

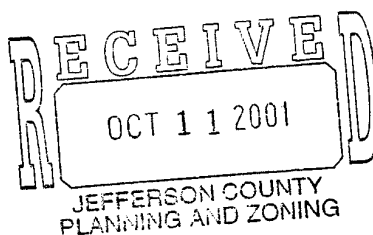
# COAL CREEK CANYON HOMEOWNER ASSOCIATIONS

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October 10, 2001

Jefferson County Planning Commission  
100 Jefferson County Parkway STE 3550  
Golden, CO 80419-3550



RE: Response to new information – changes to ODP conditions, Pinnacle Towers Inc. (“PTI”) application for rezoning and exemption from platting (Case Nos. 00015485RZP1/EXP1)

Dear Planning Commissioners,

This letter responds to new information submitted by PTI in a letter dated October 3, 2001 (attached) regarding several substantial changes to the proposed ODP offered as a condition of rezoning. We welcome PTI’s willingness to begin addressing concerns raised by the community over the past year, but the conditions offered are obviously just a first step towards getting their application into a solid enough form that it could actually be meaningfully considered. PTI’s fundamental problem remains a lack of demonstrated clients commensurate to the proposed facilities, and they need to solve that problem first and foremost. We have the following specific comments on PTI’s new changes:

***No demonstration that Jeffco tower space must be increased to accommodate HDTV***

PTI claims that a net increase in tower space in the Denver area is “required for newly authorized facilities”, presumably HDTV. But PTI’s claim is speculative at best. First, not one HDTV broadcaster willing to commit to Eldorado Mountain has been identified, and consequently there is no demonstrated need for (or probability of) locating any HDTV facilities at the site. Second, prior and pending tower rezoning applications in Jefferson County have proposed to accommodate new HDTV facilities with no net increase in tower face area. We understand the Mt. Morrison proposal includes the net removal of one broadcast tower. While we take no position regarding the overall merits of these competing proposals, it is clear that the broadcast industry believes that it can accommodate new HDTV facilities without any net increase in tower face area.

***PTI provides no binding commitment for removal of comparable towers***

PTI speculates that existing Jeffco broadcast towers will ultimately be forced to be dismantled if PTI’s rezoning request is granted, yet nothing in PTI’s proposed ODP requires this. Each of the three towers that PTI proposes to build on Eldorado Mountain would be significantly larger than either of PTI’s two towers on Lookout Mountain, only one of which PTI is now offering to remove, or the existing Eldorado Mountain tower. PTI offers no binding commitment to remove any existing towers of comparable height or bulk, either owned by PTI or by any broadcaster committed to relocating to Eldorado Mountain. Of course, the Telecommunications Land Use Plan (“TLUP”) requires comparable towers to be removed from the same area, but PTI hasn’t

even provided a binding commitment that would remove comparable towers from anywhere within the County. The Jeffco Board of County Commissioners (“BCC”) has denied tower rezoning proposals precisely because they failed to meet this criterion (e.g., CC90-592, finding 4), and the County successfully defended application of this criterion in subsequent litigation (e.g., 92CA0591 and 90CV3042).

***No consolidation of existing towers: tower space and face area substantially increased***

PTI’s offer to replace the existing 160-foot tower on Eldorado Mountain with the proposed second new tower would result in a net increase in tower face area (from 1,670 square feet to 6,300 square feet for that tower alone). The first and third new towers would each result in a further net increase of 6,300 square feet. The total increase in tower face area would exceed 1,000 %, from 1,670 square feet at present to 18,900 square feet for the three proposed towers. Further, PTI’s offer to remove one of its two towers on Lookout Mountain after completion of a new tower on Eldorado Mountain does not satisfy the TLUP requirement that towers be removed from the same area. Previous Jeffco tower rezoning proposals have been denied by the BCC because they failed to meet this criterion (e.g., CC99-357, finding 4).

***Tower height is still speculative (and doesn’t correspond to studies)***

PTI admits that the ODP language implicitly allows for 510-foot towers, and that towers 500 feet and higher would be subject to the FAA’s most visually intrusive lighting and painting requirements. PTI states that they asked for higher towers than what was represented in their application materials in order to provide “flexibility for accommodating additional stations”. The fact that PTI needed such “flexibility” illustrates PTI’s confusion over what tower heights would be required to accommodate their purported customers, and underscores the speculative nature of their proposal. PTI has still not cleared up their confusion: In the first paragraph of their letter they say they now want 500-foot towers; In the last paragraph, they say 450 feet.

Even now, PTI likely does not know what tower height they might need because they still have not identified any committed broadcast clients. PTI appears to have retreated from the 510-foot height more to enhance their chances of approval than because their requirements are known any better. In any event, the tower heights assumed in PTI’s engineering and impact studies still do not match what they propose. For example, PTI has not demonstrated that setbacks between the proposed towers are adequate to prevent multiple tower failure in the event that one tower falls.

***PTI tries to justify heliport for reasons of competition, not compatibility***

PTI’s letter states that the proposed heliport is needed to respond to a previous competing rezoning proposal. Broadcasters associated with that proposal indicated that access to Eldorado Mountain for equipment maintenance would necessitate unacceptably long travel times. PTI now admits that access to Eldorado Mountain is so poor as to necessitate a heliport in order to compete with other Jeffco tower sites. Instead of providing noise impact or other pertinent studies, the only justification PTI now offers for being allowed a heliport is the fact that the previous owner apparently got away unpunished following the illegal use of helicopters.

PTI's new condition restricting heliport use to "emergency use" offers no meaningful protections because any equipment outage, including a burnt-out coffee pot or light bulb would qualify. PTI still needs to provide noise studies, approach and landing patterns, specific numbers of allowable flights, and other pertinent information in order to be able to meaningfully consider the compatibility of a heliport.

***PTI acknowledges recurring illegal use of helicopters at site***

PTI's letter expressed regret over the controversy that their proposal for a heliport has caused, yet inexplicably goes on to recount a history of recurring illegal helicopter use at the site by the former owner. According to PTI, helicopters have landed at the site both for maintenance related to the existing tower facilities, and for "social visits". None of these uses is allowed under the current zoning. Since other PTI documents indicate that the former owner still resides at the site, and is a consultant to PTI, it is not clear that this pattern of abuse at the site has even ceased.

Helicopters are not allowed as a use by right in Jefferson County, and the special use permit for the Eldorado Mountain site also does not grant such a use. Whether or not PTI is aware of past complaints arising from the recurring illegal use of helicopters at the site, such a use does not legalize, authorize, or excuse these violations (Jefferson County Zoning Resolution, § 3.B.2). In light of PTI's admission of illegal helicopter use at the site, PTI should commit in writing to an immediate cessation of any and all ongoing helicopter use.

***PTI's proposal merely attempts an end-run around Jeffco land use policies***

PTI makes it clear that by speculatively proposing to accommodate all existing and future broadcast telecommunications uses on Eldorado Mountain, they hope to preempt all future proposals from broadcasters for replacement or reinforcement of existing towers located elsewhere in the County. In PTI's view, broadcasters would ultimately be forced to abandon their property, and would have no option but to lease tower space from PTI.

PTI is clearly relying on criteria in Jeffco's Zoning Resolution and master plan that require an applicant to demonstrate that no alternative sites are available in order to be granted rezoning. Obviously, no future rezoning proposal could ever meet this criterion if PTI's purely speculative proposal to accommodate all existing and all future broadcast uses were granted. But PTI has not shown that any HDTV broadcaster, let alone the entire Denver area market, is committed to using their site. By turning the intent of Jeffco's land use policy on its head, PTI is trying to leverage pure speculation into an exclusive franchise for broadcast tower space.

***Jefferson County's approach: Show need, propose consolidation, then apply for rezoning***

The intent of Jeffco's Zoning Resolution and master plan is to minimize the spread of adverse impacts from broadcast towers by requiring that new towers be allowed only when they achieve a consolidation of existing facilities, and are compatible with surrounding land uses. In the 1990's, the County grappled with ways to achieve consolidation, and proposed such mechanisms as a "community tower" to be cooperatively run by the broadcasters or a neutral third party, and tower "amortization" of existing nonconforming towers to place definite time limits on how long

such towers would be allowed to operate. These mechanisms were never adopted, and clearly there has never been any authorization or stated policy for Jefferson County to anoint a designated "winner" in the tower marketplace. Should Jefferson County decide to develop a new comprehensive tower siting plan, or implement new regulatory policies, a public hearing process devoted specifically to those changes would be required. Such changes cannot be implemented under the guise of a specific, garden variety rezoning proposal.

*PTI's approach: Build it, and they will come (if we prevent them from going anywhere else)*

PTI has not demonstrated that any Denver area broadcasters are able or willing (short of heavy-handed government intervention) to broadcast from Eldorado Mountain. In fact, some broadcasters have indicated that broadcasting from Eldorado Mountain would be unsatisfactory because of a loss of coverage and unacceptable radiofrequency interference.

PTI is not a broadcaster, but is instead a real-estate investment speculator in the business of leasing tower space to actual broadcasters. Thus PTI's economic advantage lies in maximizing the apparent need for the commodity they can lease, and minimizing the legitimate concerns of the broadcasters if they conflict with PTI's interests. Jefferson County is also not in the broadcasting business, and the record of governmental interference and manipulation of the free market has been abysmal at best.

Tellingly, no actual broadcaster has stated publicly any intention to relocate their broadcast facilities to Eldorado Mountain. Instead, much, if not all of the broadcast industry has clearly and unambiguously rejected Eldorado Mountain as a viable site. It is not the County's role to second-guess the judgment of the broadcast industry. Instead, it is PTI's responsibility to demonstrate that a legitimate economic need exists for expanding tower space on Eldorado Mountain by convincing area broadcasters that the site is viable, and then obtaining binding commitments from those broadcasters. This, PTI has failed to do.

As surrounding landowners and residents, we do not wish to become the victims of PTI's speculative schemes, nor do we wish to suffer the consequences of a County foray into some ad hoc "Industrial Policy" which has not undergone the necessary public review process.

Sincerely,



David W. Osborn  
President, Crescent Park Land and Homeowners Association

Attachment

CC: Susan Wood, Case Manager  
Marilyn Nixon, Assistant County Attorney