

APPENDIX A

Paul's 4/13/22 email to Steve Marshall AND Marshall's reply email

April 13, 2022

Mr. Steve Marshall <smarshall@novato.org>
Planning Manager
City of Novato
922 Machin Avenue
Novato, CA 94945
415.899.8942

cc: Laura McDowall <lmcdowall@novato.org>, City Clerk
Vicki Parker <vparker@novato.org>, Community Development Director

[City Clerk McDowall, will you please ensure that this email/letter to the City of Novato is placed in the City's Public public record for the following Wireless Telecommunications Facilities (WTFs) applications:

File No. P2022-024; APN 151-061-06: ADJACENT TO 625 ARTHUR ST.
File No. P2022-023; APN 132-113-16: ON NOVATO BLVD. BEHIND 10 PICO VISTA AVE.
File No. P2022-022; APN 141-013-22: ADJACENT TO 1553 SOUTH NOVATO BLVD
File No. P2022-021-9.; APN 140-071-48: ADJACENT TO 7123 REDWOOD BLVD.

... and ensure that this email/letter is printed and placed into the paper file for each of these projects? We are requesting that this email/letter and all communications pertaining to these above listed WTF applications be placed in the corresponding Public Record files for Planning Manager Martin's full deliberations on these applications. Thank you for doing so.]

Dear Mr. Marshall,

I am writing to follow up on my phone call to you earlier today requesting timely answers to the following reasonable questions:

Q1: Given that the City of Novato received AT&T's applications for so-called "small" Wireless Telecommunications Facilities (sWTFs) on Feb 25, 2022 and **47 days have elapsed**, on what date will the City of Novato force AT&T to mail notices to the Novato residents and businesses that fall within 600 feet of these proposed locations?

Per CITY COUNCIL OF THE CITY OF NOVATO [ORDINANCE NO. 1654](#)

Section 3. Required Permits and Applications | C. Application Contents | 8. Public Notices. -- The applicant shall submit a mailing list and envelopes, stamped and addressed, for all properties and record owners of properties entitled to receive notice under Section 4(A). Insufficient postage and/or illegible addressing shall be a basis to deem the application incomplete.

Section 4. Approvals and Denials Notices | A. Public Notice. -- Prior to any approval, conditional approval, or denial, **public notice shall be mailed** to all properties and record owners and occupants of properties within a 600 foot radius of the project site. The notice shall contain: (1) a general project description; (2) the applicant's identification and contact information as provided on the application submitted to the City; (3) contact information for the Project Planner; (4) a statement that the Director will act on the application without a public hearing, but will for a minimum of ten (10) days from the date of the notice accept written public comments that evaluate the application for compliance with the standards in this Ordinance; and (5) a statement that the FCC requires the City to act on small wireless facility applications, which includes any administrative appeals, within 60 days for attachments to existing structures and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review.

Q2: What process will you follow to discern the veracity of the evidence -- how will you separate the wheat (substantial evidence) from the chaff (hearsay and false information) -- from the collection of

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evidence placed in the public record by the applicants, residents and other parties? What is your measure for determining if the applications are complete? What will you do if the application are not consistent with all local, state and federal laws, including, but not limited to the 1996 Telecommunications Act (1996-TCA), the National Environmental Policy Act (NEPA), the Fair Housing Amendments Act (FHAA) the Americans with Disabilities Act (ADA), the Rehabilitation Act (RA)?

Per CITY COUNCIL OF THE CITY OF NOVATO [ORDINANCE NO. 1654](#):

D. Conditional Approvals; Denials without Prejudice. Subject to any **applicable federal or California laws**, nothing in this Ordinance is intended to limit the Director's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Ordinance.

I had brief conversations today with both City Clerk McDowall and Community Development Director Parker and learned the following:

1. **Both** City of Novato Ordinances (DIVISION 19.38 – WIRELESS TELCOMMUNICATIONS FACILITIES from 2012 and CITY COUNCIL OF THE CITY OF NOVATO ORDINANCE NO. 1654 from 2018) **are relevant and must be considered in your deliberations** on these four AT&T sWTF applications, because the U.S. Court of Appeals Aug 2019 ruling in Keetoowah et al. v FCC vacated Title 47 CFR Section 1.1312(e)(2), as detailed in Exhibit A. As a result every so-called "small" Wireless Telecommunications Facility (sWTF), must now be treated as every other Wireless Telecommunications Facility (WTF), just as the FCC does.
2. Even though CITY COUNCIL OF THE CITY OF NOVATO ORDINANCE NO. 1654 says "determined appropriate by the Director", which indicates that the Novato Community Development Director is responsible for approving or denying these four AT&T sWTF applications, Ms. Parker indicated to me today that she is delegating that decision to you, Mr. Marshall.
3. While you, Mr. Marshall, will be managing the public record for any evidence submitted to you for these four AT&T sWTF applications and City Clerk McDowall will be managing the public record for any evidence submitted in public comment for these four AT&T sWTF applications, both sets of information will comprise the full public record for these four AT&T sWTF applications and will be the evidence upon which your deliberations must rely.
4. The public has encountered the consultants attached to these four applications, Hammett & Edison (H&E) and CTC Technology (CTC) several times in other CA Cities' deliberations and the public will enter evidence into the public record that shows both consultants have **not** been objective **not** been thorough enough in their previous work in these other cities. The public will determine if that trend continues in Novato with these applications. Please see the complaint filed against Hammett & Edison for his work in Palo Alto in **Appendix B**. Today, I spoke to **both** Angela Smith, Enforcement Analyst for the CA Board for Professional Engineers and to Jeanne Fleming, PhD, the woman who filed the complaint and confirmed **that this complaint is still active**. The public will submit further evidence of substandard work offered previously by H&E and CTC and request that the City of Novato require any work from each of these consultants to be more thorough than what they have offered other cities, in the past. We also recommend that the City consider hiring consultants that are more objective than these gentlemen -- all of which can be charged to the applicant.

Details of AT&T Applications for Four sWTFs too Close to Homes and Schools

From the City of Novato:

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>>> On Tuesday, April 12th, 2022 at 2:42 PM, Brett Walker bwalker@novato.org wrote

Good Afternoon:

1. File No. P2022-022; APN 141-013-22 for 625 Arthur Street: This site is in the Community Facilities land use designation and adjacent to a residential land use/zoning.
2. File No. P2022-023; APN 132-113-16 for 10 Pico Vista/Novato Blvd: This site is immediately adjacent to residential land use/zoning.
3. File No. P2022-022; APN 141-013-22 for 1553 S. Novato Blvd: This site is in the Neighborhood Commercial land use designation and adjacent to a residential land use/zoning.
4. File No. P2022-021; APN for 7123 Redwood Blvd: This site is in the General Commercial land use designation and is approx. 250 feet from the nearest residential land use/zoning.

Supplemented from <https://wirenovato.org/>

AT&T and their agents have applied for 4G/5G so-called "small" Wireless Telecommunications Facilities (sWTFs) in four locations:

- Near 625 Arthur St. — in front of Novato High School; as close as **30 feet** from homes
- 10 Pico Vista Ave. — as close as **30 feet** from homes
- 1553 S. Novato Blvd. — as close as **60 feet** from homes
- 7123 Redwood Blvd. — as close as **250 feet** from homes, but next to medical care facilities

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From: Steve Marshall <smarshall@novato.org>

Date: April 13, 2022 at 6:33 PM

To: Paul McGavin <pmcgavin@wirecalifornia.org>

CC: Laura McDowall <lmcdowall@novato.org>, Vicki Parker <vparker@novato.org>, Brett Walker <bwalker@novato.org>, Vivek Damodaran <vdamodaran@novato.org>

Subject: May I please have timely answers to the following reasonable questions?

Mr. McGavin:

Below are answers to your questions.

The Planning Division will mail a public notice to all property owners and occupants within a 600-foot radius of a proposed small cell wireless facility. The notice will be mailed ten (10) days prior to the date set for action on the given small cell use permit. The Planning Division will generate mailing labels using addresses taken from the Marin County Assessor's property ownership records. Notices will be mailed to an occupant where the Assessor's records indicate an absentee property owner. The applicant for a small cell use permit will pay for the staff time and postage required to prepare and mail the notices. The Planning Division will not rely on an applicant to prepare the mailing labels contrary to the noticing provision in Ordinance No. 1654. The Planning Division is best suited to ensure accurate noticing as it regularly performs the same type of noticing for many other permit processes and actions.

All of AT&T's applications are incomplete as of March 7, 2022. AT&T has not responded to the completeness issues raised by the Planning Division and the applications have remained dormant. Given this circumstance, there is no date certain when an action will be taken by the Planning Division on AT&T's applications. Therefore, it is not possible to specify a date when notices will be mailed by the Planning Division.

The Planning Division assesses small cell use permits on the basis of the criteria and findings of Ordinance No. 1654. Staff will consider all evidence specifically relevant to the question of compliance with the criteria and findings. Staff will receive support from a wireless telecommunications consultant to assist in verifying compliance with the criteria and findings of Ordinance No. 1654 that are of a technical nature, such as compliance with applicable health and safety regulations. Staff will receive legal support from the city attorney's office on matters of compliance with applicable laws.

The Planning Division assesses the completeness of a small cell use permit applications against the submittal items addressed in Ordinance No. 1654 as consolidated and clarified in a separately prepared application checklist. A copy of this checklist is attached.

If the Planning Division determines a proposed wireless facility is not in compliance with an applicable regulation within the authority of the City then the Community Development Director may take any of the actions listed in Section 4., clause D. – Conditional Approvals; Denials without Prejudice.

Senior Planner Brett Walker and Planner II Vivek Damodaran are copied on this email so as to add your email below and this response to the file for each of AT&T's applications.

Sincerely,

Steve Marshall
Planning Manager

Main: (415) 899-8989 | Direct: (415) 899-8942 922 Machin Avenue, Novato, CA 94945

www.novato.org