



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

In the matter of the application of:  
**Rage Development – CU2023-0022**

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 R32418. The facility includes a 99-foot monopole (104' with a lighting rod).

[Case No. CU2023-0022; 3406 E. Greenhurst Road, Nampa, also referenced as a portion of the SW¼ of Section 36, 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 CU2023-0022.

**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, CU2023-0022, was presented at a public hearing before the Canyon County Planning and Zoning Commission on September 5, 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 "A" (Agricultural, Exhibit 3e of the staff report). A telecommunication facility requires conditional use permit approval in the "A" Zone (CCZO §07-02-03 & §07-10-27).

- (2) A conditional use permit was submitted on October 27, 2023, with additional information submitted on June 24, 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. CU2023-0022.

## 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 monopole 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. Existing access on Greenhurst Road will be utilized via a 15’ wide easement. A 10’ wide utility easement is proposed along Lexi’s Way, a public road (*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 the area’s 5G wireless coverage and capacity needs 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 June 24, 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. CU2023-0022.

## 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. CU2023-0022.

## 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 the area's 5G wireless coverage and capacity needs 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 is zoned "A" (Agricultural, Exhibit 3e of the staff report). The parcel was created by land division in 1980 (Tax 46, 36-3N-2W). Per the Assessor's records, the parcel has a dwelling built in 1953  
The area consists of medium-density residential subdivisions with neighborhood commercial uses 200' west of the subject parcel (Exhibit 3d & 3e of the staff report). Commercial uses include Moxie Java, Westside Pizza, Idaho Central Credit Union, DIPS Ice Cream, Anytime Fitness, Chevron, and Sinclair Gas Station
- (3) Within a one-mile radius of the subject parcel, there are 97 subdivisions (4,011 lots) with a 0.37-acre average lot size (Exhibit 3f of the staff report). The nearest similar request is located on Parcel R32399011, approximately 2,800 feet east of the subject parcel, approved in 2010 to allow a wireless facility with an 85' tall tower (CU2010-14, Exhibit 5 of the staff report).
- (4) During the case review (Exhibit 6 of the staff report), the subject property was found to have a potential public nuisance violation per CCCO §02-01-05. 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) 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 review and approval are required which will include providing appropriate lighting (Condition No. 1b).
- (6) Conditions of approval ensure the use complies with all industry standards and federal regulations (Conditions 1, 2, & 8) and that the property is maintained in good repair and does not become a public nuisance (Conditions 5, 6 & 7).
- (7) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice was provided on June 26, 2024, and August 5, 2024. JEPA Notice to the City of Nampa was sent on June 26, 2024. Full political notice was sent on August 5, 2024. The newspaper notice was published on August 2, 2024. Property owners were sent a notice on August 2, 2024. The property was posted on August 5, 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). Nampa finds that the request has potential impacts on adjacent properties. Nampa requests the application be communicated to adjacent parcels and subdivisions for their feedback (Exhibit 4a of the staff report). The applicant completed a neighborhood meeting before the submittal of the conditional use permit. Notice of the meeting was sent to property owners within a 600-foot radius measured from the boundaries of the subject parcel (Exhibit 2e). Property owners within a 1000-foot radius measured from the boundaries of the subject parcel were sent out on August 2, 2024.
  - b. The following comments were received:
    - i. Beth Brookhouse, neighbor located approx. 1,200 feet southeast of the subject parcel (Exhibit 4g of the staff report): Opposed due to health risks to property and wildlife, and view and property value impacts. Per Title 47 U.S.C. §332(C)(7)(B)(iv) – Limitations: Local government cannot deny the placement, construction, or modification of a telecommunications facility 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.

- ii. Hal Miller, neighbor located adjacent (north) to the subject parcel (Exhibit 4h of the staff report): Recommends the cell tower be designed as a tree. Concerned about the use of Lexi Way, a public road, during construction. The site plan shows the telecommunication facility will use the existing access to the parcel via Greenhurst Road, not Lexi Way (Exhibit 2b). However, the applicant does not if the construction will or will not use Lexi Way.

- (8) See findings and evidence in criteria 5 through 8 for additional evidence for support of this criterion.
- (9) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0022.

**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 along the east boundary of the parcel and into the parcel via a 10' wide utility easement along Lexi's Way, a public road (Exhibit 2a & 2b of the staff report).
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice was provided on June 26, 2024, and August 5, 2024. JEPA Notice to the City of Nampa was sent on June 26, 2024. Full political notice was sent on August 5, 2024. The newspaper notice was published on August 2, 2024. Property owners were sent a notice on August 2, 2024. The property was posted on August 5, 2024.
    - a. Nampa & Meridian Irrigation District did not find the request to impact irrigation district facilities (Exhibit 4f 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. CU2023-0022.

**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 easement is adequate for the request and is not opposed by the affected agencies.

- Findings:**
- (1) Access is proposed from the existing access point from Greenhurst Road via a 15' wide access easement. A parking space is proposed adjacent to the facility for one service vehicle (Exhibit 2a & 2b of the staff report).
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice was provided on June 26, 2024, and August 5, 2024. JEPA Notice to the City of Nampa was sent on June 26, 2024. Full political notice was sent on August 5, 2024. The newspaper notice was published on August 2, 2024. Property owners were sent a notice on August 2, 2024. The property was posted on August 5, 2024.
    - a. Greenhurst Road is not in Nampa Highway District #1 jurisdiction (Exhibit 4c of the staff report). The City of Nampa did not find the request to impact access or traffic (Exhibit 4a and 4e 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. CU2023-0022.

**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 parking space for one maintenance vehicle will only access the site for maintenance (Exhibit 2a & 2b of the staff report).
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Agency notice was provided on June 26, 2024, and August 5, 2024. JEPA Notice to the City of Nampa was sent on June 26, 2024. Full political notice was sent on August 5, 2024. The newspaper notice was published on August 2, 2024. Property owners were sent a notice on August 2, 2024. The property was posted on August 5, 2024.
    - a. Greenhurst Road is not in Nampa Highway District #1 jurisdiction (Exhibit 4c of the staff report). The City of Nampa Engineering and Idaho Transportation Department (ITD) did not have concerns regarding access or traffic generated by the use (Exhibits 4e and 4d 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. CU2023-0022.

**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 was provided on June 26, 2024, and August 5, 2024. JEPA Notice to the City of Nampa was sent on June 26, 2024. Full political notice was sent on August 5, 2024. The newspaper notice was published on August 2, 2024. Property owners were sent a notice on August 2, 2024. The property was posted on August 5, 2024.
    - a. Nampa Fire District finds the request to be approximately 1.6 miles from Nampa Fire Station 2 with an approximate response time of three (3) minutes (Exhibit 4b of the staff report). Nampa Fire does not oppose the request subject to code and condition compliance.
  - (2) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0022.

**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 the City of Nampa per CCCO Section 09-11-25 was provided on June 26, 2024, and August 2, 2024.
  - (3) Nampa finds that the request has potential impacts on adjacent properties. Nampa requests the application be communicated to adjacent parcels and subdivisions for their feedback (Exhibit 4a of the staff report). The applicant completed a neighborhood meeting before the submittal of the conditional use permit. Notice of the meeting was sent to property owners within a 600-foot radius measured from the boundaries of the subject parcel (Exhibit 2e). Property owners within a 1000-foot radius measured from the boundaries of the subject parcel were sent out on August 2, 2024.

- (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0022.

## Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Planning and Zoning Commission **approves** Case #CU2023-0022, a conditional use permit to allow a telecommunication facility on Parcel R32034 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 monopole (104' with lighting road) unless amended through conditional use permit modification approval.
  - a. The facility shall meet the required setbacks of the "A" Zone pursuant to CCZO Section 07-10-21. The applicant may use City of Nampa setbacks instead subject to CCZO Section 07-10-23.
3. Prior to building permit submittal for the construction of the facility/proposed structures, all public nuisances, defined by CCCO Section 02-01-05, shall be abated.
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 5 day of September, 2024.



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

*Robert Sturgill*  
Robert Sturgill, Chairman

State of Idaho )

SS

County of Canyon County )

On this 5<sup>th</sup> day of September, 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