance between a wireless facility and the nearest residences.

3. **On property value:** The appellant states that the proximity to the tower could diminish property value at a time when the neighboring property owner seeks a permit to remodel or expand farmworker housing.
 - **Response:** Current housing surrounding the tower, with the exception of the residence on the tower's property, all stand more than the County Code §7.11.005 500-foot minimum distance between a wireless facility and the nearest residences. This code section also limits the location of the tower itself and does not mandate restricting the location of surrounding housing. With regard to property value, the appellant has not submitted any evidence of the difference between future value with the tower present and that without the tower present. Any finding in support of the appeal would have to be based on substantial evidence in the record on appeal.

4. **On tower's unnecessary for signal strength and quality:** The appellant describes no diminishing of signal in the area where the tower is intended to fill a gap.

- **Response:** The tower would initially serve truck transportation in particular as part of a network of wireless facilities to manage truck fleets and maintain reliability in their operations, a purpose different from the general public's use of cellular telephone wireless facilities. Signal mapping is available showing diminished signal along this portion of Route 156 for some commonly used wireless phone carrier services that would find space to co-locate equipment on the tower.

NOW THEREFORE BE IT RESOLVED that, based on the evidence in the record, the Board of Supervisors of the County of San Benito hereby reaffirms the California Environmental Quality Act (CEQA) Finding and the Use Permit Findings as found by the Planning Commission at its meeting of June 17, 2020, in Planning Commission Resolution 2020-08; and

BE IT FURTHER RESOLVED that, based on the foregoing findings and evidence in the record, the Board of Supervisors hereby denies the appellant's request to reverse the adoption of Planning Commission Resolution 2020-08 and its approval of the project subject to the findings and conditions of approval included therein, and as modified in finding number 2, above.

PASSED AND ADOPTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BENITO THIS 4TH DAY OF AUGUST 2020 BY THE FOLLOWING VOTE:

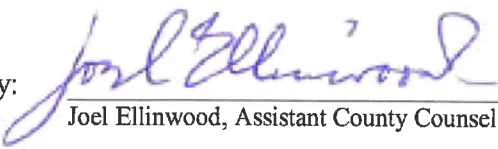
AYES Supervisor(s):
NOES Supervisor(s):
ABSENT Supervisor(s):
ABSTAIN Supervisor(s):

By: _____
Jaime De La Cruz, Chair of the Board of Supervisors

ATTEST:

APPROVED AS TO LEGAL FORM

By: _____
Janet Slibsager, Clerk of the Board of Supervisors

By:  _____
Joel Ellinwood, Assistant County Counsel

Date: _____

Date: August 4, 2020