



NAVAJO COUNTY

Board of Supervisors

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WRITTEN DECISION AND RECORD OF THE NAVAJO COUNTY BOARD OF SUPERVISORS REGARDING SPECIAL USE PERMIT RESOLUTION 44-2024

The request to approve Special Use Permit 44-2024 (the "**SUP Application**") application, filed by SBA Communications, (the "Applicant,"), for property located east of Snowflake, Arizona, for the construction and operation of a 120' multi-carrier, monopole communication tower and associated facilities, having come for review by the Navajo County Board of Supervisors (the "**Board**") on November 12, 2024, and the Board having heard and considered the testimony and evidence presented, and by unanimous decision in the finding and decision:

The Navajo County Board of Supervisors, has voted unanimously to DENY SUP 44-2024. Request to install a 120' multi-carrier, monopole communication tower and associated facilities, on property located east of Snowflake, Arizona.

WRITTEN DECISION:

The Navajo County Board of Supervisors makes the following findings in recognition of 47 USC § 332(c)(7)(B)(iii), which provides that, "[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record."

1. **Adverse Health Concerns Not Considered.** In rendering its decision, the Board has specifically excluded from its consideration or reasoning for denial of the SUP Application any and all comments, statements, submissions, and any other materials or information regarding any potential adverse health concerns or effects over radio frequency (RF) emissions, recognizing that, "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."
2. **Public Protest/Property Value.** The Board finds that the SUP Application has generated significant public opposition based on concerns of the potential adverse effects on nearby property values. The Board further finds that these concerns were raised by property owners who have clearly stated they will be directly and personally impacted by a decrease in property values should the SUP Application be approved. These concerns are substantiated by statements, letters, and Broker Price Opinions from local real estate professionals, grounding the opposition in the specific circumstances of this case, rather than general fears about potential impacts on property values. Notably, the neighborhood in question was partially funded with public money, with the specific goal of creating an environment that minimizes radio frequency (RF) exposure, particularly for residents who are Electromagnetic Hypersensitive (EHS). The development and funding of this community were designed with the intent of prioritizing the health and well-being of individuals who are highly sensitive to electromagnetic fields, ensuring they could live in an area that minimizes RF emissions

and supports their unique medical needs. Residents have provided compelling evidence that the proposed location of the cell tower would significantly and negatively affect property values. This impact is particularly pronounced due to the tower's proximity, which would undermine the carefully implemented protections against harmful electromagnetic fields, thereby diminishing both the desirability and market value of their homes.

3. **Public Protest/Aesthetics.** The Board finds that the SUP Application has been met with significant public opposition, primarily focused on concerns regarding the aesthetic and visual impacts of the proposed wireless communications facility on nearby properties. In addition to vocal opposition expressed during the public hearing, the Board also received a Memorandum in Opposition, submitted on behalf of Safeguard Snowflake (the "Memorandum"), which includes approximately twelve (12) opposition letters detailing concerns about the visual impact of the proposed tower. The Board further finds that these concerns are raised by property owners who have personally and compellingly articulated how the proposed tower would directly and adversely affect the aesthetics and visual appeal of their properties if the SUP application is granted. These objections are not a general opposition to wireless communications facilities but are specific to the unique circumstances of this case. Testimony presented to the Board indicated that some property owners would have chosen not to purchase their homes had they known the tower would be located nearby, while one resident stated that the presence of the tower would compel them to move, as they would not tolerate seeing it from their home every day.
4. **Public Protest/Americans with Disability Act Compliance.** The Board finds that the applicant for the SUP Application has failed to adequately address the applicability of the Americans with Disabilities Act (ADA) and the request by affected residents for accommodations related to Electromagnetic Hypersensitivity (EHS). The Board further finds that land use law requires the County to consider the rights and necessary accommodations of individuals with EHS, as protected under the ADA. EHS is recognized by some as a medical condition that may necessitate reasonable accommodations to protect individuals' health and well-being. In this context, the County is obligated to carefully assess how the proposed land use—specifically the placement of the cell tower—may impact residents with EHS and to determine whether any accommodations or modifications are required to ensure compliance with applicable disability protections.
5. **Lack of Hard Data - Insufficient Evidence to Establish a Need for the Proposed Tower at the Proposed Location.** The Board finds that the applicant for the SUP Application has failed to present meaningful, hard data and probative evidence to establish a need for the proposed Tower at the proposed location, as opposed to possible less intrusive viable alternative facilities or locations; that the Tower must be built to its proposed height; or otherwise that approving the SUP Application would be the only feasible means to fill a significant gap in coverage or remedy a capacity deficiency; and that there are no other potential solutions to do so. For example, although the SUP Application includes purported coverage maps, the denial of service records, drive test data, and RF data; the applicant did not provide adequate data to show a gap in coverage by failing to include projected coverage data with the approved, but not yet operational towers at the AZ3 Willis Ranch and AZ3 Concho Highway sites. Without data for the site that took these future sites in consideration, there was

not sufficient evidence to indicate the need for a wireless communication facility at the AZ3 White Antelope site. The Board further finds that, based on the non-health concern related testimony and evidence presented by the public, and the lack of meaningful data and probative evidence from the applicant to the contrary, the applicant has failed to show that a denial of the SUP application would materially inhibit the provision of new or additional telecommunication services or improve existing services in the area.

6. **Granting the SUP Application is Not Consistent With Local Area.** Without limiting any of the foregoing, the Board finds that granting the SUP Application is inconsistent with the unique character of the area where the proposed tower is to be located. The regulation of wireless communications facilities in this area is intended to protect the integrity, character, and identity of the neighborhood by minimizing the adverse visual impact of towers through careful design, siting, and screening. The Board further finds that approving the SUP Application would have an unreasonably negative impact on nearby properties, substantially altering and materially affecting the surrounding neighborhood. The neighborhood was specifically designed to minimize exposure to electromagnetic fields (EMF), and placing a cell tower in this location would directly harm residents who chose to build their homes in this environment. Additionally, this neighborhood was developed with public funding, with the original intent of creating a space free from such facilities. Allowing a cell tower in this area now would undermine that purpose and adversely affect the citizens who moved to this location based on those protections.

This written denial letter is being sent to you concurrently with the Navajo County Board of Supervisors record to comply with the Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(B), and United States Supreme Court decisions which dictate the "in writing" requirement of the Telecommunications Act of 1996.

IT IS HEREBY ORDERED that SUP 44-2024 is **DENIED**.

Dated this 12th day of November 2024



Jason Whiting, Chairman
Navajo County Board of Supervisors