



**Findings of Fact, Conclusions of Law, and Order**

**Introduction**

1. The appellant, Atlas Tower 1, LLC, is appealing the decision by the Planning and Zoning Commission regarding the denial of a conditional use permit to construct a telecommunication facility including a 100' monopole. The monopole will be designed as an Evergreen Pine Tree. The facility will be located within a 2,500-square-foot fenced lease area. The subject property is located on Lone Star Road, Nampa, also referenced as Parcel R31463010, a portion of the SW<sup>1</sup>/<sub>4</sub> of Section 19, T3N, R2W, BM, Canyon County, Idaho.
2. On September 7, 2023, at a duly noticed public hearing, the Planning and Zoning Commission found Criteria 4 of CCZO §07-07-05 (Conditional Use Permit - Hearing Criteria) could not be made due to potential impacts to the property values of adjacent properties (Exhibits 3a & 3b, Staff Report).
3. A complete appeal application and required fees were submitted on October 20, 2023, per CCZO §07-05-05(1) (Exhibit 2, Staff Report). On October 20, 2023, the applicant submitted an appeal of the decision by the Planning and Zoning Commission requesting the Board of County Commissioners approve CU2023-0005 based on the following reasons (Exhibit 2a):
  - 1) The denial was based on injurious impacts to property values. The appellant challenges the interpretation of "injurious" and that the decision was not made based on reliable facts, evidence, or reports.
  - 2) The denial relied on testimony regarding RF propagation and human health.
  - 3) The denial was arbitrary and capricious. Other similar facilities have been approved in the County with similar information provided in the application.
  - 4) The denial violated federal law by denying coverage as defined by the Telecommunication Act of 1996.
4. The 65.93-acre parcel, R31463010, is zoned "A" (Agricultural, Exhibit 1, Staff Report) with southern property boundary frontage on Lone Star Road and northern property boundary frontage on Smith Avenue. The property is an agricultural parcel with no residential buildings available (AD2017-109; Exhibit 4c, Staff Report).
5. The Canyon County Future Land Use Plan within the 2030 Canyon County Comprehensive Plan designates the subject property as "agriculture" (Exhibit 1 - Exhibit B, Attachment 5, Staff Report).
6. Per Canyon County Code 09-11-25(1), a notice was sent to the City of Nampa on May 24, 2023, and January 3, 2024. The property is located within the Nampa Area of City Impact. Nampa's Future Land Use Plan within their Comprehensive Plan designates the subject property as "Residential - Mixed Use" (Exhibit 1 - Exhibit B, Attachment 6, Staff Report).
7. A comment from Nampa Planning and Zoning was received indicating that the Planning and Zoning Department had no comments for the proposed tower (Exhibit 1 - Exhibit C, Attachment 2, Staff Report). Nampa Engineering is responsible for the section of Lone Star Rd, a minor arterial Engineering requires the driveway approach to be used for cell tower access to be improved to Nampa Standard Drawing N-287 (Exhibit 1 - Exhibit C, Attachment 3).
8. The request was noticed/published per Canyon County Code §07-05-01. Property owners within 600 feet of the property boundaries were noticed on January 3, 2024. Agencies were noticed on January 3, 2024. A newspaper notice was published on January 4, 2024. The property was posted on January 11, 2024.
9. All record herein consists of exhibits provided in the public hearing staff report, testimony, and exhibits provided during the public hearing on February 13, 2024, and all information in case file CU2023-0005-APL.

## Review

Upon review, the Board of County Commissioners finds and concludes the following regarding the Standards of Review for Conditional Use Permit (CCZO §07-07-05):

### **1. Is the proposed use permitted in the zone by conditional use permit?**

The proposed use is a telecommunications tower. Parcel R31463010 is zoned "A" (Agricultural) (Exhibit 1, Staff Report). CCZO §07-10-27 (Land Use Matrix), permits a telecommunication facility in the "A" zone subject to a conditional use permit. Therefore, the proposed use is permitted in the "A" (Agricultural) zone subject to the approval of a conditional use permit.

### **2. What is the nature of the request?**

The nature of the request is a telecommunications facility that includes a 100' monopole designed as an evergreen tree and associated facilities. The tower can support up to four wireless providers with the providers installing their antennas and on-the-ground equipment as needed. The facility will have a fence around the site. A 12' wide access gate and utility hookups for electrical.

### **3. Is the proposed use consistent with the Comprehensive Plan?**

The subject property is designated as "Agriculture" on the 2030 Comprehensive Plan's Future Land Use map (Exhibit 1, Exhibit B - Attachment 5 of the Staff Report). A Telecommunication facility is an allowed use subject to conditional use permit approval in "A" (Agricultural) zones (CCZO §07-10-27). The Canyon County Comprehensive Plan contains the following policies pertaining to telecommunication towers:

- a. P2.02.01: "Plan for anticipated population and households the community can support with adequate services and amenities."
- b. G4.01.00 "Support livability and high quality of life as the community changes over time."
- c. P4.01.02: "Planning, Zoning, and land use decisions should balance the community's interests and protect private property rights."
- d. P4.02.01: "Consider site capability and characteristics when determining the appropriate locations and intensities of various land uses."

The property abuts the City of Nampa's jurisdiction and is located in Nampa's Area of City Impact. (Exhibit 1; Exhibit B - Attachment 1 and Exhibit C, Attachment 2 of the Staff Report). According to Nampa's Future Land Use map, the area is experiencing high levels of residential growth where reliable mobile networks are necessary. The parcel's future land use in Nampa's 2040 Comprehensive Plan is residential mixed-use. The proposed use would assist in supporting livability by increasing mobile network connectivity in this potential future residential area under the Nampa Plan and creating better communication in the area for first responders (Exhibit 1; Exhibit A of the Staff Report). For these reasons, the proposed use is consistent with the 2030 Canyon County Comprehensive Plan.

### **4. Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?**

The applicant proposes a 100' monopole designed as an evergreen tree and associated facilities that would occupy a portion of a 65.93-acre parcel currently in agricultural use. The parcel's southern property boundary frontage on Lone Star Road and the northern property boundary frontage is on Smith Avenue. The property is an agricultural parcel with no residential buildings. The parcel is within the Nampa city area of impact and designated as future residential on Nampa's comprehensive plan. There are 115 platted subdivisions in both county and City of Nampa jurisdiction within one mile of the proposed site.

The applicant proposes placing the tower and facilities in a specific location on the southwestern portion of the parcel adjacent to two 2.62-acre parcels with existing single-family residential uses. The owner of Parcel R31463, Joseph Stone, provided written comment and testified that this parcel is an investment property and that the location of the proposed telecommunication facility has impacted the sale and future development of the property. Mr. Stone was not opposed to the facility but opposed to the facility's location. Stone testified that the proposed facility lease area is 10' from the property boundary line and that the monopole location appears to be approximately 20' from the property boundary line and approximately 240 feet from the existing dwelling

on Mr. Stone property. Stone provided additional comments, in Exhibit 5l of the Staff Report, including a 2019 study that cell towers within 650 feet of a residential property can decrease the value between 2.65% to 15%.

Other residential property owners from the area provided written comments and testimony regarding their concern about impacts on their property value and that the tower design (monopole designed as an evergreen out of character) was out of character with the area.

The area consists of a mix of large agricultural lots, annexed residential developments, and smaller "A" zoned parcel with single-family homes. There is one public school, Lone Star Middle School located at the intersection of Lone Star and S. Middleton Road. Because of the existing residential use and expected residential growth from Nampa the Board considers the character of the area to be that of transitional residential.

The applicant proposed the following mitigation conditions: use of a "stealth mono-pine" to disguise the cell tower; fenced/exterior lighting; weed control; and meeting all County, state, and federal requirements. The applicant said at the Board's hearing that although no trees are present at the proposed site conifer trees could be planted to disguise the monopole in the future. The applicant would not consider relocating the tower to another area of the parcel or any alternative sites. The applicant did not provide any data to refute the impact of the tower on residential property values. Nor did the applicant provide any data to support the idea that the tower was necessary for cell phone coverage in the area beyond the mere assertion of such.

The Planning and Zoning Commission denied the application because of the tower's negative impact on property values and negative impact on the ability of adjacent property owners to the tower to develop their property for residential use. The Board concurs with the Commission as to this review criteria.

The Board finds both the anecdotal evidence offered about the difficulties developing this residential lot immediately adjacent to a proposed monopole and the statistical study about the impacts on property values within proximity to a monopole to be compelling. There's no question for the Board that common sense dictates that a 100' telecommunications pole in the backyard or view from a residential home would dissuade potential purchasers of the residence be that because of aesthetics or for fear of harm. The applicant offers no substantial rebuttal or mitigation to this point. Indeed, the applicant offered to have the monopole decorated as an evergreen tree in an area where there are no other mature evergreen trees present will provide further attention to the pole and make it stand out from the area. The Board, because of the proximity to Nampa and the existence of extensive residential subdivision development in the area, believes the future character of this area is residential and that the area is currently a transitional residential character. The proximity of the monopole to the southwestern parcels where residential development is being contemplated by at least one of the parcel owners would clearly injure the parcel owners' future use of the parcel.

The purpose of this conditional use permit process is to establish conditions to mitigate the potential impact of a proposed use. In this case, the applicant's unwillingness to consider alternative locations, even on the same parcel, is a primary factor influencing this conclusion. This is a large parcel and proximity to adjacent residential uses or prospective residential uses is the cause of the injury and change of character in the area.

The Board finds the proposed use will be injurious to other property in the immediate vicinity and will negatively change the essential character of the area for the reason stated above.

**5. Will adequate water, sewer, irrigation, drainage and stormwater drainage facilities, and utility systems be provided to accommodate the use;**

The facility will be unmanned, and therefore, will not require access to domestic water or sanitary system (Exhibit, Exhibit A, Staff Report). Idaho Power will supply utilities to the facility. A backup generator is proposed to ensure the facility is operational if there is a power outage (Exhibit, Exhibit A, Staff Report). The Wilson Drain and Phyllis Canal bisect the subject property. The facility is located approximately 740 feet from the canal and drain. Therefore, the facility will not impact the existing irrigation systems. According to the applicant's land use worksheet, drainage will occur into the Phyllis Canal. Nampa-Meridian Irrigation district responded by requiring all surface drainage must be retained on site and if any drainage leaves the site the drainage plan must be reviewed by the irrigation district. If approved, all surface drainage must be retained on site, and if any drainage leaves the site the drainage plan must be reviewed by the irrigation district. The agency notice was on May 24<sup>th</sup>, 2023. Responded agencies include the Nampa Meridian Irrigation District, Nampa Fire District, Nampa Engineering, and Nampa Planning and Zoning.

Adequate facilities and systems for the use will be provided to accommodate this use. No additional water,

sewer, or irrigation facilities are needed for this unmanned facility. Irrigation facilities that bisect the property will not be impacted by the request.

**6. Does legal access to the subject property for the development exist or will it exist at the time of the final plat?**

Legal access to the site will be provided by a 32' access and utility easement from Lone Star Rd. The proposed easement consists of a 20' utility easement proposed by Atlas and a 12' access easement proposed by Atlas within it (Exhibit, Exhibit A, Staff Report). Any approach from Lone Star Rd shall meet the City of Nampa's requirements for rural approaches. Per agency comments from the City of Nampa Engineering (Exhibit 1 - Exhibit C, Attachment 3, Staff Report).

**7. Will there be undue interference with existing or future traffic patterns?**

Traffic to and from the site is intended to be minimal. The average amount of visits to the site is estimated to be one to four per year per carrier or its contract. This average to about one visit per month by someone to the site if the site is at full capacity (Exhibit, Exhibit A, Staff Report). This section of Lone Star Road, a minor arterial, is under the jurisdiction of the City of Nampa. The city will require the approach to meet City of Nampa standards and will require the applicant to obtain a right-of-way permit before approach construction (Exhibit 1- Exhibit C, Attachment 3, Staff Report).

There will not be undue interference with existing or future traffic patterns.

**8. Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or require additional public funding in order to meet the needs created by the requested use?**

The letter of intent and land use worksheet demonstrate that the proposed unmanned facility does not require any services or utilities except power. Nampa Fire has expressed the need for mitigation efforts concerning access to any site for utilities. Other emergency services had not provided comment.

Nampa Fire comments provided two conditions if the application was approved (1) Any associated utility building placed at the site for utilities such as backup power supply shall be provided with appropriate fire department access with a turnaround if located more the 150' off the main road. (2) Backup power supplies including above-ground diesel tanks or battery backup banks shall meet international fire code requirements and be permitted through the fire district. The proposed site is further than 150' from Lone Star Road. A proper turnaround must be provided for the site per fire district comments (Exhibit 1; Exhibit C - Attachment 1 of the Staff Report). Therefore, the proposed use is not anticipated to negatively impact essential public services and facilities if these conditions are satisfied.

**Order**

Based upon the Findings of Fact and Conclusions of Law enumerated above, the Board of County Commissioners hereby **denies** the appeal **upholding** the decision by the Planning and Zoning Commission for Case No. CU2023-0005, a request for a Conditional Use Permit to allow a telecommunications facility on Parcel R31463010.



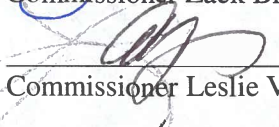
According to Idaho Code §67-6519, the following actions may be taken to obtain approval:

1. Applicant should propose a different site that does not have a direct impact on the valuation of adjacent properties and propose additional mitigations to address the public comments and concerns related to the use being injurious to surrounding areas and negatively impacting the character of the area.

According to §67-6535 of the Idaho Code, the applicant has 14 days from the final decision to seek reconsideration before seeking judicial review.

APPEAL DENIED this 12<sup>th</sup> day of March, 2024.

**BOARD OF COUNTY COMMISSIONERS  
CANYON COUNTY,**

	Yes	No	Did Not Vote
 _____ Commissioner Brad Holton	<input checked="" type="checkbox"/>	_____	_____
 _____ Commissioner Zack Brooks	<input checked="" type="checkbox"/>	_____	Could not vote <input checked="" type="checkbox"/>
 _____ Commissioner Leslie Van Beek	<input checked="" type="checkbox"/>	_____	_____
Attest: Rick Hogaboam, Clerk			
By: <u>JROSS</u>			