



Board Agenda Item 11

DATE: February 25, 2020

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Initial Study No. 7611 and Unclassified Conditional Use Permit Application No. 3648
(Applicant/Appellant: Jason Osborne/Crown Castle)

RECOMMENDED ACTION(S):

1. **Consider appeal of Planning Commission's denial of Unclassified Conditional Use Permit Application (UCUP) No. 3648, proposing to allow construction of a new unmanned wireless telecommunications facility consisting of a 150-foot lattice tower with associated antennas and equipment on a 40-foot by 50-foot fenced area on a 1.45-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District; and**
2. **If the Appeal is granted and the Planning Commission's denial of Unclassified Conditional Use Permit Application No. 3648 is overturned:**
 - a) **Adopt Mitigated Negative Declaration prepared for Initial Study Application No. 7611 and approve the proposal subject to project Mitigation Measures and Conditions of Approval; and**
 - b) **Make the required Findings specified in Fresno County Zoning Ordinance, Section 873(F) for approval of the Unclassified Conditional Use Permit Application No. 3648; and**
 - c) **Adopt Resolution approving Unclassified Conditional Use Permit Application No. 3648 for a wireless communications facility, with Conditions of Approval.**

The subject property is located on the west side of South Elm Avenue approximately 1,764 feet north of its nearest intersection with East Elkhorn Avenue and approximately 3.36 miles southeast of the unincorporated community of Caruthers (SUP. DIST. 4) (APN 042-200-06S) (16629 S. Elm Avenue, Caruthers, CA).

This item comes before your Board on appeal of the Planning Commission's denial of the subject application (6 to 0, 3 Commissioners absent) at its October 10, 2019 hearing. Department of Public Works and Planning staff notes that the Zoning Ordinance requires your Board to determine, independent from the decision of the Planning Commission, whether the application should be approved, approved with stated conditions, or disapproved. A copy of the Planning Commission's action is included as Attachment A. This item pertains to a location in District 4.

ALTERNATIVE ACTION(S):

If your Board is unable to make the required Findings for granting Unclassified Conditional Use Permit (UCUP) No. 3648, a motion to deny the appeal and uphold the Planning Commission's decision, stating which Findings cannot be made and the reasoning for the inability to make those Findings, would be appropriate. Alternatively, your Board could approve the UCUP with different (or additional) conditions of approval than those recommended by Department staff.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. Pursuant to the County's Master Schedule of Fees, the Applicant/Appellant has paid \$15,112 in land use processing fees to the County for the UCUP Application request. The Appellant also paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

Appeal Procedure

Section 873(H) of the Fresno County Zoning Ordinance outlines the procedure for an appeal of the decision of the Planning Commission. Appeal hearings are "de novo," which means the application is examined anew. Pursuant to Zoning Ordinance Section 873(F), for your Board to approve UCUP No. 3648, the following Findings must be made:

1. *That the site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this Division, to adjust said use with land and uses in the neighborhood.*
2. *That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.*
3. *That the proposed use will have no adverse impact on abutting property and surrounding neighborhood or permitted use thereof.*
4. *That the proposed development is consistent with the General Plan.*
5. *That the conditions stated in the resolution are deemed necessary to protect the public health, safety, and general welfare.*

The Planning Commission Staff Report dated October 10, 2019, attached as Attachment B, provides additional project information, including Department staff's analysis of the adequacy and appropriateness of the site, and further evidence for your Board's proposed Findings. The site is on the west side of South Elm Avenue approximately 1,764 feet north of its nearest intersection with East Elkhorn Avenue and is approximately 3.36 miles southeast of the unincorporated community of Caruthers.

Background

The subject proposal entails construction of a new unmanned wireless telecommunications facility consisting of a 150-foot lattice tower with associated antennas and equipment on a 40-foot by 50-foot fenced area on a 1.45-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The existing wireless telecommunications facility located approximately 1,688 feet south of the project site will be decommissioned and removed upon completion and deployment of the new wireless telecommunications facility (Project).

At the October 10, 2019 Planning Commission hearing, public testimony was heard in support and in opposition of the Project. The Applicant/Appellant provided testimony in support of the application, stating

that the tower needed to be moved because the lease agreement with the property owner had expired and they were unable to negotiate a favorable new lease. A member of the public, representing the property owner of the existing telecommunications site, presented a letter to the Planning Commission and provided testimony in opposition of the application. One additional letter of opposition was presented to the Commission at the hearing, included in Attachment C. Those in opposition expressed concerns about loss of property value and that the Applicant/Appellant was using the application as a negotiating tool to acquire a more favorable lease agreement with the property owner of the current site. During the hearing, Commissioners expressed concerns regarding adverse impacts the proposed tower could have on surrounding single-family residential units and the need for a new tower, with an existing tower located south of the proposed facility.

After receiving Department staff's presentation and considering public testimony in support and in opposition of the subject application, the Planning Commission approved a motion to deny the Project and the associated Mitigated Negative Declaration (MND).

The Applicant/Appellant filed the appeal, included as Attachment D, on October 23, 2019, stating the appeal was based on factual errors in the interpretation of the Zoning Ordinance, the denial was in violation of Federal law, and the Findings for denial of the UCUP were not supported.

If your Board is able to make the required Findings for granting approval of UCUP No. 3648, a motion to approve the appeal based on Department staff's analysis, found in Attachment B, overturning the Planning Commission's denial of the Project would be appropriate, stating in its motion to approve the manner in which your Board can make the required Findings and that your Board is adopting the MND prepared for Initial Study (IS) No. 7611 and approving the proposal subject to project Mitigation Measures and staff's recommended Conditions of Approval shown in Attachment E. The proposed MND prepared for IS No. 7611 is included as Attachment F.

In addition, Department staff recommends inclusion of an additional Condition of Approval requiring the following:

- The Applicant/Appellant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of IS No. 7611 and UCUP No. 3648 and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.

If your Board is unable to make the required Findings for granting UCUP No. 3648, a motion to deny the appeal and uphold the Planning Commission's decision, stating which Finding(s) cannot be made and the reasoning for the inability to make the Finding(s), would be appropriate.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - F
On file with Clerk - Resolution

CAO ANALYST:

Sonia M. De La Rosa