



CANYON COUNTY HEARING EXAMINER
MINUTES OF REGULAR MEETING HELD
Wednesday, August 17, 2022
1:30 P.M.

1ST FLOOR PUBLIC MEETING ROOM SUITE 130, CANYON COUNTY ADMINISTRATION BUILDING

Hearing Examiner Present: Bruce Eggleston

Staff Members Present: Dan Lister, Planning Official
Cassie Lamb, Planner
Madelyn Vander Veen, Planning Technician
Bonnie Puleo, Recording Secretary

Hearing Examiner Bruce Eggleston, called the meeting to order at 1:30 p.m. and read the testimony guidelines.

Recording Secretary Bonnie Puleo called roll and swore in officials and staff.

- **Case CU2022-0022/Maverick Towers & Loucks:** The applicant, Andy Cockell, representing Lamon & Melissa Loucks, is requesting a conditional use permit on Parcel R32942010A for a telecommunications facility. The tower will be 199' in height. The parcel is zoned "A" (Agricultural). The 0.20-acre property is located roughly 875 feet south from the intersection of Karcher Road and Wagner Road, Caldwell; also referenced as a portion of the NE¼ of Section 18, Township 3N, Range 3W; BM; Canyon County, Idaho.

Planning Technician Madelyn Vander Veen reviewed the Staff report for the record including late exhibits.

Recording Secretary Bonnie Puleo affirmed the witnesses to testify.

Testimony:

Andy Cockell – Applicant (Representative) – IN FAVOR – 1815 N. 11th St., Boise ID 83702

Mr. Cockell is representing Maverick Towers, a wireless telecommunications site development company. They work with the telecommunication companies expanding their networks. He is here seeking a Conditional Use Permit for a 199 foot telecommunications tower with fencing. The requested use is allowed in an agriculture zone subject to a Conditional Use Permit. The general location was chosen based on radio frequency engineering. Mr. Cockell said their initial analysis determined that 199 foot tower would be the optimal height to service the area based on the coverage they wanted. They looked at it more closely and did scanner data analysis which gives better data and determined they could lower the height to 150 feet and still achieve their objective. 199 feet is not uncommon for this area and he showed a map with other tower locations with similar heights. It is not uncommon to request of tower of this

height, but they did more analysis and today they are prepared to lower the tower height to 150 feet. He agrees with staff's analysis and conditions of approval. Mr. Cockell explained a lot of things have to come together to make one of these facilities happen; the first is to find a property owner willing to lease the land for the facility. There is a lot of development in this area, residential as well as commercial. He said a lot of people are holding out for developers to purchase their properties so they aren't willing to enter into a lease agreement with them. They had to find a property owner and land that was able to be zoned under the County code. He referred to the late exhibit letter from Josh Leonard (attorney) that discussed the facts and legal opinion on the project. There are no lighting plans for the tower because this is only the first step in the process and tower location might move. After local approval, then they have to get approvals from a host of other agencies and groups and he listed the other agencies and groups they have to notify and get approval from. They are not opposed to lighting the tower if the FAA requires it but they don't anticipate any lighting or marking requirements from them. He has never installed a tower in the area with lighting on it. There was discussion about EMF emissions and wildlife migratory corridors.

Steven Kennedy – IN FAVOR – 11142 N. 165th Dr. Suite 343, Surprise AZ 85388

Mr. Kennedy spoke about RF safety and Radio Frequency (RF) levels on the towers. The Federal Communications Commission (FCC) regulates the maximum permissible exposure of RF for humans. There is a general public limit and an occupational limit. The RF levels below the tower are very low. RF power is at 10% of the 'general public limit' on the ground below the tower. He explained if you are 200 feet away from the tower, it is practically zero. He spoke about the general public limit vs. the occupational limit for RF exposure. Occupational exposure is 10 times less than the FCC's limit. The general public is 50 times lower than the limit allowed by the FCC. The cell phone carriers spend a lot of money buying the licenses so they are very careful not to mess it up. Mr. Kennedy said they are going to follow the rules.

Krishina Riggs – IN OPPOSITION – 15775 Wagner Road Caldwell ID 83607

Ms. Riggs said their company, Idaho Impact Homes, built the house located at 15775 Wagner Road. When they purchased the home, it was the entire original parcel. When they deeded the small portion back to the owner, Lamou Loucks, they thought it was for a road that was going back to the field he owned behind the property for future development of subdivisions. She said now they have constructed a million dollar house that they can't sell because a large tower is being constructed next to their property which has questionable health risk. Whether that is true or not, people are telling them that is why they won't buy the home. She said it is threatening their livelihood and they have been deceived. The pictures seem to show that the tower is far away but it's immediately next to their property. She said for the residents who are living there, 100% of their life will they will have exposure to the higher EMF levels. They originally purchased the entire 1.5 acres and at the last minute Lamou Loucks said he wanted the 60 feet of property back and they thought it was for a road. The 60 feet was originally part of their property; they built the house to the very left of the property so the future residents could have a big side yard because there is not a lot of backyard as it is right up next to a canal. She said the aerial photos are not up to date.

Dustin Riggs – IN OPPOSITION – 15775 Wagner Road Caldwell ID 83607

Mr. Riggs said the 60 feet of frontage road on Wagner Road where the tower is going to be located was originally owned by the Riggs. The reason this property was split and 60 feet was quitclaim deeded back to the Loucks was because he was told 60 ft of frontage was for a road to access the property immediately west of the subject property. That would give the Loucks the possibility of accessing their property without coming in off a State Highway which is much more difficult to gain access from. The cell tower site has severely diminished the value of the home he has just constructed. Potential buyers have told them they would not buy it if there was a cell tower adjacent to the property. Mr. Riggs is a licensed realtor in the State of Idaho and he knows of several properties with diminished value because of cell phone towers existence. The Loucks own a commercial property immediately to the east of the subject property, is 60

feet higher than the subject property and it would be more reasonable to use for a cell phone tower. The tower would diminish his property value and the value of another historical property nearby. Because no other property owners would lease their property for a cell phone tower, that tells Mr. Riggs they know it would also diminish their property values. They were threatened with a lawsuit by the Loucks if they didn't quitclaim the subject property back to them. Because they don't have the funds to fight a legal battle, they quitclaimed the property back to him to avoid a lawsuit. He reiterated that they were told the property they sold back would be used as a road to access property to the west for 5-acre residential properties. The Loucks commercial property is still for sale indicating they are willing to part with the property and is also a sign they are aware the tower would reduce value of that property. He showed where the home he built is on the map.

Mary Tomlinson – IN OPPOSITION – 15655 Wagner Road Caldwell ID 83607

Ms. Tomlinson has been living at her residence for over 50 years. For many years, she has watched geese and ducks migrate through the fly pattern where the cell tower is going to be. She knows they aren't endangered birds but they are a way of life in Idaho; people like to hunt. When you come to the crest of the hill on Riverside and look over the valley, it's beautiful. Now we are going to come to the crest of the hill and see an unsightly cell tower. She is also concerned about peoples' animals, including dog, cats, sheep, near the cell tower. The cell tower would destroy the beauty of the area. The Riggs' property butts right up against the property where the cell tower would be. She doesn't think anyone would want to buy a home next to a cell tower. The study information given to them was very outdated. Progress is great but peace is better and this will disturb the peace.

Jennifer Boersma – IN OPPOSITION – 15733 Wagner Road Caldwell ID 83607

Ms. Boersma said Maverick Towers is the site developer but they aren't affected by the tower they put up; they construct this big tower and the rest of the local residents get to deal with the ramifications of the tower. The Loucks don't live even on the property; they live in Marsing. She said they don't have to live with it but we have to deal with the negative impacts. Despite FCC regulations, public perception of cell towers is a real thing. She spoke to many people along Karcher Road to Homedale; not a single resident wanted a cell tower on their property. She has a list of 45 people who represent 24 property owners who are opposed to putting a cell tower there. She is speaking for the 45 people who will be affected by living in close proximity to the cell tower. The perception alone is not positive and is one reason why your property values go down. She is in opposition to the cell tower and would appreciate the consideration for the people who live in proximity to this and the effects it will have on their households.

Andy Cockell – Applicant (Representative) – REBUTTAL – 1815 N. 11th St., Boise ID 83702

Mr. Cockell detailed his conversation with Lamou Loucks about the tower and explained how he had reservations about what was being built next door. He asked him specifically about it and asked if he had made the owners who bought his property next door were made aware of the tower and Mr. Loucks said 'yes, he is going to quitclaim the property back to him.' Regarding property values: he referred to Maverick Towers attorney's letter on studies from 2015 – 2020 that shows there is no measurable impact on home valuations by cell towers. They have provided substantial evidence countering the opponents opposition on property devaluation. Mr. Cockell spoke to Mr. Lamou about placing the cell tower on his commercial property and Mr. Lamou said he wasn't interested; he was going to sell that property. Mr. Cockell said in regards to the historic property next door: The State Historical Preservation Office will do an extensive review of the application as part of the regulatory process and they have to approve it. If they determine that the tower is not allowed there based on archaeological work and state historical records, they won't move forward. They will meet all conditions and setbacks for property lines and the house next door according to Canyon County codes. Everyone uses wireless technology and use has increased year over year over the last 25 years: it's not going away but no one wants the infrastructure

near them. This infrastructure is what makes it all work. He addressed the outdated information on health concerns; it is from the American Cancer Society. It may be 20 years old but information doesn't become outdated until the information becomes irrelevant or the situation changes. The situation hasn't changed. He reviewed some of the data on health concerns. As long as the FCC approves the safety standards; health concerns aren't an issue. He spoke about 5G technology; 6G is right around the corner. It's just an enhancement of using the radio frequencies more effectively. He said we have offered a ton of evidence and information and our opponents have concerns but have offered no evidence. They agree with staff and agree with all their conditions of approval. This application meets all the requirements of the Canyon County code and the Comprehensive Plan and they are asking for approval. He reiterated there has been no effect on property values. The Hearing Examiner asked about studies on the proximity of property values next to cell towers and corresponding property values. Mr. Cockell stated that the distance from the cell towers was irrelevant. There was general discussion about property values as it is related to proximity of cell towers.

MOTION: Hearing Examiner Eggleston closed public testimony on Case CU2022-0022.

DELIBERATION:

The Hearing Examiner said when he first looked at this application, it seemed to have lots of clearances in agricultural land and little to no impact on surrounding uses. Come to find out, that is not the situation with the neighbors being within 100 feet of it. Intuitively, he feels the proximity to the structure would have some effect on the resale value of the property and the livability. There has been a lot of commentary on both sides of the question. It does change the attitude and it is not as clear cut with the residence being that close to the tower. The applicant's contention is there is zero harm to animal and human life but there are also aesthetics aspects to having that type of facility in the neighborhood. The question is whether this could be located somewhere else but according to the applicant, that wasn't possible because they couldn't get someone to lease them land. With the Conditional Use Permit, they are asking for greater leeway from the County than can be covered in the agricultural code. His thinking on this is there is a convincing case for approval but no demonstrable body of evidence that such use is a deleterious effect to the community. On the other hand, there are some concerns about aesthetic issues on the community. Hearing Examiner Eggleston has taken into consideration the comments from the public on this. The data in front of him shows approval may be warranted by the Code of Canyon County; the other option is denial. He is really divided on this; mainly because of the proximity of the neighbors to the proposal. Hearing Examiner Eggleston spoke about the dispute between the property owner and his neighbor. He is sympathetic to that but he doesn't have the means to get to the bottom of it. One of the ameliorating factors is the applicant would reduce the tower to 150 feet. The Hearing Examiner said he is going to have to go with what's in front of him and what is in the staff report. He concurs with the Findings of Fact, Conclusions of Law which is consistent with the Comprehensive Plan with the exception that the proposed use would be injurious to the area/the character of the area. He doesn't feel that negates the application itself. He finds the conditions of approval are acceptable. He asked to amend item #3 which is changes FAA approval changing height to 150 feet and item #7 should be changed to read, "lighting at the top of the tower and tower height should not exceed 150 feet".

MOTION: Hearing Examiner Eggleston moved to approve Case CU2022-0022 including the Findings of Facts, Conclusions of Law and conditions of approval.

APPROVAL OF MINUTES:

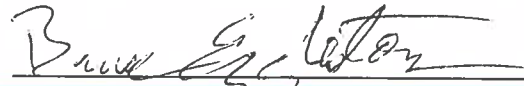
MOTION: Hearing Examiner Eggleston approved the minutes from July 20, 2022.

ADJOURNMENT:

HEARING EXAMINER Bruce Eggleston adjourned the meeting at 3:07 pm.

An audio recording is on file in the Development Services Departments' office.

Approved this 14th day of September, 2022



Bruce Eggleston, Hearing Examiner

ATTEST



Bonnie Puleo, Recording Secretary