

CITY OF SONOMA  
STATE OF CALIFORNIA

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In the Matter of the Application of

**VERIZON WIRELESS**  
For a Use Permit

**MEMORANDUM IN  
SUPPORT AND IN  
OPPOSITION**

Premises: Site 006 - Near 574-552 Fifth Street West

Site 007 - Near 550 Second Street West

Site 012 - Near 25 McDonell Street

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**MEMORANDUM IN SUPPORT AND IN OPPOSITION**

Respectfully Submitted,

Lin Marie deVincent & Mark Marthaler  
Representing the Community of Sonoma Neighbors for Safe Tech.

## Table of Contents

Preliminary Statement .....	1
<b>POINT I</b>	
It is Beyond Dispute That the Facilities which <i>Verizon</i> seeks to Install at Sites 006, 007, 012 are Not Necessary For <i>Verizon</i> <u>To Provide Personal Wireless Services Within the City</u> .....	2
A. <i>Verizon's</i> Own Data Conclusively Establishes That it Does Not Suffer From Service Gaps at The Precise Locations <u>Where it Seeks to Install Small Cells 006, 007, and 012</u> .....	3
(i) <i>Verizon's</i> Data for Site "006" .....	4
(ii) <i>Verizon's</i> Data for Site "007" .....	5
(iii) <i>Verizon's</i> Data for Site "012" .....	6
B. <i>Verizon</i> has Wholly Failed to Provide Any Credible Evidence, Whatsoever, To Establish That There is a Need for the Proposed Facilities or That There Would be Any Public Benefit to Be <u>Derived from the Construction of Same</u> .....	7
<b>POINT II</b>	
<i>Verizon's</i> Application Must be Denied, Because It Has Failed to Demonstrate That the Imposed Conditions <u>Violate the Telecommunication Act of 1996.</u> ....	11
<b>POINT III</b>	
<i>Verizon's</i> Application Must be Denied, Because the Proposed Facilities Would Inflict The Exact Types of Adverse Impacts Which The City of Sonoma's Code Was Specifically Enacted to Prevent .....	13
A.    The Proposed Installation Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon <u>the Aesthetics and Character of The Area</u> .....	13
(i) <i>Verizon's</i> Photo-Simulations Are Inherently Defective And Should be Disregarded Entirely .....	14
(ii)   Evidence of the Actual Adverse Aesthetic Impacts Which the Proposed Installations Would Inflict Upon the Nearby Community ....	15
B.    The Proposed Installations Will Inflict Substantial and Wholly Unnecessary Losses in the Values of the <u>Adjacent and Nearby Properties</u> .....	16

<b>POINT IV</b>	§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow <i>Verizon</i> to Increase the Height of the Proposed <u>Facilities Without Additional or Prior Zoning Approval</u> . . . . .	17
<b>POINT V</b>	Contrary to Any Baseless Suggestion Otherwise, There is No Federal Law, Rule or Regulation Which Compels the Council to Grant <i>Verizon's</i> Application, <u>Nor Prohibits The Council From Denying it</u> . . . . .	19
<b>POINT VI</b>	To Comply With the Telecommunications Act of 1996 (TCA), <i>Verizon's</i> Application Should Be Denied in a Written Decision Which <u>Cites the Evidence Provided Herewith</u> . . . . .	23
	A. The Written Decision Requirement . . . . .	23
	B. The Substantial Evidence Requirement . . . . .	23
<b>Conclusion</b> . . . . .		24

### **Preliminary Statement**

Verizon Wireless (hereinafter "*Verizon*") seeks a Use Permit to install multiple wireless facilities in the form of Small Cell Towers within the City of Sonoma, inclusive of three proposed facilities identified by *Verizon* as "small cells" numbered 006, 007, and 012.

On or about January 23, 2020, the Planning Commission approved *Verizon's* application to install small cells number 006, 007, and 012 subject to sixteen (16) conditions. Thereafter, on or about February 3, 2020, *Verizon* appealed the Planning Commission's, January 23, 2020, decision regarding Conditions of Approval 1 and 16 to the City Council. *Verizon* appealed the Planning Commission's Condition of Approvals 1 and 16 due to its belief that the conditions violate the federal Telecommunications Act. Further, on or about February 7, 2020, Lin Marie DeVincent and Mark Marthaler filed a cross appeal requesting that the Council reject *Verizon's* application for a Use Permit and approval of site regardless of vaulting or other conditions.<sup>1</sup>

As set forth herein below, *Verizon's* Appeal of Conditions of Approval Application for a Use Permit under Section §19.54.040 of the City of Sonoma's Municipal Code should be denied. While Lin Marie DeVincent and Mark Marthaler's appeal should be granted, because there is no need for the proposed facilities, no public benefit would be derived from the installation of such facilities, and the installation of such unnecessary facilities would inflict upon the adjacent and nearby properties the precise type of adverse impacts which the Sonoma Municipal Code was specifically enacted to prevent.

As such, the individuals, on whose behalf this Memorandum is submitted, respectfully submit that the application should be denied, and they seek to ensure that it is denied in a manner which does not violate the Telecommunications Act of 1996.

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<sup>1</sup> See Lin Marie DeVincent and Mark Marthaler's appeal application dated February 6, 2020.

While violations of the Telecommunications Act of 1996 (TCA) do not enable applicants, such as *Verizon*, to recover any money damages or attorneys fees against municipalities which violate the TCA, if the City were to deny *Verizon's* application in a manner which violated the TCA, *Verizon* would be able to seek a federal court order directing the City to grant an approval for the Use Permit it seeks.

## POINT I

### It is Beyond Dispute That the Facilities which *Verizon* seeks to install at Sites 006, 007, and 012 are Not Necessary For *Verizon* To Provide Personal Wireless Services Within the City

As is set forth herein below, *Verizon's* application to appeal the Conditions of Approval required by the City prior to granting the Use Permit to construct the proposed wireless facilities it has described as Small Cells 006, 007, and 012, must be denied because: (a) *Verizon* does not "need" any of the proposed facilities to remedy any gap in their personal wireless services, and (b) concomitantly, there is no public benefit which would be derived from the installation of such wholly unnecessary installations.

Moreover, *Verizon* has wholly failed to meet the requirements for the granting of a Use Permit as well as the requirements set forth in Chapters 5.30 and 5.32 of the Municipal Code. As set forth in Section §5.30.040, a "use permit shall be required to locate or modify any wireless telecommunications facility in any zone within the city, including the public right-of-ways."

Section §5.30.010 sets forth the legislative intent of the Municipal Code. Specifically, "[t]hese regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities." Further, Section §5.30.010 details that the chapter provides "standards necessary to: (1) preserve and promote harmonious land uses and the public right-of-way in the city; (2) promote and protect public health and safety, community welfare,

visual resources, and the aesthetic quality of the city consistent with the goals, objectives and policies of the General Plan; (3) provide for the orderly, manager, and efficient development of wireless telecommunications facilities in accordance with the state and federal laws..."

As such, *Verizon's* application for a Use Permit under Chapter 19.54 of the Municipal Code should be denied as a matter of law.

As is reflected within the report submitted by the City's expert, *Verizon* does not need the proposed small cell facilities to remedy any gap in their personal wireless services. *Instead*, *Verizon* has proffered an utterly baseless claim, without any proper evidentiary support, that *Verizon* needs the proposed facilities to remedy gaps in *Verizon's* personal wireless services.

Not only has *Verizon* wholly failed to provide the evidence which is ordinarily and customarily submitted by applicants seeking zoning approvals of the type being sought by *Verizon* herein, but *Verizon's* own data conclusively establishes that *Verizon's* claims that it needs the proposed nodes to remedy alleged gaps in *Verizon's* services are patently false and without factual basis.

A. *Verizon's* Own Data Conclusively Establishes That It Does Not Suffer From Service Gaps at The Precise Locations Where it Seeks to Install Small Cells 006, 007, and 012

As is a matter of public record, *Verizon* maintains an internet website at the internet domain address of <http://www.verizonwireless.com>.

In conjunction with its ownership and operation of that website, *Verizon* contemporaneously maintains a database which contains geographic data points which cumulatively form a geography inventory of *Verizon's actual current* coverage for its wireless services.

As maintained and operated by *Verizon*, that database is linked to *Verizon's* website, and functions as the data-source for an interactive function, which enables users to access *Verizon's*

own data to ascertain both: (a) the existence of *Verizon's* wireless coverage at any specific geographic location, and (b) the level, or quality of such coverage.

*Verizon's* interactive website translates *Verizon's actual coverage data* to provide imagery whereby areas which are covered by the *Verizon's* service are depicted in red, and areas where *Verizon* has a lack (or gap) in coverage, are depicted in white.

Contemporaneously, the website further translates the data from *Verizon's* database to specify the actual *service level* at any specific geographic location. As categorized by *Verizon*, *Verizon's* service levels ranging from worst to best are: Service Not Available, Fair, Good and Excellent.

(i) *Verizon's Data for Site "006"*

Exhibit "A" which is being submitted together with this Memorandum is a true copy of a record obtained from *Verizon's* website<sup>2</sup> on June 4, 2020.

This Exhibit depicts the specific geographic location at which *Verizon* seeks to install Site "006" under the claim that *Verizon* "needs" such wireless facility to provided improved wireless voice and data coverage to the surrounding areas, increase capacity needs, and remedy a gap in *Verizon's* 4G personal wireless service at such location.

As reflected within Exhibit "A," *Verizon's* own data reflects that there is no significant coverage gap in *Verizon's* 4G service at that location, or anywhere around or in close proximity to it.

Moreover, Exhibit "A" additionally reflects that the quality and/or strength of *Verizon's* 4G coverage at that location is "excellent," meaning that the level of *Verizon's* coverage at that location is the best level of coverage *Verizon* has at any location, whatsoever.

Exhibit "A" additionally reflects that such coverage data is current as of June 4, 2020

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<sup>2</sup> <http://www.verizonwireless.com>.

(See the upper left corner of Exhibit "A"), and the ledger on the bottom left of the page confirms that its source was, in fact, *Verizon's* internet website.

Since the basis upon which *Verizon* claims that Site "006" is *necessary*, is to improve wireless voice and data coverage in the surrounding area, and *Verizon's* own data conclusively establishes that quality and/or strength of *Verizon's* coverage at that location is "excellent," there is no need for the proposed facility, no public benefit would be derived from the installation of the facility, and concomitantly *Verizon's* application for a Use Permit to construct such facility should be denied.

(ii) *Verizon's* Data for Site "007"

Exhibit "B" which is being submitted together with this Memorandum is a true copy of a record obtained from *Verizon's* website<sup>3</sup> on June 4, 2020.

This Exhibit depicts the specific geographic location at which *Verizon* seeks to install Site "007" under the claim that *Verizon* "needs" such wireless facility to provided improved wireless voice and data coverage to the surrounding areas, increase capacity needs, and remedy a gap in *Verizon's* 4G personal wireless service at such location.

As reflected within Exhibit "B," *Verizon's* own data reflects that there is no significant coverage gap in *Verizon's* 4G service at that location, or anywhere around or in close proximity to it.

Moreover, Exhibit "B" additionally reflects that the quality and/or strength of *Verizon's* 4G coverage at that location is "excellent," meaning that the level of *Verizon's* coverage at that location is the best level of coverage *Verizon* has at any location, whatsoever.

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<sup>3</sup> <http://www.verizonwireless.com>.



Exhibit "B" additionally reflects that such coverage data is current as of June 4, 2020 (See the upper left corner of Exhibit "B"), and the ledger on the bottom left of the page confirms that its source was, in fact, *Verizon's* internet website.

Since the basis upon which *Verizon* claims that Site "007" is *necessary*, is to improve wireless voice and data coverage in the surrounding area, and *Verizon's* own data conclusively establishes that quality and/or strength of *Verizon's* coverage at that location is "excellent," there is no need for the proposed facility, no public benefit would be derived from the installation of the facility, and concomitantly *Verizon's* application for a Use Permit to construct such facility should be denied.

(iii) *Verizon's* Data for Site "012"

Exhibit "C" which is being submitted together with this Memorandum is a true copy of a record obtained from *Verizon's* website<sup>4</sup> on June 4, 2020.

This Exhibit depicts the specific geographic location at which *Verizon* seeks to install Site "012" under the claim that *Verizon* "needs" such wireless facility to provided improved wireless voice and data coverage to the surrounding areas, increase capacity needs, and remedy a gap in *Verizon's* 4G personal wireless service at such location.

As reflected within Exhibit "C," *Verizon's* own data reflects that there is no significant coverage gap in *Verizon's* 4G service at that location, or anywhere around or in close proximity to it.

Moreover, Exhibit "C" additionally reflects that the quality and/or strength of *Verizon's* 4G coverage at that location is "excellent," meaning that the level of *Verizon's* coverage at that location is the best level of coverage *Verizon* has at any location, whatsoever.

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<sup>4</sup> <http://www.verizonwireless.com>.

Exhibit "C" additionally reflects that such coverage data is current as of June 4, 2020 (See the upper left corner of Exhibit "C"), and the ledger on the bottom left of the page confirms that its source was, in fact, *Verizon's* internet website.

Since the basis upon which *Verizon* claims that Site "012" is *necessary*, is to improve wireless voice and data coverage in the surrounding area, and *Verizon's* own data conclusively establishes that quality and/or strength of *Verizon's* coverage at that location is "excellent," there is no need for the proposed facility, no public benefit would be derived from the installation of the facility, and concomitantly *Verizon's* application for a Use Permit to construct such facility should be denied.

B. *Verizon* has Wholly Failed to Provide Any Credible Evidence, Whatsoever, To Establish That There is a Need for the Proposed Facilities or That There Would be Any Public Benefit to Be Derived from the Construction of Same

Glaringly absent from *Verizon's* application is any evidentiary submissions which are ordinarily and customarily provided by applicants seeking to construct wireless facilities within virtually any jurisdiction within the Country.

Where, as here, an applicant seeks to proffer that the installation of the proposed facilities are "necessary" to provide improved wireless voice and data coverage, increase coverage and remedy some alleged significant gap in personal wireless services, or to provide some public benefit, such applicant will, virtually without exception, provide competent proof that such a gap exists, or that a specific benefit would be derived from the installation of their proposed facility.

The most common forms of such evidence are: (a) drive test results,<sup>5</sup> (b) RF engineer

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<sup>5</sup> Perhaps the most common tool employed to ascertain the existence, location and extent of gaps in personal wireless services, the drive test consists of attaching a recording device to a cell phone, which records actual wireless signal strengths every few milliseconds. The tester then drives through a geographic area, while the device records the signal strengths through the area. In a one to two hour drive, the device can record hundreds of thousands of signal strength records, thereby providing an accurate record of any gaps in service, and the precise location and extent of each such

reports with dropped-call data, from the RF engineers of the provider who actually suffers from a gap in their personal wireless services, or (c) dropped call records.

Significantly, the reason these specific types of evidence are customarily provided by applicants is because: (a) drive test data is not based upon “computer modeling” or hypothetical propagation maps, but instead is based upon real-time testing of the actual signal strengths which exist at the precise locations being considered, (b) dropped called data is similarly based on actual, and not “estimated” data, and (c) both forms of evidence are extremely inexpensive to compile.

Where gaps in coverage are the problem which an applicant seeks to remedy, the drive test data is the evidence most commonly presented, because such evidence shows the existence of the gap or gaps, as well as their precise location and extent.

By contrast, where capacity is the problem, applicants will provide dropped call records as evidence that their system lacks sufficient capacity to handle the volume of personal wireless communications, making a new proposed installation necessary to remedy such deficiency in capacity.

Not surprisingly, *Verizon* has not provided any of these forms of evidence simply because, as clearly addressed hereinabove, improved coverage is not needed, there are no gaps in *Verizon's* service, and no public benefit would actually be derived from the installations being proposed by *Verizon* as Sites "006", "007" and "012".

Incredulously, instead of providing the above-referenced types of evidence which most applicants across the Country provide, *Verizon* has provided coverage area maps which affirmatively confirms that all of the “maps” it has submitted were created through the use of a

design group.

The maps presented were not actually based on any hard data recorded from any actual drive test, simply because no such drive test was conducted. Concomitantly, the maps do not possess any probative value in establishing: (a) the existence of any location of any significant gap in personal wireless service, or are suffering in any capacity deficiency, much less (b) the location and geographic size of any actual gap in service or area suffering from a capacity deficiency.

Without providing a shred of hard data to support the same, and after manipulating the actual data, *Verizon* arrived at what was undoubtedly their pre-determined conclusion that *Verizon* “needs” the proposed small cells.

This is an especially glaring defect, since it is apparent that no drive test was ever conducted by *Verizon*, and accordingly, there would be no way to obtain an accurate recording of the “signal strengths” which are purportedly listed in the Legend being proffered, without any evidentiary basis, whatsoever, by *Verizon*.

Simply stated, *Verizon* has wholly failed to provide any credible evidence as to what the “maps” actually show, and the source of the data it purports to display with such depiction.

As such, it is entirely void of evidentiary value, especially in light of the fact that what *Verizon* purports *its* coverage to be, is directly contradicted by *Verizon*'s own data, as is documented within Exhibits “A,” “B” and “C” being submitted herewith and with the reports from the City's own expert as detailed below.

The City of Sonoma had their own experts review *Verizon's* original and revised Small Cell Wireless Applications and prepare a report. In addition to reviewing *Verizon's* application the City's experts also conducted on-site field tests. The results of those on-site field tests revealed that the current network provides adequate coverage. Specifically, “[o]ur signal intensity measurements confirm that Verizon's existing network delivers a signal level that is

mostly adequate to support a high level of connectivity and service."<sup>6</sup>

Further, in August 2018, the City's experts conducted drive test measurements of signal levels, which *Verizon* has failed to do, on primary roads in and near the proposed small cell deployment areas. The results of the drive test were on the "day on which testing was conducted, we experienced no disconnects and no interruption in the connection to the 4 LTE network service."<sup>7</sup>

Since *Verizon* has wholly failed to provide documentation that demonstrates the public necessity of the wireless telecommunication facilities at the locations proposed, *Verizon's* application for a Use Permit should be denied as a matter of law.

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<sup>6</sup> See page 9 of "ctc technology & energy engineering & business consulting" report dated September 2019.

<sup>7</sup> See pages 9 and 10 of "ctc technology & energy engineering & business consulting" report dated September 2019.

## POINT II

### *Verizon's Appeal Application Must be Denied, Because it Has Failed to Demonstrate That the Imposed Conditions Violate the Telecommunication Act of 1996*

As stated above, on or about February 3, 2020, *Verizon* appealed the Planning Commission's, January 23, 2020, decision regarding Conditions of Approval 1 and 16 to the City Council. *Verizon* filed an appeal against the Planning Commission's Condition of Approvals 1 and 16 due to its unsupported and baseless conclusion that the decision violates the federal Telecommunications Act.

Following the meeting held on January 23, 2020 the Planning Commission issued several "Conditions of Project Approval." One of the conditions that the Planning Commission placed on *Verizon*, was the requirement to place "the radio" in an underground vault.

Pursuant to Section §5.32.110(B)(4) of the Sonoma Municipal Code, Telecommunication support facilities "shall be constructed out of non-reflective materials and *shall be placed in underground vaults to extent possible.*" §5.32.110 provides that "[t]he city shall have authority to require special design of the telecommunications facilities where findings of particular sensitivity are made (e.g., proximity to historic or aesthetically significant structures, views and/or community features)." Additionally, Section 19.62.100 of the Sonoma Municipal Code requires the new subdivision developments underground their utility infrastructure in the absence of physical conditions making undergrounding unreasonable or impractical.

The City of Sonoma Planning Council, determined that *Verizon* had not demonstrated that placing the radio in an underground vault is not possible. *Verizon* however, argues that the City's Condition constitutes an unlawful prohibition of service pursuant to 47 U.S.C. §332(c)(7)(B)(i)(II), which states that local government regulation of wireless facilities "shall not prohibit or have the effect of prohibiting" the provision of personal wireless service.

"Aesthetic concerns may be a valid basis for denial of a permit" if substantial evidence is provided. City of Rancho Palos Verdes v. Abrams, 101 Cal. App. 4th 367, 381 (2002), as modified on denial of reh'g (Sept. 11, 2002). Moreover, the Ninth Circuit held that "a plaintiff must establish either an outright prohibition or an effective prohibition on the provision of telecommunications services; a plaintiff's showing that a locality could *potentially* prohibit the provision of telecommunications services is insufficient. Sprint Telephony PCS, L.P. v. Cty. of San Diego, 543 F.3d 571, 579 (9th Cir. 2008).

Thus, an undergrounding Ordinance is only preempted if it is an "an outright prohibition or an effective prohibition on the provision of telecommunications services." NextG Networks of California v. City of Huntington Beach, No. SACV0701471ABCCTX, 2009 WL 10672783, at \*6 (C.D. Cal. Feb. 23, 2009). Similarly that court also held, "The Undergrounding Ordinance is clearly neither an outright nor effective prohibition of telecommunications services. The ordinance simply requires, save for antennas, that NextG place its lines and facilities underground. This may be costly, but it is not an outright prohibition."

Similarly here, *Verizon* in its appeal papers argues that placing the radio underground would "pose considerably more impact" and would take thirty to forty-five days rather than three to five days. However, this does not render undergrounding an outright prohibition or unreasonable. Further, *Verizon* vaguely states that placing the radio underground may compromise network reliability but does not provide any substantial or probative evidence explaining. *Verizon* has failed to demonstrate that undergrounding would be either unreasonable, impractical or effective prohibition.

### POINT III

#### *Verizon's Application Must be Denied, Because the Proposed Facilities Would Inflict The Exact Types of Adverse Impacts Which The City of Sonoma's Code Was Specifically Enacted to Prevent*

As the City of Sonoma's Code makes quite clear, the intent behind the provisions pertaining to Wireless Telecommunication Facilities, and the reason why the City implemented a Use Permit requirement for same, was to protect the City, its communities and the residents against the adverse impacts which irresponsibly placed wireless facilities would inflict upon the communities and homes within the City.

That legislative intent is codified in Section §5.32.010, which is entitled "Purpose" and explicitly states "[t]he regulations contained herein are designed to protect and promote public health, safety, community welfare and the aesthetic quality of Sonoma..." and to "[e]nsure against the creation of visual blight within or along the city's scenic corridors."

Consistent with such intent, Section §5.32.110(C) of the Code provides that wireless facilities, such as those which are currently the subject of *Verizon's* application, "shall be located so as to minimize their visibility and the number of distinct facilities present."

#### A. The Proposed Installations Will Inflict Dramatic and Wholly Unnecessary Adverse Impacts Upon the Aesthetics and Character of The Areas

Recognizing the likely adverse aesthetic impact which an irresponsibly placed wireless facility could inflict upon the communities, the City of Sonoma enacted Chapters 5.30 and 5.32 to protect aesthetic values, regulate the installation of wireless facilities and minimize adverse aesthetic and visual impacts on nearby communities.

To enable the Council to accurately assess the extent of the adverse aesthetic impacts that a proposed wireless facility would inflict upon nearby homes, the City requires pursuant to Section



§5.30.060(A) that wireless telecommunication facilities "shall be designed and maintained so as to minimize visual, noise, and other impacts on the surrounding community."

(i) *Verizon's Photo-Simulations are Inherently  
Defective and Should be Disregarded Entirely*

In an entirely hollow and disingenuous effort to comply with the City Code, *Verizon has* submitted photo-simulations pertaining to each of the sites that are the subject of this Memorandum (006, 007, and 012).

As set forth herein below, the photographic images submitted by *Verizon* are wholly defective and should be rejected in their entirety because, as *Verizon* is undoubtedly aware, they do not fulfill the function for which Chapters 5.30 and 5.32 were enacted.

As common sense would dictate, the whole purpose for which local governments require photo-simulations is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts which a proposed installation is likely to inflict upon the surrounding community.

Not surprisingly, applicants often seek to disingenuously minimize the visual impact depictions, by ***deliberately omitting*** from the photo-simulations, any images taken from the perspective of those nearby businesses which would sustain the most severe adverse aesthetic impacts.

Such is precisely the case here. The images presented by *Verizon* do not include any images taken from vantage points showing the most severe adverse aesthetic impacts.

(ii) Evidence of the Actual Adverse Aesthetic Impacts Which the Proposed Installations Would Inflict Upon the Nearby Community

As logic would dictate, the persons who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts which an irresponsibly placed wireless facility would inflict upon the nearby community are the business owners whose businesses' are located in close proximity to the proposed installations.

Consistent with same, federal Courts have consistently held that adverse aesthetic impacts are a valid basis on which to deny applications for proposed wireless facilities. *See Omnipoint Communications Inc. v. The City of White Plains*, 430 F2d 529 (2nd Cir. 2005).

Annexed collectively hereto as Exhibit "D" are letters from business owners whose businesses are in located close proximity to sites upon which *Verizon* proposes to install its Small Cells Sites 006, 007 and 012.

Within each of those letters, the business owners, personally detail the adverse aesthetic impacts that the proposed installations would inflict upon their respective business and the community as a whole. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installations are permitted to proceed.

Significantly, as is set forth hereinabove, all of the adverse aesthetic impacts which the proposed wireless facilities would inflict upon the community are entirely unnecessary, because *Verizon* does not need the proposed facilities to provide wireless services within the City.

As such *Verizon's* application for a Use Permit to construct such small cells should be denied.

B. The Proposed Installations Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Properties

In addition to the adverse impacts upon the aesthetics and character of the area at issue, the irresponsible placement of such unnecessary wireless facilities would contemporaneously inflict a severe adverse impact upon the actual value of nearby properties.

Across the entire United States, both real estate appraisers and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When wireless facilities are installed unnecessarily close to residential homes or businesses, such properties suffer material losses in value which typically range anywhere from 5% to 20%.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, as direct evidence of the reduction of property values which an irresponsibly placed wireless facility would inflict upon nearby properties, the professional opinions of licensed real estate brokers, (as opposed to appraisers) who could provide their professional opinions as to the adverse impact upon property values which would be caused by the installation of the proposed wireless facility *See Omnipoint Communications Inc. v. The City of White Plains*, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

As evidence of the adverse impact that the proposed wireless installations would have upon the property values of the businesses which would be adjacent and/or in close proximity to the small cells described herein, annexed collectively hereto as Exhibit "E" are letters setting forth the professional opinions of licensed real estate professionals.

Within each of these letters, the real estate professionals set out their professional credentials and personally submit their professional opinions that the installation of the proposed facilities would cause severe reductions in the property values of the affected properties.

Given the drastic reductions in property values that the proposed installations would inflict upon the nearby properties the granting of *Verizon's* application would inflict upon the neighborhood the very type of injurious impacts which the Municipal code was specifically intended to prevent. Accordingly, *Verizon's* application should be denied.

#### **POINT IV**

##### **§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 Would Allow *Verizon* to Increase the Height of the Proposed Facilities Without Further or Prior Zoning Approval**

As substantial as the adverse impacts upon the community will be if the proposed facilities were constructed at the heights currently proposed by *Verizon*, *Verizon* might unilaterally choose to increase the height of the poles where sites 006, 007 and 012 will be located by as much as an additional twenty-two (22) feet, and the City would be legally prohibited from stopping *Verizon* from doing so, due to the constraints of the Middle-Class Tax Relief and Job Creation Act of 2012.

§ 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012 provides that notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless facility or base station that does not substantially change the physical dimensions of such facility or base station. *See* 47 U.S.C. § 1455(a).

Under the FCC's reading and interpretation of § 6409(a) of the Act, local governments are prohibited from denying modifications to wireless facilities unless the modifications will "substantially change" the physical dimensions of the facility, pole or tower.

The FCC defines "substantial change" to include any modification that would increase the height of the facility by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas range from four (4) to eight (8) feet tall, so this provision would allow an increase in the proposed facility's height by approximately twenty-two (22) feet, and this height increase could not be challenged or prevented by the City.

Simply stated, under the FCC's regulation, if these nodes were to be built, on existing or entirely new poles, *Verizon*, at any time thereafter, could unilaterally increase the height of any such facility by as much as an additional twenty-two (22) feet, and there would be no way for the Council or Planning Commission to prevent such an occurrence.

Considering the even more extreme adverse impacts which an increase in the height of the facilities would inflict upon businesses and communities nearby, *Verizon's* application should be denied, especially since, as set forth above, *Verizon* doesn't actually *need* the proposed nodes in the first place.

## POINT V

Contrary to Any Baseless Suggestion Otherwise,  
There is No Federal Law, Rule or Regulation Which  
Compels the Council to Grant *Verizon's* Application,  
Nor Prohibits The Council From Denying it.

Applicants seeking approvals for the installation of wireless facilities from local jurisdictions often submit false and/or misleading factual information to boards charged with making decisions to grant or deny such applications.

Even worse, they very often proffer baseless representations and/or arguments as to what local governments may or may not do, in processing and deciding wireless facility applications within the constraints of the Telecommunications Act of 1996.

Contrary to any claims otherwise which may have been proffered by the applicant herein, there is nothing in the TCA, nor any other federal law, rule or regulation which either (a) mandates that *Verizon's* application for be granted, or (b) prohibits the Council from denying such application.

While applicants are quick to point out the finite constraints which the TCA imposes upon local government under 47 U.S.C.A. §332(c)(7)(B), they invariably and deliberately omit the preceding section of the TCA (subparagraph (c)(7)(A), wherein Congress expressly preserved the rights of local governments to regulate the installation of wireless facilities within their respective jurisdictions.

As is set forth within §332(c)(7)(A), the TCA explicitly provides:

“Except as provided in this paragraph, nothing in this chapter shall limit or affect the ability of a State or local government or instrumentality thereof over decisions regarding the placement, construction and modification of personal wireless services facilities.”

47 U.S.C.A. §332(c)(7)(A)

That provision of the TCA remains unchanged to date. Thereafter, subparagraph §332(c)(7)(B) imposes five *finite* limitations upon (a) the basis upon which, wireless facility applications may be denied, and (b) the manner in which they are denied.

As set forth herein below, none of those limitations prevent the Council from denying *Verizon's* application herein, nor requires the Council to grant it.

The five (5) constraints which the TCA imposes upon local zoning authority consist of the following:

- (a) Local governments cannot unreasonably discriminate among providers of functionally equivalent services §332(c)(7)(B)(i)(I),<sup>8</sup>
- (b) Local governments cannot prohibit or have the effect of prohibiting the provision of personal wireless services §332(c)(7)(B)(i)(II),<sup>9</sup>
- (c) Local governments must act upon any application to place, construct or modify a wireless facility within “a reasonable period of time” §332(B)(7)(B)(ii),<sup>10</sup>

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<sup>8</sup> As interpreted by the United States Court of Appeals for the Ninth Circuit, this provision allows some discrimination among providers of equivalent services. Any discrimination need only be *reasonable*. MetroPCS Inc. v. The City and County of San Francisco, 400 F3d 715, 727 (2005) [“Most courts have recognized that discrimination based on traditional bases of zoning regulation, such as preserving the character of the neighborhood and avoiding aesthetic blight are reasonable and thus permissible . . . In fact, the sole district court case in the Ninth Circuit on this issue holds that a mere increase in the number of wireless antennas in a given area over time can justify differential treatment of providers”].

<sup>9</sup> “Effect of prohibiting” - As reflected within its text, §332(c)(7)(B)(i)(II) prohibits local governments from enforcing ordinances which actually either prohibits or “have the effect of prohibiting” the provision of wireless services.

In 2008, *Sprint* sued the County of San Diego to challenge the City’s ordinance regulating the installation of wireless facilities, claiming that a parallel law, 47 USC §253(a), prohibited any ordinance which “*may*” have the effect of prohibiting wireless services. In considering *Sprint’s* argument, the United States Court of Appeals for the Ninth Circuit reversed its own previous decisions, and ruled that a plaintiff suing a municipality under section §253(a) must show that the ordinance being challenged imposes *an actual or effective prohibition*, rather than *the mere possibility of prohibition*. Sprint Telephony PCS LP v. County of San Diego, 543 F3d 571 (2008).

<sup>10</sup> On November 18, 1999, the FCC adopted ruling FCC 09-99 which imposed the following time frames within which local governments must act upon siting requests for wireless towers or antenna sites: (1) 90 days for the review of collocation applications, and (2) 150 days for the review of siting applications other than collocations.

- (d) Any decision to deny an application to place, construct or modify a wireless facility shall be *in writing* and be *supported by substantial evidence* contained in *a written record* §332(c)(7)(B)(iii),<sup>11</sup> [italics added] and
- (e) Local governments cannot regulate the placement, construction or modification of a wireless facility on the basis of environmental effects of radiofrequency emissions, *to the extent that such facilities comply with the FCC's regulations concerning such emissions* §332(c)(7)(B)(iv) [italics added].

If the Council were to deny *Verizon's* application because of such adverse impacts, each of which has been established by the evidence that has been submitted, such denial: (a) would not be based upon "unreasonable discrimination between providers, (b) would neither prohibit nor have the effect of prohibiting the applicant from providing personal wireless services, (c) would be completed within a "reasonable time" (i.e. within the applicable shot-clock period), (d) could be rendered in a written decision citing the substantial evidence which is now in the record before the Council, and (e) would not be based upon "environmental concerns", those being health concerns based upon the RF radiation which such facilities would emit.

Notwithstanding the foregoing, *Verizon* will undoubtedly assert a baseless claim, as many applicants across the County are now doing, that a recent decision by the FCC in September of 2018 has somehow altered the provision of the TCA, to the extent that the Council is now

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<sup>11</sup> Written Record - In MetroPCS v. City and County of San Francisco, 400 F.3d 715(2005) the United States Court of Appeals for the Ninth Circuit adopted the *Todd* standard for what satisfies the requirement of a written record. Under this standard, to satisfy §332(c)(7)(b)(iii) any local government which denies an application for the installation of a wireless facility must: (a) issue a written denial which is separate from the written record of the proceeding, and (b) the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons.

"Substantial Evidence" - In MetroPCS, the Ninth Circuit Court of Appeals also embraced *Oyster Bay* standard for what constitutes "substantial evidence." Under this standard, substantial evidence means less than a preponderance but more than a scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations.



mandated by federal law to grant *Verizon's* application.

Simply stated, such proffers are without basis in law or fact.

If, and to any extent that the FCC had sought to limit the zoning powers which Congress expressly preserved for local governments, any and all such efforts by the FCC would be void, *ab initio*, because the FCC is entirely without legal authority to divest local governments of powers which Congress has explicitly preserved to them.

To the extent that *Verizon* asserts that any ruling of the FCC somehow revoked, reduced or limited the zoning powers which the FCC has expressly preserved to the City under 47 U.S.C.A. §332(c)(7)(A), any such purported attempt to so limit the powers preserved to the City if any, would be void *ab initio*, as the FCC has no power to repeal or revoke federal Act which has been duly enacted by Congress.

## POINT VI

### To Comply With the TCA, *Verizon's* Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith

The Telecommunications Act of 1996 requires that any decision denying an application to install a wireless facility: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

#### A. The Written Decision Requirement

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to evaluate the evidence in the record supporting those reasons. *See e.g. MetroPCS v. City and County of San Francisco*, 400 F.3d 715(2005).

#### B. The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla." Review under this standard is essentially deferential, such that Courts may neither engage in their own fact-finding nor supplant a local zoning board's reasonable determinations. *See e.g. American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196]

To ensure that the Council's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Council deny *Verizon's* application in a separate written decision, wherein the Council cites the evidence based upon

which it made its determination.

### **Conclusion**

In view of the foregoing, it is respectfully submitted that *Verizon's* Appeal of Conditions of Approval Application for a Use Permit under Section §19.54.040 of the City Code should be denied and Lin Marie DeVincent and Mark Marthaler's appeal be granted.

Respectfully Submitted

Lin Marie deVincent & Mark Marthaler  
Representing the Community of Sonoma Neighbors  
for Safe Tech.

CITY OF SONOMA  
STATE OF CALIFORNIA

-----X

In the Matter of the Application of

**VERIZON WIRELESS**

For a Use Permit

**EXHIBITS IN  
SUPPORT AND IN  
OPPOSITION**

Premises: Site 006 - Near 574-552 Fifth Street West

Site 007 - Near 550 Second Street West

Site 012 - Near 25 McDonell Street

-----X

**EXHIBITS IN SUPPORT AND IN OPPOSITION**

Respectfully Submitted,

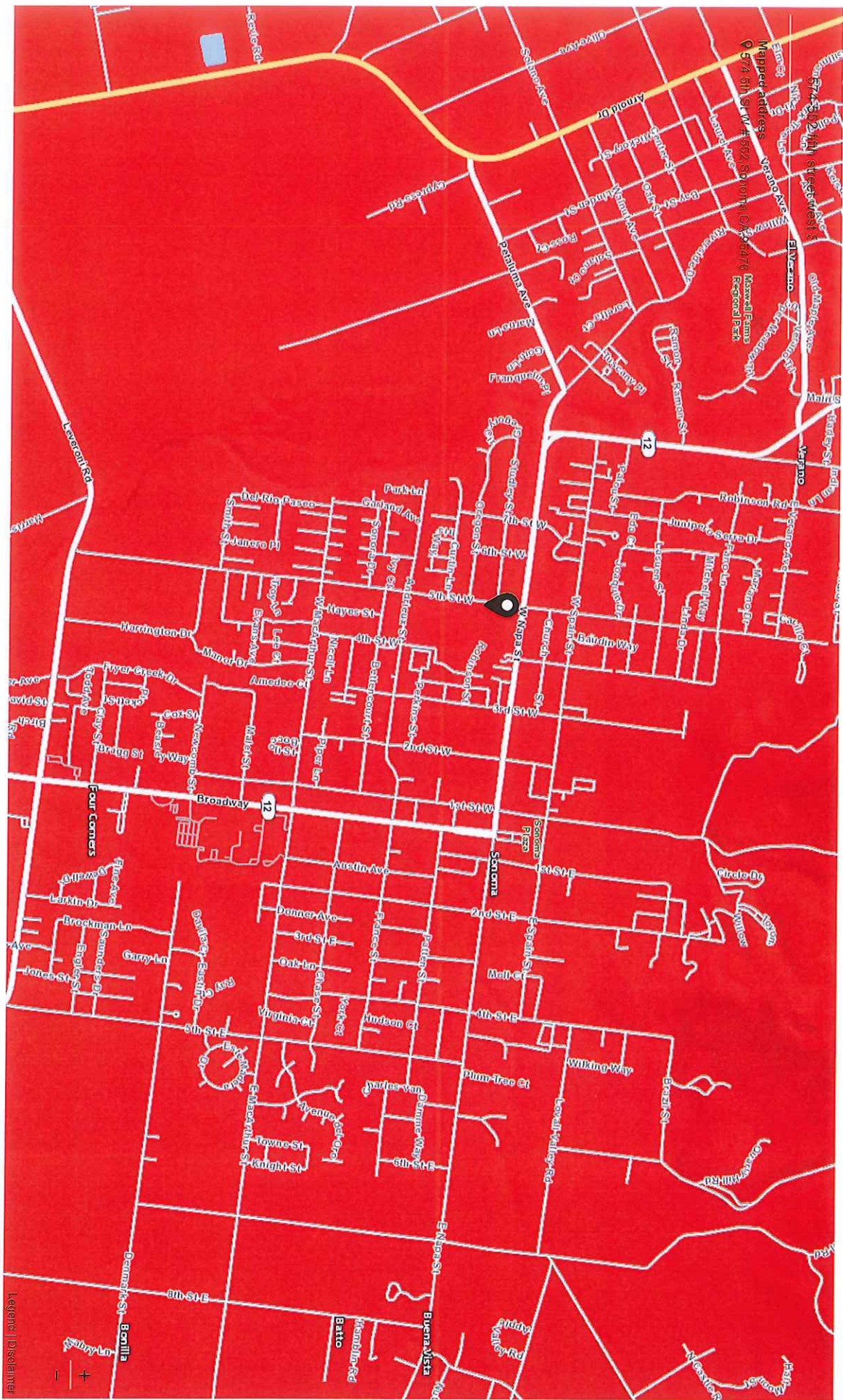
Lin Marie deVincent & Mark Marthaler  
Representing the Community of Sonoma Neighbors for Safe Tech.

## **Exhibits**

- A     *Verizon* Coverage Map for Location Proposed for Site "006"  
Current as of June 4, 2020
- B     *Verizon* Coverage Map for Location Proposed for Site "007"  
Current as of June 4, 2020
- C     *Verizon* Coverage Map for Location Proposed for Site "012"  
Current as of June 4, 2020
- D     Aesthetic Impact Letters
- E     Professional Opinion Letters

# EXHIBIT A





# EXHIBIT B





# EXHIBIT C





# **EXHIBIT D**

 NICOLE KATANO

589 5th Street West Sonoma, CA 94576 [www.nicolekatano.com](http://www.nicolekatano.com) [nicole@nicolekatano.com](mailto:nicole@nicolekatano.com)  
310.220.9285

June 1, 2020

RE: SITE 006 Proposed Verizon Cell Tower

To the Sonoma City Councilmembers,

My name is Nicole Katano. I am an artist with my studio located at 589 5<sup>th</sup> ST W, right near one of the proposed Verizon 5G cell towers.

Aesthetics and visual surroundings are my life and work. People come to me to experience beauty, not to be confronted with an ugly, poorly disguised cell tower. Finding decent studio space in Sonoma is almost impossible. It took me a long time to find the space I'm in now, but with this unsightly cell tower in such close proximity to the space I may well have to relocate. This will also affect my landlady, a widow in her 80's, who counts on me not only for rent but also for our friendly and cordial landlord/tenant relationship. She is already struggling to find tenants in this economy and will be at a huge disadvantage with the tower outside her building.

To make matters even worse, Verizon wants to put another of these ugly towers directly across from my home at 29 5<sup>th</sup> ST W. We can't get away from the relentless, ugly and disturbing visual impact of these things!

These visual eyesores are a really bad idea. Verizon is not known for their aesthetic intelligence but rather for their unflinching devotion to money. These ugly, phony looking towers should be far, far away from anyone's line of sight.

Sincerely,

Nicole Katano



## Sonoma Security Lock Safe and Key

564 First Street West  
Sonoma, CA 95476  
707 996 3707

May 29, 2020

Dear Sonoma City Council Members,

I am writing today to encourage your decision to deny the application for a cell tower proposed very near my commercial properties located at 546, 554 and 566 First St. West in downtown Sonoma.

I ask that this cell tower be denied because of the negative impact it will have on my ability to rent out my spaces to business owners who are looking for: an aesthetically pleasing place to run their businesses. The cell tower proposed very near my properties is visible walking up to the front door of each address which adds an element of "ugly" to an otherwise pleasant and attractive environment. Sonoma prides itself on being one of the most beautiful small towns in Northern California and I am fortunate to be able to live and own commercial properties here. My quality of life will be diminished if the small town character and charm is threatened by ugly cell tower equipment disgracing the view.

The cell tower antenna is industrial and futuristic looking and does not fit in with the aesthetics of our town. My tenants who are next door on both sides have all agreed that it will negatively impact their customer, service-oriented businesses. This will in turn create a hardship for me to keep my existing tenants in their locations. Am I going to have to offer them reduced rent to keep them there, while they look for other locations that don't have a cell tower ruining the appeal of their businesses? Why should my rights to live in a pleasant environment and enjoy a good standard of living be reduced simply because of a terribly ugly piece of industrial equipment in our midst?

I speak for myself and others to say that we choose to live in Sonoma because it is a great place to live and have a business. It is such a small town that the littlest thing can disturb its fine balance. A cell tower looming in the background is one of those things that will change the attractive look of our town which our way of life and businesses rely on. Please see fit to deny all three of these cell tower applications and especially the one near my business properties.

Sincerely,



5.29.20

John Duffy

## FineLine Art & Frame

201 West Napa St. Ste. 16

Sonoma, CA 95476

707.935.3199

[bleigh@franpath.com](mailto:bleigh@franpath.com)

TO: City of Sonoma

RE: Proposed Verizon cell tower Site 007

June 2, 2020

Dear Sonoma City Council Members, and To Whom It May Concern,

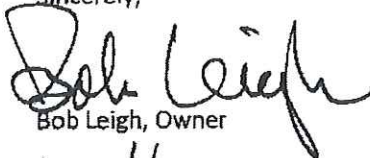
My name is Bob Leigh and I am the owner of Fine Line Art & Frame located at the Marketplace Shopping Center in Sonoma. I am writing on behalf of myself and my Store Manager, Lisa Horn, our employees and our customers to ask that the cell tower that would be installed across the street from my store be removed from consideration.

Since our store serves the artists and art community of our town (and beyond) we have a particular interest in the look of things and how an object is decorated or designed, which makes the difference in whether or not it becomes pleasing to the eye or not. In my opinion, as well as that of staff and customers, we feel that the look of the proposed cell tower is cold and industrial and unattractive. We feel that the oddness of it does not blend well with the surroundings and it is over-all inappropriate. We don't like it, and we think that the accessory equipment on the pole looks clumsily hidden by the street signage "disguise".

In our small town, we are blessed with an abundance of natural beauty which is a major reason I've chosen to have my business in Sonoma. We are happy to be in a wonderful location that is centrally located a block from the town square and is within walking distance. I am concerned about the visual impact of this cell tower here at the Marketplace Shopping Center when our customers walk and drive to our store because they will be confronted with this visual blight every time they do. Furthermore I am disturbed to find out that this cell tower has been relocated from further north on 3rd St. where the residents and businesses there didn't want it ruining their view and so it was decided to bring it closer to us. All of us at Fine Line Art & Frame are happy for our neighbors who won't be suffering from the unattractive intrusion of this cell tower, but we don't want it next to us either.

Please do what you can to restrict placement of this unattractive cell tower in our town, no matter where it might go, and especially next to my store.

Sincerely,



Bob Leigh, Owner



Lisa Horn, Manager



# Yoga community

GATHER SHARE GROW

To: City of Sonoma  
Re: Verizon proposed cell tower, site 006

June 1, 2020

Dear Sonoma City Council:

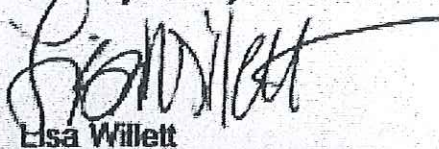
My name is Lisa Willett and I own Yoga Community, located at 577 5<sup>th</sup> Street East in Sonoma. Yoga Community is a well-established and loved business in Sonoma. We have been in our current location on 5<sup>th</sup> Street West for close to 15 years, and another five years just around the corner on Napa Street. On a monthly basis, we have thousands of visits.

I am writing to you today to implore you to reject Verizon's request for a permit to install their equipment in front of our business on Fifth St. W. I have been following this issue with interest because I believe that the presence of this equipment on the pole just outside my business would be a deterrent for my clients. Over the past year, I have spoken with dozens of clients who agree....we do NOT want this unsightly and awkward equipment within sight of the yoga studio. As a large employer in the City, I hope that you will consider this serious request.

In addition, as a Verizon customer, I can attest that the current equipment is working perfectly. I haven't been anywhere in the City limits where I did not have excellent coverage. To date, there has been no gap in coverage and no dropped calls in the many, many years that I have been operating my business on 5<sup>th</sup> Street West.

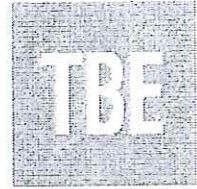
Why such a strong push to fix what isn't broken?

Thank you for your time and consideration,



Lisa Willett  
Owner, Yoga Community  
Sonoma, CA 707-337-8351





**TBE ARCHITECTURE**

579 5<sup>th</sup> Street West

Sonoma, Ca 95476

(707) 934-1000

[www.TBEarch.com](http://www.TBEarch.com)

To: City of Sonoma  
Re: Verizon proposed cell tower site 006

June 2, 2020

Dear Sonoma City Council:

My name is Ray Willett and I own TBE ARCHITECTURE, located at 579 5th Street East in Sonoma. TBE just relocated our offices to the City of Sonoma from my garage in the Springs. Now I am informed that Verizon wants to put a cell tower next to the shopping center where my new studio is, adjacent to the Yoga Community. I agree w/ my wife, Lisa Willett's assessment, per her letter of opposition.

I too strongly object to the installation of this cell tower at Fifth Street West, based on the lack of aesthetics that combine with our small town character. The tower would be next to many businesses and homes. Please deny the permit for site 006.

As an architect, the built environment is my life and work. People come to me to experience beauty, not to be confronted with an ugly, poorly disguised cell tower.

This equipment is in the wrong location; it should be in the hills with the other macro towers.

Thank you for your time and consideration.

A handwritten signature in black ink, appearing to read "Ray Willett". The signature is stylized with a large, sweeping initial "R" and a long horizontal line extending to the right.

Ray Willett  
Owner/Architect

# EXHIBIT E

KEY HOME  
REALTY

*Your key to home ownership!*

May 31, 2020

TO: City of Sonoma

RE: 3 Verizon proposed installations of cell towers in commercial zones.

Proposed eventual installation of SEVEN more towers in residential zones.

3 proposed towers in Commercial Zones, which merge with Mixed Use & Residential.

1. *Site-006. One block away is Sassarini Elementary School, multiple neighborhoods, and small businesses in the Fifth St West Center. Directly across from Safeway.*
2. *Site-007 near 550 Second St West, next to Best Western Lodge, across the street from the Whole Foods Shopping Center w/dozens of small businesses, and near housing developments.*
3. *Site-012 at 25 McDonell St, near Children's Conservatory of Dance, dozens of small businesses, live/work units, offices, and homes.*

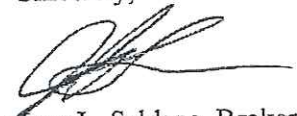
Dear Sonoma City Council,


We are local Realtors in Sonoma Valley. Our combined experience in the industry leads us to the professional opinion that the installation of these three cell towers could negatively impact property values of nearby Sonoma residences by 5% to 25%. The proximity of a cell tower will be disclosed as a part of the sale process, and could cause potential buyers to shy away from purchasing properties in those neighborhoods, also extensively add to the time a property is on the market.

We are very concerned that if these 3 towers are permitted in commercial/mixed use zones, the other seven residential applications may be approved, which would further deteriorate property values in the Valley. That potential loss in property value to business and homeowners is unacceptable.

We respectfully request that you deny these permits.

Sincerely,

  
Jose L. Saldana, Broker  
DRE #01314125

  
Larinda R. Merkins, Sales Associate  
DRE #02019182

180 Encinas Lane, Sonoma, California 95476

cell (707) 294-5564 | office (707) 536-1751 | email jose@keyhomerealty.net

CENTURY 21 Wine Country  
DRE# 01523620  
561 Broadway, Suite A  
Sonoma, CA 95476

May 31, 2020

TO: City of Sonoma  
City Manager  
City Council  
Planning Commission



RE: Verizon Wireless proposed installation of Site-007 near 550 Second St West, next to Best Western Lodge, across the street from Whole Foods Shopping Center with dozens of small businesses, and near residential developments.

Dear Sonoma City Council, Staff, and Commissioners,

It has come to my attention that Verizon/CBR intends to install a 4G cell tower near downtown Sonoma. The site they have selected, #007, is right next to the Best Western Lodge, where our valued visitors will be staying. Across the street is the Whole Foods Shopping Center with many small businesses, and one block away are residential neighborhoods.

As an owner of Century 21 Wine Country and a Licensed Real Estate agent in this area since 1982, I have experienced the pros and cons of selling homes and properties. In my professional opinion, I believe that the installation of such a facility at this developed location would reduce the value of the nearby properties, with the greatest losses in actual property value being suffered by the properties closest to the tower, and/or those which would suffer the greatest adverse aesthetic impacts.

In addition, the value of the business properties nearby, many of which are leased, could be similarly negatively impacted. I respectfully request that you vote no on allowing this tower to be installed in Sonoma.

Sincerely,

Catherine Sevenau, Owner/Broker  
DRE# 00838538  
707-338-1394  
C2170@sbcbglobal.net



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## Karla Noyes

15549 Brookview Drive, Sonoma, CA 95476 ~ (707) 321-8841 cell/text ~ Karla@KarlaNoyes.com  
California Bureau of Real Estate License Number 01344015

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June 1, 2020

TO:

- City of Sonoma
- City Manager
- City Council
- Planning Commission

RE: Verizon Wireless' proposed installation at Site-006.

To Whom It May Concern:

I have been a Licensed Real Estate Agent in Sonoma Valley for 14 years. Verizon's Site 006 would **NEGATIVELY IMPACT** the property values of all businesses and homes located near the 574-552 Fifth Street West cell tower.

It is my professional opinion that the installation of this proposed cell tower will reduce the values of nearby homes and businesses by approximately 5% to 20%.

All sellers will have to disclose its location to future buyers. It will reduce the number of buyers willing to have a cell tower nearby and buyers will insist on a price reduction.

I can be reached directly anytime to further discuss and can provide backup information and statistics to justify my professional opinion on this very serious matter.

I request that you recommend to Verizon to relocate this tower further out of town, perhaps to 8<sup>th</sup> Street East, which is more conducive to industrial equipment.

Sincerely,

*Karla Noyes*



LANI GULLOTTA  
REALTOR

DRE #01941573



May 31, 2020

TO: City of Sonoma, Sonoma City Council

RE: Verizon Wireless proposed installation of a cell tower in the narrow commercial zone in the City of Sonoma Site-012 at 25 McDonell St, near Children's Conservatory of Dance, dozens of small businesses, live/work units, offices, and homes.

To Whom It May Concern:

I am a real estate professional in the Sonoma Valley. I know the market and I am concerned about the loss in property value due to this new cell tower location.

In my professional opinion, if this cell tower is built at the proposed Site 012, there will be an adverse effect on the real properties nearby, with an estimated range of loss of equity from 2% to 20%. Considering the market in the city of Sonoma, the potential loss in property values near this tower is staggering.

I recommend you deny this permit, based on the tremendous negative impact it would have on property values in Sonoma.

Respectfully,

  
Lani Gullota.