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BEFORE THE BOARD OF ADA COUNTY COMMISSIONERS

In re:

Application of Clark Wardle, LLP

Reconsideration of Project No. 202103048-A (x_ref: 202103048-CU)

**RECONSIDERATION FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER**

FINDINGS OF FACT

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

A. The Board finds that the record is comprised of:

1. Exhibits to the Staff Report.
2. Exhibit A to the Findings of Fact, Conclusions of Law and Order.
3. All other information contained in Ada County Development Services File for Project Nos. 202103048-A and 202103048-CU
4. All information and testimony presented at the Public Hearing held on May 11, 2022.
5. All information in the Findings of Fact, Conclusions of Law and Order dated May 31, 2022.
6. All information and testimony presented at the Public Hearing held for the Reconsideration on August 10, 2022.

B. As to procedural items, the Board finds the following:

1. On February 10, 2022, the Ada County Planning & Zoning Commission approved Project No. 202103048-CU with conditions of approval.
2. On February 24, 2022, Development Services accepted an application from William Lind, appealing the Planning & Zoning Commission's decision, and scheduled the appeal before the Board of Ada County Commissioners public hearing on May 11, 2022.
3. On March 9, 2022, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Reconsideration of Project No. 202103048-A

as Exhibits.

4. On March 9, 2022, property owners within 1,000 feet of the site were notified of the hearing by mail. Legal notice of the Board's hearing was published in The Idaho Statesman on April 25, 2022. Notices of the public hearing were posted on the property on April 21, 2022 and a certification sign posting was submitted to the director on April 21, 2022.
5. On May 11, 2022, the Board of Ada County Commissioners heard the appeal and voted to approve the appeal, overturning the Planning & Zoning Commission's approval. The application was tabled to the Board's May 31, 2022, Open Business Meeting to revise the Findings of Fact, Conclusions of Law, and Order to reflect the applicant failed to justify why an existing private tower that is approximately 1.65 miles from the site cannot accommodate the proposed facility nor if a significant gap in coverage exists warranting the proposed tower on the subject property.
6. At their May 31, 2022, Open Business Meeting, the Board signed the revised Findings of Fact, Conclusions of Law, and Order.
7. On June 13, 2022, Josh Leonard with Clark Wardle filed for a request for reconsideration with the Board of Ada County Commissioners.
8. On July 12, 2022, the Board of Ada County Commissioners granted a motion for reconsideration to consider only the matter of a cell tower located in Canyon County where colocation may be possible to remedy the significant gap in coverage identified by the applicant.
9. On July 12, 2022, Development Services Staff scheduled the reconsideration to be held on August 10, 2022, before the Board of Ada County Commissioners.
10. On July 13, 2022, property owners within 1,000 feet of the site were notified of the hearing by mail. Legal notice of the Board's hearing was published in The Idaho Statesman on July 26, 2022.
11. A public service announcement was released on August 1, 2022 to notify all other newspapers and radio and television stations.

C. As to the project description, the Board finds based on the application materials found in the file for Project No. 202103048 A the following:

1. PROPOSED USES: Communications Tower (Tower or Antenna Structure, Commercial)
2. PROPOSED STRUCTURES: 100' communications tower and 2,500 square foot fenced lease area.
3. PROPOSED SITE IMPROVEMENTS: Fencing surrounding the lease area.

D. Based on the materials found in the file for Project No. 202103048 A, the Board finds the following concerning the project description:

1. PARCEL NUMBER AND LOCATION: The parcel number is S0406347000 and the property is located at 12016 W Floating Feather Rd, Section 6 of T. 4N, R. 1W.

2. OWNERSHIP: Virginia and Dennis Krug.

3. SITE CHARACTERISTICS

Property size: 2.88 acres.

Existing structures: 1,816 square foot single family home with a 484 attached garage.

Existing vegetation: Residential landscaping and dryland shrubs, grasses, and forbs.

Slope: The subject property is relatively flat.

Irrigation: None.

Drainage: The natural drainage of the property is towards the northwest.

Views: The site has clear views in all directions.

E. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the current land use and zoning:

The property is single-family residential with pasture in the Rural Residential (RR) District.

F. Based on the officially adopted Ada County land use maps, the Board finds the following concerning the surrounding land use and zoning:

North: The site is single-family residential with pasture in the Rural Residential (RR) District.

South: The site is single-family residential in the Rural-Urban Transition (RUT) District.

East: The site is an open space lot associated with a single-family residential development in the City of Star's Medium Density Residential (R-3) District.

West: The site is single-family residential with pasture in the Rural Residential (RR) District.

G. Based on the officially adopted Ada County land use maps and materials found in the file for Project No. 202103048 A, the Board finds the following concerning services:

Access Street and Designation: Access is off Floating Feather Rd, which is designated as a minor arterial.

Fire Protection: Star Fire District.

Sewage Disposal: Septic.

Water Service: Individual Well.

Irrigation District: Middleton Irrigation and Middleton Ditch Co.

Drainage District: Drainage District No. 2.

H. As to the applicable law, the Board finds the following:

This section details the comp plan goals, objectives and policies, the zoning ordinance regulations, and other applicable standards regarding development of the subject property. In

addition to the applicable standards cited in the Board's approval of 202103048 A, an appeal which overruled the Planning & Zoning Commission's approval of Project No. 202103048-CU, the following standards have been modified/added based on the Board's decision to deny the reconsideration.

1. The Board finds **Section 8-7E-5 of the Ada County Code** is applicable because the original applicant filed a request for reconsideration. The Board finds the request complies with **Section 8-7E-5 of the Ada County Code**.

- A. Every applicant or affected person seeking judicial review of the board's final decision must first submit with the director an application and the fee as set forth in chapter 7, article A of this title for reconsideration of the board's decision, specifying deficiencies in the decision within fourteen (14) days of the date of the decision, along with the applicable fee. The deficiencies identified must be based on the record and not based on information that is not part of the record.

The Board finds that Josh Leonard with Clark Wardle, LLP, the original applicant of 202103048-CU, filed a request for reconsideration with the Board of Ada County Commissioners on June 13, 2022. This was within fourteen (14) days of the May 31, 2022 decision made by the Board on the appeal (202103048-A), which decision granted the appeal of approval of a cell tower pursuant to Project No. 202103048-CU, thereby denying the conditional use permit for the tower.

- B. The board will consider the reconsideration motion as scheduled on an open business meeting agenda and determine whether to grant or deny the request. If the board grants reconsideration in whole or in part, a hearing before the board will be scheduled to address the specific deficiencies identified by the applicant or affected person and to allow interested persons to have an opportunity to be heard.

The Board finds that Clark Wardle's request for reconsideration was granted by the Board of Ada County Commissioners at their July 12, 2022 Open Business Meeting to consider only the matter of the existing private tower that is approximately 1.65 miles from the site where colocation may be possible to remedy the significant gap in coverage identified by the applicant.

- C. Notice of the public hearing on the reconsideration, identifying the specific deficiencies alleged in the reconsideration request, will be provided as follows, including:

1. Notice To Agencies And Political Subdivisions: At least fifteen (15) days prior to the public hearing, the director shall send notice to all political subdivisions providing services with the planning jurisdiction, including school districts and the manager or person in charge of the local public airport.

The Board finds, on July 13, 2022, public agencies were notified of the public hearing.

2. Legal Notice: At least fifteen (15) days prior to the public hearing, the director shall publish a notice of the time and place in the official newspaper or paper of general circulation in the county.

The Board finds, Legal notice of the Board's hearing was published in The Idaho Statesman on July 26, 2022.

3. Radius Notice: Will be provided in the same manner as originally provided on the application.

The Board finds, on July 13, 2022, property owners within 1,000 feet of the site were notified of the hearing by mail.

4. Public Service Announcement: The director shall issue a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement.

The Board finds that a public service announcement was released on August 1, 2022, to notify all other newspapers and radio and television stations.

- D. If the Board grants the request to hold a hearing on the reconsideration, it must be held within sixty (60) days of receipt of the request for reconsideration. If the board fails to timely decide, the request for reconsideration is deemed denied.

The Board finds that a public hearing on Clark Wardle's request for reconsideration was held on August 10, 2022.

- E. Following the hearing on the reconsideration, the board may affirm, reverse, or modify its prior decision and shall provide a written decision to the applicant and the affected person(s).

The Board finds that the decision made on May 31, 2022, by the Board to approve the appeal, overturning the Planning & Zoning Commission's approval, was affirmed at the August 10, 2022, public hearing as the evidence provided at the August 10, 2022 reconsideration hearing did not show that the applicant had a significant gap in coverage. The evidence also showed the tower that is approximately 1.65 miles from the site is available for colocation.

2. The Board finds **Section 8-5-3-114 of the Ada County Code** is applicable because the applicant has applied to construct a communications tower (Tower or Antenna Structure, Commercial). The Board finds that the application does not comply with **Section 8-5-3-114 of the Ada County Code**. Regarding Section 8-5-3-114 the Board amends and modifies the previously approved Findings of Fact associated with 202103048 A as follows:

- E. Additional Application Requirements for Facilities that Require a Conditional Use Approval:

4. A map and written analysis demonstrating that the facility cannot be accommodated on an existing or approved tower within a two (2) mile radius.

The Board finds a map, testimony and written analysis was provided, but the applicant failed to justify why an existing private tower that is approximately 1.65 miles from the site cannot accommodate the proposed facility nor did the applicant justify that a significant gap in coverage existed warranting the proposed tower on the subject property.

5. It shall be the burden of the applicant to demonstrate that the proposed facility cannot be accommodated on an approved tower or structure within the two (2) mile search radius due to one or more of the following reasons:

- a. Unwillingness of a property owner, or tower or facility owner to entertain shared use.
- b. The planned equipment would exceed the structural capacity of the existing tower or structure, as documented by a qualified and licensed professional engineer, and the existing tower or facility structure cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment at a reasonable cost.
- c. The planned equipment would cause radio interference with material impacting the usability of other existing or planned equipment at the tower or structure, and the interference cannot be prevented at a reasonable cost as documented by a qualified and licensed professional engineer or other professional qualified to provide necessary documentation.
- d. Existing or approved towers or other structures within the search radius cannot accommodate the planned equipment at a height necessary to be commercially functional as documented by a qualified and licensed professional engineer or other professional qualified to provide necessary documentation.
- e. The proposed collocation with an existing tower or structure would be in violation of a local, State, or Federal law.
- f. Any other unforeseen reasons that make it unfeasible to collocate upon an existing or approved tower or structure as documented by a qualified and licensed professional engineer, or other professional qualified to provide necessary documentation.

The Board finds the applicant has not demonstrated in enough detail why the proposed facility cannot be accommodated on an existing tower which was identified approximately 1.65 miles from the subject property. In addition, the applicant failed to demonstrate a significant gap in coverage exists in the area which would necessitate the proposed facility.

CONCLUSIONS OF LAW

If any of these Conclusions of Law are deemed to be Findings of Fact they are incorporated into the Findings of Fact section.

1. The Board concludes that request for reconsideration complies with Section 8-7E-5 of the Ada County Code.
2. The Board concludes that request of reconsideration does not comply with Section 8-5-3-114 of the Ada County Code.


ORDER

Based upon the Findings of Fact and Conclusions of Law dated May 31, 2022 as amended and modified by these Findings of Fact and Conclusions of Law contained herein, and the record and testimony from the public hearings, the Board affirms their decision dated May 31, 2022 to approve Project No. 202103048-A, which overturned the Planning & Zoning Commission's approval of Project No. 202103048-CU.

DATED this 12th day of August, 2022

Board of Ada County Commissioners


By: Rod Beck, Commissioner


By: Ryan Davidson, Commissioner

ABSENT

By: Kendra Kenyon, Commissioner

ATTEST:



Phil McGrane, Ada County Clerk