



CANYON COUNTY HEARING EXAMINER
MINUTES OF REGULAR MEETING HELD
Wednesday, September 14, 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
Jenna Petroll, Planner
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.

Hearing Examiner Eggleston stated Case No. CR2022-0018/Mireya Felix withdrew her application as the applicant is going through the City of Nampa annexation process.

- **Case No. RZ2022-0008/Pamela Carlton:** The applicant, Pamela Carlton, is requesting a conditional rezone of a 2.04-acre of parcel R30591 from an "R-R" (Rural Residential) zone to a "CR-R-1" (Single Family Residential) zone. The request includes a development agreement that limits the number of divisions of the parcel. The 2.04-acre property is located on the southeast corner of Orchard Road and N Robinson Blvd, Nampa; also referenced as a portion of the NW¼ of Section 20, Township 3N, Range 1W; BM; Canyon County, Idaho.

Planner Cassie Lamb reviewed the Staff report for the record.

Recording Secretary Bonnie Puleo affirmed the witnesses to testify.

Testimony:

Pam Carlton – Applicant (Representative) – IN FAVOR – 620 N. Robinson Blvd., Nampa ID 83687

Ms. Carlton said she needs to do this (rezone) because she can't take care of her property any more. Her husband is ailing and he can't help her maintain the property. She wants to stay where she lives and sell an acre so she can pay off her house, stay home and take care of him. She was asked by the Hearing Examiner about access to the property and the fact that there will be one driveway to serve both properties. Hearing Examiner Eggleston asked if she was going to have some kind of agreement to share access with the other property. Ms. Carlton said she currently uses a round driveway and she was going to remove one of the driveways she has and move it down to the new property for the new owners. She would put up landscaping and a small fence.

Pat McDonald – IN FAVOR – 700 N. Robinson Blvd., Nampa ID 83687

Mr. McDonald lives across the lane from the Carltons and said since they moved in, they have drastically improved the property value of the neighborhood. They have removed all the junk that was left on the property prior to the Carltons purchasing it and they have been great neighbors. They painted the house and have done a lot of nice things to the property. He would like her to be able to keep this property as he believes this is her retirement.

MOTION: Hearing Examiner Eggleston closed public testimony on Case RZ2022-0008.

DELIBERATION:

The Hearing Examiner reviewed the staff report including the Finding of Facts and Conclusions of Law and Order for the case. He said the Finding of Facts sections include seven findings. The Conclusions of Law addresses the Comprehensive Plan land use policies and the Conditional Rezone ordinance, labeled sections A through H. The Hearing Examiner concurs with all the Findings of Fact and Conclusions of Law stated in the staff report. He said part of the case is a proposed development agreement and he agrees with the conditions stated in that development agreement. He feels the development agreement satisfies the zoning code in the Comprehensive Plan land use policies which apply to the area.

MOTION: Hearing Examiner Eggleston recommended approval of Case RZ2022-0008 including the Findings of Facts, Conclusions of Law and Conditions of Approval, forwarding the recommendation to the Board of Canyon County Commissioners.

- **Case No. RZ2022-0009/Oregon Trail Church of God:** The applicant, Juanita Glaubitz representing Oregon Trail Church of God, is requesting a zoning map amendment (rezone) of an 8.21-acre parcel, R34536, from an "A" (Agricultural) zone to a "C-1" (Neighborhood Commercial) zone. The subject property is located at 23057 Old Hwy 30, Caldwell; also referenced as a portion of the SE¼ of Section 04, Township 4N, Range 3W; BM; Canyon County, Idaho.

Planner Jenna Petroll reviewed the Staff report for the record including late exhibits.

Recording Secretary Bonnie Puleo affirmed the witnesses to testify.

Testimony:

Juanita Glaubitz – Applicant (Representative) – IN FAVOR – 15306 N. Bonelli Ave., Nampa ID 83651

Ms. Glaubitz thanks the staff for their work on the project; she was impressed by the amount of work that goes into a request like this. As a church, she said they hear from their community about the lack of faith-based education and child care in the area. She said there are zero Christian-based preschools or daycares in Middleton. While their address is Caldwell, they are closer to Middleton. As a church, they asked themselves why they aren't a solution to that problem. As a result, they respectfully submitted the request for a C-1 Rezone which would allow them to open a faith-based preschool and daycare. They could have asked for a conditional use permit but when they explored that option, they were advised that Canyon County Development Services couldn't find an original conditional use permit for the church operation itself. The Church's Board met and unanimously decided they wanted to be in compliance and be good business partners with the County, so they submitted the request for C-1 zoning. The preschool or daycare would also fall in the Canyon County's allowable uses for C-1 zoning preventing them for having to ask for an exception to the rule and would put them in the position of being in consistent with the Canyon County

2020 Comprehensive Plan which already reflects their property as a C-1 zoned property. The Oregon Trail property is also part of the City of Middleton Impact Area and it also shows the property as being zoned commercial. Their building will not require any structural changes to operate as a daycare and preschool. The church has a 32,000 square foot building which includes 2234 square feet space upstairs that currently is used as a children's ministry on Sundays and Wednesdays. It also has a full kitchen, dining area and a 6664 square foot gym that could be used for the children during adverse weather. They plan on hiring 14 additional employees. Ms. Glaubitz would serve as Finance Director and the current Board of Trustees will provide oversight. They expect to serve 50 children. With regards to the future use of the property if it was ever sold, she said the church has been in existence in Caldwell since 1943. They were located in town and then purchased this property in 1984. They plan on changing the name of the church to Faith Journey Church. The church is established under a larger church organization and she explained that structure. Article 19 of their church bylaws states if this church leaves the property, it will revert back to the larger church organization. She said this means any future sale of the property is restricted by their bylaws and it will always be a church. She read a letter from the pastor Brian Seidel explaining why they want to make this change and the great need for Christian childcare in the Middleton area. In response to a question from the Hearing Examiner, she said she has had no discussion with staff about a development agreement but she said the church is more than happy to enter into a development agreement that would limit the scope of use to a church facility that allows a preschool/daycare within the boundaries of that building. She said they would have zero issues with that. The Hearing Examiner said that he feels a recommendation to the Board of County Commissioners to consider a development agreement would provide insurance to the community of what could be put there.

Srinivasa Nookala – IN FAVOR – 1579 Bighorn Ave., Middleton ID 83644

Mr. Nookala is a real estate developer and does a lot of multi-family and industrial projects in the valley. He resonates with the issues Ms. Glaubitz and the pastor have highlighted and the desperate need for quality Christian preschool and daycare in the area. He has a two-year old who attends the daycare services at the church on Sundays so this is personal for him and wanted to provide testimony in support of this project. He has done a lot of rezones on his properties and is very familiar with development agreements. He asked that they keep any development agreement simple by stating the use would be the church and daycare. If that was the agreement, they would willingly enter into that as a condition of approval. They already have a daycare for church services on Sundays and a family program on Wednesday evenings. There is a lot of community-based involvement there. He wanted to give his personal support for this and express why it is a great idea. He is looking forward to having this available for his child.

Paige Lilienthal – IN FAVOR – 14079 Shannon Circle Caldwell ID 83607

Ms. Lilienthal supports the idea of a faith-based preschool because she feels the community really needs childcare. She currently provides private childcare for several families and they are always asking for daycare options, but there aren't a lot of options in the community. In fact, there are no faith-based childcare options in their town. She is excited about this option because she would like to work there and not just because of job opportunity. It would also allow her to share her faith with children and other adults.

Victoria Moreland – IN FAVOR – 722 Fairhaven Middleton ID 83644

Ms. Moreland is currently the Oregon Trails Church children's director. She would be the director of the new preschool/daycare. She has many years of experience in childcare settings. She urges the Hearing Examiner to approve the zoning change so they can move forward with their faith-based preschool and daycare. Canyon County has experienced a population surge and finding quality childcare services has been a cumbersome and painful process. Local daycares are overcrowded and the waiting list is extensive.

This has resulted in parents having to settle for inadequate daycare or driving long distances to find programs for their children. They have been blessed with the opportunity to start a quality, faith-based preschool. They have ample space in their church to accommodate this community need. It is also a convenient location for parents and will ensure a preschool program of excellence. It will be a safe and clean environment; class sizes will be limited and it will ensure each child receives the best possible experience. It will also provide employment opportunities to high school students and moms seeking full or part-time employment that will allow them to be with their kids. She can't stress enough that the community is sorely lacking in quality daycare and preschool program availability.

Kimberly Lilienthal – IN FAVOR – 14079 Shannon Circle Caldwell ID 83607

Ms. Lilienthal came to speak in favor of the church daycare/preschool. She is a mother of three children, has had them in daycare and is aware of the battle to find a good, sound, safe place for children to spend a good portion of their days. After her third child, she decided to go into daycare. When they moved to Middleton 8 years ago, she began to work at a local daycare. At the time, that daycare was at full capacity with both part-time and full-time kids; they were constructing a new building to accommodate all the kids who needed a place to go. She said now that facility is no longer accepting part-time children because there are so many who need full-time childcare. She changed to providing home daycare and found it was a more relaxed environment and enjoyed being able to choose what to teach the children. She completely understands the need for faith-based preschool/daycare. This would be an amazing opportunity for the community and their church.

MOTION: Hearing Examiner Eggleston closed public testimony on Case RZ2022-0009.

DELIBERATION:

Hearing Examiner Eggleston asked staff about road improvements for the intersection in the area. Staff said they understood that it might be another 7 years until the improvements to that intersection would be made. Staff said they didn't see any significant impacts to the traffic that would be generated through this use due to the type of use they are proposing. The Hearing Examiner said the Findings of Facts 1 – 8 that substantiate the process has been followed according to County and State code. The Conclusions of Law 1 – 8; the Hearing Examiner agrees with the Conclusions of Law and finds the proposed use is suitable for the area. The Middleton Area of City Impact has this area zoned Commercial. Based on the Findings of Fact, Conclusions of Law, the Hearing Examiner recommended approval of the rezone from A to C-1. After discussion with staff about how the addition of a development agreement would require the applicant to re-apply as a conditional rezone, he rescinded his recommendation to the Board of County Commissioners to add the development agreement.

MOTION: Hearing Examiner Eggleston recommended approval of Case RZ2022-0009 including the Findings of Facts, Conclusions of Law and Conditions of Approval, forwarding the recommendation to the Board of Canyon County Commissioners.

- **Case CU2022-0029/Dinius-Humphrey:** The applicant, Jenelle Humphrey on behalf of AT&T, representing Kevin and Roberta Dinius, is requesting a conditional use permit to install a telecommunications facility on parcel R29681122B. The request includes the installation of a 50' x 50' fenced compound around a 150' monopole telecommunications tower and ground equipment. The parcel is zoned "A" (Agricultural). The subject property is located at 8455 Lonesome Dove Ln, Nampa; also referenced as a portion of the SE¼ of Section 22, Township 2N, Range 2W; Canyon County, Idaho.

Planner Jenna Petroll reviewed the Staff report for the record including late exhibits.

Recording Secretary Bonnie Puleo affirmed the witnesses to testify.

Testimony:

Kara Subleski – Applicant (Representative) – IN FAVOR – 8455 Lonesome Dove Lane Nampa ID 83686

Ms. Subleski was there on behalf of AT&T and was proposing a wireless telecommunications facility on the property. AT&T proposes erecting a new 150 ft. monopole within a 50x50 compound to provide coverage for South Nampa area along State Highway 45. This parcel and most surrounding parcels are zoned agricultural. She said the site will also provide coverage for FirstNet users in the area which is access for First Responders to have first priority in an emergency. Ms. Subleski displayed the site plan, the 50x50 compound in the corner of the parcel and the elevation view of the monopole structure. She also showed a map of the existing AT&T installations in the area with before and after service coverage maps for the proposed installation. She also showed a service coverage map for an alternate site which does not provide the same amount of coverage. She explained the different colors on the map which represented the different types of coverage (indoor vs. outdoor or voice vs. data coverage). She said the increase in coverage would allow more people to use data coverage to stream videos and video chats. In response to a question from the Hearing Examiner, Ms. Subleski said other areas were looked at and this location and height at this location worked best for the best coverage objectives with an interested property owner. She said these builds are expensive so AT&T does not choose these sites randomly.

Donald Peck – IN FAVOR – 820 2nd Street South Nampa ID 83687

Mr. Peck is a Lieutenant with the Nampa Police Department testifying in favor of this application. He is over the dispatch center which includes the Fire Department and this affects them (the Fire Department) more than Mr. Peck's department. He wanted to state that all their Fire Chiefs are in favor of this; currently, the connectivity is not as great on the data side which is what they use a lot of. He said Fire apparatus and patrol cars all run off FirstNet SIM cards and in order to get data to the vehicles to respond to emergencies, this is going to be vital to them. One area in this new coverage area is the Nampa Rod & Gun Club and he said they don't have great service at the range when they are doing their qualifications. This will increase coverage there and it will mean they can continue to have communications when they are out there. He encourages approval of this permit so they can have the coverage and the service they need to adequately serve the community.

Christy Perry – IN OPPOSITION – 8791 Elkhorn Lane Nampa ID 83686

Ms. Perry and her husband owns the property immediately adjacent to this proposed site. It is her understanding that this tower will sit about 5 feet off their property. It will be a massive monopole enclosed in a 50 ft fence that runs right up alongside their property and next to their horses. They built their home on the property 21 years ago. She raises steers and horses on the property. She said they pre-date the property owned by Mr. Dinius and the subdivision he lives in. She doesn't feel it's correct to impose a massive cell tower and lower the property value on the homes that have been there for decades when there are better options available. There are studies that show diminishing property values of about 20% when there is a cell phone tower this close. Ms. Perry said the area is full of high-end, small acreage parcels and the monopole is a massive intrusion into the agricultural landscape. She understands the need for coverage and especially for First Responders but First Responders will not be the only people using this pole. The pole's use is not limited to AT&T and First Responders only. The Department of Commerce clearly states this is intended for growth. She said they will sell space on the tower creating a lot of traffic and workmen in this area. Staff couldn't access the property and had to take pictures offsite. She would like them to consider that there are better siting opportunities within this same area which will fulfill the

same needs without having such a massive impact to the local landowners. Ms. Perry brought up the gun range. She said it sits adjacent to this property and it is higher up on the hill and would allow a safe distance around the pole. She attended the neighborhood meeting and asked why the tower is being placed at the bottom of the hill. The engineer told her he wanted it at the top of the hill. It would work better and there wouldn't be any shadowing or disruptions but they had to work with the property owner. She said the property owner has approximately 50 acres and is placing it as far away from his home as possible but close to her home. The tower has to be a 150' tall because of its placement. Ms. Perry said the water drains down to a low spot at the location where they are putting the tower; they already have drainage problems there and this will cause even more trouble. She said the company told her once they found one interested person, they stopped searching and started this process. She is asking them to go back and find a better place for this. She is also asking for a protective distance. 5G technology is relatively new. She left her photos and information to be included as part of the record.

Kirk Bowman – IN OPPOSITION – 8899 Missouri Ave., Nampa ID 83686

Mr. Bowman said he, along with the Perrys, are the closest neighbors to this property. He has lived in the area 50 years and has seen a lot of change; not all change is good and he doesn't view this as good. At one time, he farmed all property between Bennett Road and Sissom Road and it pains him to see farmland to move to other uses particularly when there are better locations for this. He asked why put it at the bottom of the hill? He said the top of the hill has great views and would have greater reach and he feels the location was poorly chosen. Mr. Bowman said it could be located on waste ground like the old gravel pit which is located near the top of the hill. That land won't be used for many years. He doesn't dispute the need, especially for essential services. He just questions the location. He said the information about drainage issues is true. That area has flooded a number of times and if they put it in that location, it is going to be even harder for the farmer to maintain the catch basin that is right there. He said that is a very valid concern. He said Mr. Dinius owns property directly east of the location and that is within a few feet of the highest point of that hill.

Jolene Williams – IN OPPOSITION – 8801 Elkhorn Lane Nampa ID 83686

Ms. Williams said she is adjacent to where this is happening and showed where she lived on the map. She said they were approached a year ago by AT&T about having the cell phone tower put on their property. They are further down the hill and much lower. She said they received all AT&T's paperwork and listened to their pitch. AT&T said they wanted 14 acres of their 21 acres for the tower. They thought about putting in on their property and about how the lease is for 25 years. They considered the impact to their neighbors: AT&T wanted to put it on their southeast border/corner which would be closer to homes. They were told the appealing thing about their property is that it has great highway access. She said now it seems they are reaching for a piece of property; the parcel they are proposing to use is landlocked and is a low spot. Ms. Williams said they don't have anything against AT&T, she just thinks there are better places for this tower. The tower is quite high because it is built in a lower spot. When the Williams bought their property in 1983, there were only 3 homes with sugar beets and hay being grown around them. She said this is an odd way for Dinius to use his property because it is landlocked. The Williams declined AT&T's offer so they went looking for other possibilities. There is a gravel pit nearby that is much higher and in close proximity to this location with no homes next to it. She said it seems to be a better fit there. The Williams own the entrance and they were worried about that. Ms. Williams said they have proven with studies that there should be ¼ of a mile between homes and poles for safety and she doesn't think they are establishing that at all. She doesn't know any neighbors who want this close to their property when there are higher and better properties out there. She thinks it needs to be looked at as far as fit. The people who have lived there for a long time see this as an infringement. She said it's a shame: this land used to produce a lot of sugar beets and now it's just going to be a cell phone tower. She thinks we need to get this right because the lease is for 25 years.

REBUTTAL:

Kara Subleski – Applicant (Representative) – 8455 Lonesome Dove Lane Nampa ID 83686

Ms. Subleski wanted to point out that the Hearing Examiner can't make a ruling on Health and Safety per FCC guidelines. She said additionally, this location has been vetted extensively; the 50 x 50 compound that AT&T will need for this installation was chosen for a reason. They vetted many areas around this property and this one was selected. The hill that they have been hearing about; there is an existing AT&T site to the north that provides coverage for the area. They need to be a certain distance away from those existing sites for all the sites to work appropriately together. She said they want to avoid being too close. In response to a question from the Hearing Examiner, she said she wasn't part of the discussions with the landowner when they finalized the decision on this site. She stated the reason the north/east corner of the property wasn't chosen is because they didn't want to disrupt the existing Ag use and wanted to be away from the (housing) development on the east side. There was additional discussion about the placement of the cell tower using the map as a reference. Regarding the drainage concerns, she said they could make one of the conditions that they do a drainage study before installation.

William Mosman – 11984 W. Edna St. Boise ID 83712

Mr. Mosman testified about LTE frequency re-use coverage. They use the same frequencies across all their sites. He said when you have overlapping coverage, there will be dropped calls and a reduction in data through-put. They vetted the whole area and it was tough to find a spot that was suitable. He said if they don't build here, they may have to drop the site. His only concern is coverage and service, he doesn't get involved with anything else. He described the vetting process in choosing a site. The sites are expensive and they have a limited budget in this area so they have to be picky about where they put them. If they put it up on the hill, it might improve coverage to the south but it will conflict with another existing site. He said they are down in a hole a little bit but they are high enough to see over the hilltop; he showed on the map what they want the coverage to be and the possible conflicts. Mr. Mosman said they engineer mostly for indoor coverage and he discussed the amount of signal power you get inside a home, which is very low. He doesn't know if the top of the hill is a possibility for this land owner; they have to work with the landowner to place the tower. Mr. Mosman said putting it in the southeast corner may put the home in the 'fall zone' of the tower, which is the area radius if the tower were to fall. The property owner may not want to move the location. He doesn't get involved in the potential impact to the neighborhood, he just chooses the sites based on performance. Moving it a little would probably not have much of an impact, but he can't say without doing a propagation prediction and he is not sure if the property owner would agree to it.

Kara Subleski – Applicant (Representative) –8455 Lonesome Dove Lane Nampa ID 83686

Hearing Examiner Eggleston stated he is most concerned about the impact on the neighborhood. He asked if the landowner was present; Ms. Subleski said he was not. The Hearing Examiner asked if this is the only location the landowner would agree to. She said other locations on his property were discussed and this was the location they have agreed to. The Hearing Examiner asked if they canvass everyone in the area for a site and Ms. Subleski replied they do. She said once they get a list of interested property owners, they submit that list to AT&T and their engineers choose the best site. Hearing Examiner Eggleston asked if there was a list of ranked sites for this area. Ms. Subleski said in certain circumstances they do (have that) but she didn't have that for this site.

Hearing Examiner Eggleston said the location is a concern to him. He is hesitant to approve something that doesn't seem to be a good fit. He was also concerned about the access to this site; staff replied that the site is landlocked but there is an easement that runs alongside the bottom portion of the eastern parcel. The Planner showed the easement on a map.

MOTION: Hearing Examiner Eggleston closed public testimony on Case CU2022-0029.

DELIBERATION:

Hearing Examiner Eggleston said he finds these cases very difficult because of having limited understanding of the technical requirements of cell tower transmission. He appreciates the expert testimony that was given. He did not know about the proximity effect to other towers. He is concerned about the impact on the neighborhood as the siting doesn't seem to be optimum for it's impact on the neighborhood. He is also concerned about the piece of farmland that has wastewater flooding from irrigation, even though that can be resolved by ditching. He understands these sites are necessary and a great majority of people use these services. He is always going to have to question the impact and the ability to fulfill the policies of the Comprehensive Plan. Hearing Examiner Eggleston said the zoning isn't so much of an issue here, but he has to make findings also based on the Comprehensive Plan. He is not convinced either way that this is the best site and the best use for the property. The only thing he finds compelling is that staff has vetted these facts, the facts were vetted in the hearing and the site has been found suitable by staff based on their knowledge of the land use considerations and the policies and ordinances. At a certain point, he has to rely on that however painful it is on the impact to the local area. He is quite divided on this application and feels there is better locations for the tower.

MOTION: Hearing Examiner Eggleston approved Case CU2022-0029 including the Findings of Facts, Conclusions of Law and conditions of approval.

APPROVAL OF MINUTES:

MOTION: Hearing Examiner Eggleston approved the minutes from 8/17/2022.

DIRECTOR, PLANNER, COMMISSION COMMENTS:

ADJOURNMENT:

HEARING EXAMINER Bruce Eggleston adjourned the meeting at 3:39 pm.

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

Approved this 19th day of October, 2022


Bruce Eggleston, Hearing Examiner

ATTEST



Bonnie Puleo, Recording Secretary