



PLANNING OR ZONING COMMISSION
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:
Rage Development – CU2023-0023

The Canyon County Planning and Zoning Commission considers the following:

- 1) Conditional Use Permit for an unmanned wireless telecommunications facility within a 50' x 50' lease area on Parcel R32034. The facility includes a 99-foot monopole (104' with a lighting rod).

[Case No. CU2023-0023; 2201 Lone Star Road, Nampa; a portion of the NW¼ of Section 29, T3N, R2W, B-M, Canyon County, Idaho]

Summary of the Record

1. The record is comprised of the following:

A. The record includes all testimony, the staff report, exhibits, and documents in Case File CU2023-0023.

Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-07 (Conditional Use Permits), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Idaho Code §67-6512 (Special Use Permits, Conditions, and Procedures), Canyon County Code §09-11-25 (Area of City Impact Agreement), and Title 47 U.S.C. §332(C)(7)(B).
 - a. Notice of the public hearing was provided pursuant to CCZO §07-05-01, Idaho Code §67-6509 and 67-6512.
 - b. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Idaho Code §67-6512.
 - c. Every use which requires the granting of a conditional use permit is declared to possess characteristics which require review and appraisal by the commission to determine whether or not the use would cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity. *See* CCZO §07-07-01.
 - d. Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development;(6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. *See* Idaho Code §67-6512, CCZO §07-07-17, and 07-07-19.
 - e. Title 47 U.S.C. §332(C)(7)(B) – Limitations
 - (i) *The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—*

- (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
 - (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
 - (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
 - (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
 - (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.
2. The commission shall have those powers and perform those duties assigned by the board that are provided for in the local land use planning act, Idaho Code, title 67, chapter 65, and county ordinances. CCZO §07-03-01, 07-07-01.
 3. There are no mandates in the Local Planning Act as to when conditional permits may or may not be granted, aside from non-compliance with the community master plan. I.C. § 67-6512. Chambers v. Kootenai Cnty. Bd. of Comm'rs, 125 Idaho 115, 117, 867 P.2d 989, 991 (1994).
 4. The burden of persuasion is upon the applicant to prove that all criteria are satisfied. CCZO §07-05-03.
 5. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.
 6. The County's hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

The application, CU2023-0023, was presented at a public hearing before the Canyon County Planning and Zoning Commission on July 18, 2024. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Canyon County Planning and Zoning Commission decided as follows:

CONDITIONAL USE PERMIT HEARING CRITERIA – CCZO §07-07-05

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

Conclusion: The requested use is allowed subject to conditional use permit approval.

Findings: (1) The subject parcel is zoned “R-1” (Single Family Residential, Exhibit 3e of the staff report). A telecommunication facility requires conditional use permit approval in the “R-1” Zone (CCZO §07-02-03 & §07-10-27).

- (2) A conditional use permit was submitted on October 27, 2023, with additional information submitted on April 24, 2024 (Exhibit 2 of the staff report). The applicant’s PowerPoint presentation was submitted on July 8, 2024 (Exhibit 2i).
- (3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

2. What is the nature of the request?

Conclusion: (1) The facility includes the construction of a 99’ monopole (104’ with light road) for carrier antennas and microwaves for up to four vendors. The tower and accessory equipment shelters will be located within a 50’ x 50’ (2,500 square feet) leased area enclosed by an 8’ tall chain-linked fence with green or tan slats. New utility access will be located within a 15’ access easement with an area to park for scheduled maintenance (*See site plan and details, Exhibit 2a & 2b of the staff report*).

The applicant requests an unmanned telecommunications facility at the subject location to address wireless coverage needs in the area and contribute to improved emergency 911 services. After considering alternative locations, the location was chosen to optimize coverage where existing network infrastructure is insufficient. The facility will improve coverage, capacity, and off-load traffic from neighboring sites improving users' experience (*See Coverage Maps and Justification, Exhibit 2a & 2c of the staff report*).

Findings: (2) A conditional use permit was submitted on October 27, 2023, with additional information submitted on April 24, 2024, and July 8, 2024 (Exhibit 2 of the staff report).

(3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

3. Is the proposed use consistent with the comprehensive plan?

Conclusion: The request is generally consistent with the 2030 Canyon County Comprehensive Plan.

Findings: (1) The 2030 Canyon County Comprehensive Plan designates the future use of the parcel as “residential” (Exhibit 3c of the staff report).

(2) The request aligns with the following goals and policies of the 2030 Comprehensive Plan:

- G1.01.00: *“Protect the integrity of individual property rights while safeguarding public health, safety, and welfare.”*
- G2.01.00: *“Incorporate population growth trends and projections when making land use decisions.”*
 - P2.01.01: *“Plan for anticipated population and households that community can support with adequate services and amenities.”*
- P4.03.03: *“Recognize that each land use application is unique and that agricultural and non-agricultural uses may be compatible and co-exist in the same area and in some instances may require conditions of approval to promote compatibility.”*
- G7.01.00: *“Endeavor to continue providing reliable public services, public safety facilities, & public utilities that support existing developed areas and future growth.”*

(3) See findings and evidence in criteria 4 through 8 for evidence that supports this criterion.

(4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

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

Conclusion: As conditioned, the request will not be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area.

Findings:

- (1) The applicant requests an unmanned telecommunications facility at the subject location to address wireless coverage needs in the area and contribute to improved emergency 911 services. After considering alternative locations, the location was chosen to optimize coverage where existing network infrastructure is insufficient. The facility will improve coverage, capacity, and off-load traffic from neighboring sites improving users' experience (Exhibit 2a & 2c of the staff report).
- (2) The parcel and the majority of the area are zoned "R-1" (Single Family Residential, Exhibit 2e of the staff report). The parcel was created in 1996 via the land division process at the time. The dwelling and detached garage on the parcel was built in 1951.

The area consists of high-density residential subdivisions with sporadic public and neighborhood commercial uses (Exhibits 2a, 3a, 3f, and 3g of the staff report). Commercial and public uses include Lonestar Middle School, Walmart Neighborhood Market, Asay Dental, and St. Luke's Urgent Care. Within a one-mile radius of the subject parcel, there are 146 subdivisions. The property is adjacent to Silverwood Subdivision, Sterling Meadows #1, Westview, and Schomburg Place Subdivision.

The request is approximately 2,500 feet east of the denial of a telecommunications facility (CU2023-0005, Exhibit 5 of the staff report). The request was denied due to the lack of site analysis and lack of mitigation measures to minimize the impacts to the surrounding property and character.

 - Regarding this case, the applicant has provided coverage objectives, alternative site research within the search ring, and justification analysis (Exhibit 2a and 2c of the staff report).
 - Conditions of approval minimize impacts to adjacent properties by ensuring the use complies with all industry standards and federal regulations and that fencing and the lease area remain in good repair and weed-free (Conditions 6 & 7).
- (3) Pursuant to CCZO Section 07-10-21(3), FAA approval is required for telecommunication facilities 100 feet or greater in height. The request was reviewed through the FAA project review system (Tow-Air) and found FAA review is not required (Exhibit 2g of the staff report). Before construction and commencement of use, FCC and FAA review and approval are required which will include providing appropriate lighting.
- (4) During the case review, the subject property was found to have public nuisance violations, and a notice of violation was issued (CDEF2024-0131, Exhibit 6 of the staff report). As a condition of approval, the property shall comply with the applicable public nuisance, building, and zoning codes before commencement of use (Condition No. 3).
- (5) Conditions of approval ensure the use complies with all industry standards and federal regulations (Conditions 1) and that the property is maintained in good repair and does not become a public nuisance (Conditions 6 & 7).
- (6) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18, 2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.
 - a. The subject parcel is in the Nampa Area of City Impact. Nampa's future land use plan designates the property and area as "Medium Density Residential" (Exhibit 3d of the staff report). The city initially submitted comments recommending annexation and denial of the request. After communication with the applicant, Nampa finds the County's conditional use permit process appropriate subject to residents east of the request being notified (Exhibit 4a of the staff report).
 - b. The County notified property owners within a 1,000-foot radius. Three comment letters were received. One comment letter does not oppose the request but recommends the

monopole be designed as a pine tree (Exhibit 4e of the staff report). The other comment letters oppose the request (Exhibit 4d and 4f of the staff report).

- i. Although the area is comprised of trees of different heights and widths (Exhibit 7 of the staff report), the monopole design proposed is streamlined compared to the bulk of a tree design.

(7) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

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

Conclusion: The unmanned facility does not require irrigation, water, or sanitary services. Utilities will be provided by Idaho Power.

Findings: (1) The unmanned facility does not require irrigation, water, or sanitary services. Utilities will be provided via existing overhead powerlines proposed to be extended to the facility via the 15' access and utility easement (Exhibit 2a & 2b).

(2) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18, 2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.

a. No comments were received regarding adequate facilities or services.

(3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

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

Conclusion: The proposed 15' wide access and utility easement is not opposed by the City of Nampa.

Findings: (1) After construction, the proposed 15' wide access with one parking space will be used for scheduled maintenance (Exhibit 2a & 2b of the staff report).

(2) The proposed access from Lone Star Road is the existing access approved for property and existing dwelling (Exhibit 2b of the staff report).

(1) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18, 2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.

a. Lone Star Road is not in Nampa Highway District #1 jurisdiction (Exhibit 4c of the staff report). The City of Nampa did not have concerns regarding access or traffic (Exhibit 4a of the staff report).

(2) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

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

Conclusion: The unmanned facility is not anticipated to create impacts on existing and future traffic patterns.

Findings: (1) After construction, the proposed 15' wide access with one parking space will be used for scheduled maintenance (Exhibit 2a & 2b of the staff report).

(2) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18,

2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.

- a. Lone Star Road is not in Nampa Highway District #1 jurisdiction (Exhibit 4c of the staff report). The City of Nampa did not have concerns regarding access or traffic (Exhibit 4a of the staff report).

(3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

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?

Conclusion: The unmanned facility is not anticipated to impact essential services.

- Findings:**
- (1) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18, 2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.
 - a. Nampa Fire District supports the request subject to access and road conditions (Exhibit 4b of the staff report). Condition No. 4 requires fire district permit review and approval as part of the building permit application process.
 - (2) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

Canyon County Code §09-11-25 - NAMPA AREA OF CITY IMPACT AGREEMENT ORDINANCE

Conclusion: The property is located within the Nampa Area of City Impact. A notice was sent to the City of Nampa per Canyon County Code Section 09-11-25.

- Findings:**
- (1) The subject parcel is in the Nampa Area of City Impact. Nampa’s future land use plan designates the property and area as “Medium Density Residential” (Exhibit 3d of the staff report).
 - (2) Agency notice including City of Nampa per CCCO Section 09-11-25 was provided on April 30, 2024, and June 18, 2024. The newspaper notice was published on June 18, 2024. Property owners were sent a notice on June 18, 2024. The property was posted on June 11, 2024.
 - (3) The city initially submitted comments recommending annexation and denial of the request. After communication with the applicant, Nampa finds the County’s conditional use permit process appropriate subject to residents east of the request being notified (Exhibit 4a of the staff report). The County notified property owners within a 1,000-foot radius. Two comment letters were received. Two comments were received (Exhibit 4d & 4e of the staff report)

Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0023.

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Planning and Zoning Commission **approves** Case #CU2023-0026, a conditional use permit to allow a telecommunication facility on Parcel R32916 subject to the following conditions as enumerated:

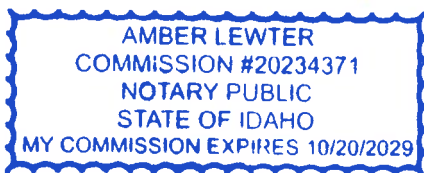
Conditions of Approval

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the subject property and the proposed use.

- a. The facility shall meet all applicable Federal Communication Commission (FCC) requirements and standards regarding RF Emissions.
 - b. Prior to building permit issuance, FAA (Federal Aviation Administration) approval shall be submitted to the Development Services Department.
2. A building permit is required for the construction of the facility/proposed structures. The monopole shall not exceed 99' tall (104' with lighting road) per Exhibits 2a and 2b of the staff report unless amended through conditional use permit modification approval.
 3. Prior to building permit issuance of the use, code violation CDEF2024-0131 (Exhibit 6 of the staff report) shall be abated and closed.
 4. The applicant shall comply with applicable Nampa Fire District requirements (Exhibit 4b of the staff report). The applicant shall obtain a fire district permit before the construction of the facility. A copy of the permit shall be provided at the time of building permit submittal.
 5. All exterior lighting, if installed, shall be downward-facing and directed away from surrounding properties.
 6. The lease area shall be enclosed by fencing proposed in Exhibit 2b of the staff report. Fencing shall be demonstrated in the building plans submitted as part of the building permit submittal. Review and approval by DSD shall be completed before building permit issuance.
 7. The lease area site and fencing shall be maintained and kept in good repair. The lease area and surrounding fence line shall be kept weed-free and/or maintained with weeds being 6" in height or less.
 8. The applicant shall not impede, disrupt, or otherwise disturb the existing irrigation easements on and adjacent to the subject property unless approval in writing is obtained from local the irrigation district.
 9. This conditional use permit must follow land use time limitation as stated in CCZO 07-07-23: "When a conditional use permit is granted, the land use or construction of its facility proposed in the application must have commenced within three (3) years of the date of the final decision by the presiding party or a court of appropriate jurisdiction. The improvements for the approved use must be completed within five (5) years of the same date.

Pursuant to 07-05-05: *The decisions of the commission or the hearing examiner may be appealed to the board by filing a written notice of appeal with DSD within fifteen (15) calendar days of the date the FCOs were signed. The notice of appeal should include a statement of the reasons for the appeal and must be accompanied by a filing fee as established by the adopted fee schedule.*

DATED this 18 day of July, 2024.



**PLANNING AND ZONING COMMISSION
CANYON COUNTY, IDAHO**

[Signature]
Robert Sturgill, Chairman

State of Idaho)

SS

County of Canyon County)

On this 18 day of July, in the year 2024, before me Amber Lewter, a notary public, personally appeared Robert Sturgill, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she) executed the same.

Notary: Amber Lewter

My Commission Expires: 10/20/2029