

Commissioners Minutes

February 22, 2023 – 1:34 p.m. to 3:08 p.m.

PUBLIC HEARING TO CONSIDER AN APPEAL BY MATT AND CHRISTY PERRY OF THE HEARING EXAMINER'S APPROVAL OF CASE NO. CU2022-0029

Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek

DSD Planner I Maddy Vander Veen, DSD Planner III Michelle Barron, Deputy PA Zach Wesley, Christy Perry, Matt Perry, William Packard, Mary Packard, Jon Liljegren, Brook Collins, Kirk Bowman, Jon Stewart, David Loper, Sara Upson, Renata Prozapas, Kenny McGaugh, Jr., Jason Evans, Jenelle Humphrey, and other interested citizens

Deputy Clerk Monica Reeves



PUBLIC HEARING TO CONSIDER AN APPEAL BY MATT AND CHRISTY PERRY OF THE HEARING EXAMINER'S APPROVAL OF CASE NO. CU2022-0029

The Board met today at 1:34 p.m. to conduct a public hearing in the matter of an appeal by Matt and Christy Perry appealing the Hearing Examiner's approval of a conditional use permit to install a wireless telecommunications facility on Parcel R29681122B, Case No. CU2022-0029-APL. Present were: Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek, DSD Planner I Maddy Vander Veen, DSD Planner III Michelle Barron, Deputy PA Zach Wesley, Christy Perry, Matt Perry, William Packard, Mary Packard, Jon Liljegren, Brook Collins, Kirk Bowman, Jon Stewart, David Loper, Sara Upson, Renata Prozapas, Kenny McGaugh, Jr., Jason Evans, Jenelle Humphrey, other interested citizens, and Deputy Clerk Monica Reeves.

DSD Planner I Maddy Vander Veen gave the oral staff report. On June 1, 2022, Jenelle Humphrey with AT&T Mobility, representing Kevin and Robert Dinius, submitted a conditional use permit application (CU2022-0029) for a telecommunications facility located at 8455 Lonesome Dove Lane in Nampa, in the southwest corner of the parcel. The appellants, Matt and Christy Perry, are appealing the Hearing Examiner's decision to approve the CUP for a telecommunications facility. The original application proposed to install a 50' x 50' fenced compound around a 150' monopole telecommunications tower and ground equipment. The applicant is also requesting to install a 20'x12' concrete pad with a 30kw diesel generator and a 10'x10' walk-in cabinet that will house all of the equipment. The appellants are concerned with the danger of the tower falling over onto adjacent structures, disruption to the current drainage system and potential flooding issues, danger to crop dusting pilots, the only access to the tower is through a narrow subdivision road, and harm to the landscape and character of the area as well as property values. The property is designated agricultural on the future land use map and the request is substantially consistent with the comprehensive plan. Staff could not access the property so the site photos were taken at the entrance of the adjacent parcel almost 1,500 feet east of the property. The area is predominately agriculture. All essential services were notified of the proposed use and no comments were

received. Staff recommends the Board deny the appeal and uphold the Hearing Examiner's approval of Case No. CU2022-0022. Following the report, Ms. Vander Veen and DSD Planner III Michelle Barron responded to questions from the Board.

Testimony in favor of the appeal (opposed to the cell tower) was as follows:

Christy Perry testified she has lived in the area for 22 years and the tower is proposed to be 30 feet from her property. She stated the Hearing Examiner was torn on this decision and in deliberation stated he was concerned with the impact on the neighborhood and the wastewater flooding that has occurred and he was not convinced this is the best site/best use of the property. He believes there are better locations for the tower. Originally, AT&T preferred a location on Track Road but that owner backed out and AT&T tried to get other locations. The neighborhood is inundated with telecommunication towers and major transmission lines that run through Star Pass Ridge, and this will be the fourth tower in a very small footprint. The density needs to be spread out in a much larger area and not condensed to burden the neighborhood. Traffic for the construction of the tower has to come through Star Pass Ridge which is a very elegant neighborhood that has small roads and they maintain their own roads. Drainage is an issue; there was a massive mudslide on the Perry property and they met with Mr. Dinius about keeping his dirt on his property and so he put in a ditch, but they continue to have major water problems. There is also a cornfield that floods the Perry property and that owner put in sediment ponds but the water continues to still run right where the tower will be placed. It's not a viable location for a tower.

William Packard lives ½ mile from the proposed location of the cell tower and he is opposed to the proposal because this neighborhood is not the correct location for an unsightly 150-foot cell tower. He stated people paid for good views and the County is getting more tax revenue because of it. According to Mr. Packard, other neighbors are opposed due to the health effects of electromagnetic radiation and AT&T needs to find a suitable location for their towers.

Kenny McGaugh lives 350 yards from the site and testified there are two towers behind his property, and he believes it's ridiculous and unfair to place a 150-foot tower at this location. Mr. McGaugh has handicapped children and health problems and he doesn't want the tower placed near his home. He is also concerned about the wear on the tear on the road that will be caused by the construction traffic.

Brook Collins is a neighbor to the Perrys and has lived in the area for six years and last year he removed 40 yards of mudslide from an un-watered pasture. He is opposed to the request to place a cell tower at this location.

Curt Bowman has lived in the area for 50 years, and he used to farm all the way to Bennett Road. His concerns include: impacts to property value, the lack of access and the concern about how they will get equipment to the site, and wastewater runoff. He said AT&T said a reason Mr. Dinius didn't want the tower on top of the hill was due to his concern of it falling on his house, and that

concern should also be considered at this location. There are other places such as the gravel pit or the gun range were not contacted.

Commissioner Van Beek disclosed that she has been friends with the Bowmans for many years.

Testimony in opposition to the appeal (in favor of the cell tower) was as follows:

Jenelle Humphrey and Jason Evans from AT&T testified in support of their application, and in opposition to the appeal.

Jason Evans testified that AT&T partners with First Net, an emergency services group, and they found a location that meets all setbacks, guidelines, and regulations for this service need of a 150-foot monopole. There are no plans to place lighting on the tower structure. The Idaho Dept. of Transportation and the FAA will do an independent analysis based on the location to determine if it needs to be lit or if there is any registration required for pilots. Commissioner Van Beek noted there are already three towers in the area and she had questions regarding alternative sites or placing the tower in a different location. Mr. Evans stated the proposed tower will not have any type of interference or interaction with the other towers in the area. In response to Commissioner Van Beek's question about drainage, Jenelle Humphrey testified it is not considered a drainage area. She contacted the County and asked if it was considered a floodplain area or drainage area and the County said no. The Board had follow-up questions regarding flooding with runoff, and why the gravel pit site was not considered as a location for the tower. Mr. Evans said when they go into the civil design and permitting phase those issues will be taken into the consideration. If it goes forward they will meet with staff and go through their recommendations to accommodate any drainage concerns, but at this point in the process they were not required to do that. Ms. Humphrey said gravel pit sites are not viable sites for cell towers because the tower has to go into the ground and if there's continual digging around it, it's not viable. Commissioner Van Beek said the gravel pit is not being used. Ms. Humphrey said if the pit is not being used they would have to look into it further. Commissioner Holton asked if AT&T provided documentation that this is the only site that's feasible for the tower. Ms. Humphrey said the coverage map showed the different candidates that were viable and this site was the best suited one after the primary choice fell out. There are other sites but they would not cover a large enough area and another tower would be needed. Mr. Evans said the sole purpose of this site is to clear a significant gap in coverage and this site provides the best location to close that gap of coverage. Commissioner Holton said it was alluded to that the owner of the property didn't want the tower by his house because he didn't want it to fall on his house. He asked if Mr. Dinius's property, which is further up in elevation, is a better site than what they offered to AT&T. Ms. Humphrey said she did not hear Mr. Dinius say that nor did he tell her the location had anything to do with the tower falling or affecting his view. The location being considered today is the spot he requested because it worked with AT&T's coverage plan. It sounds like Mr. Dinius may have other plans for his property and this site works the best for him. Commissioner Holton asked if anywhere on the Dinius property be as prime as the bottom corner that's right against a neighbor. Ms. Humphrey said she cannot speak to that because she's not a radio frequency engineer, but a property should be able

to do what they want with their land in her opinion. Commissioner Brooks asked Ms. Humphrey to expound on the letter of intent from AT&T which states the tower will not be injurious to the properties in the immediate vicinity and/or negatively change the essential character of the area (Exhibit #7E). Ms. Humphrey said in her response letter she showed that even in the rare case of a fall, the fall zone would not be 150 feet, but just to appease she did put the radius at 150 feet and it barely goes over the property lines. The tower does not affect adjacent properties, and as far as aesthetics, there are other towers and power lines within the area.

Rebuttal testimony was offered by Christy Perry. When they attended the neighborhood meeting they spoke with the AT&T engineer about how it makes better sense to place a tower at the top of the hill for wider coverage, and the engineer agreed; however, it requires working with the homeowner and if the homeowner says they only want it in a specific location then that is what AT&T does. The tower could be moved. AT&T mentioned the gun range in their letter, but said they couldn't get a hold of the range; today Ms. Perry offered to help facilitate the contact between the parties. She stands to lose a quarter of a million dollars in property value by placing that tower so close to her property and that's a big burden to expect one person to absorb without any sort of compensation. Additional concerns include: the property owner not appearing at the public hearings to discuss the proposal, and the loss of views. Following her testimony, Ms. Perry responded to additional questions from the Board.

The late exhibits were entered into the record. Upon the motion of Commissioner Van Beek and the second by Commissioner Brooks, the Board voted unanimously to close public testimony. Commissioner Van Beek said there is room to change the findings given the trepidation by the Hearing Examiner. There is a lot of opposition that is indicating injury to other properties, and in another case the Board made findings that cell towers do impact property values. She is in favor of the appeal by the Perrys for the following reasons: impacts to crop dusting, although she recognizes that's not an argument she can make because of the FAA regulations; stormwater drainage issues and the lack of a drainage study; and the fact that there appear to be other suitable locations, such as the Agenbroad gravel pit. Commissioner Brooks said Ms. Humphrey's testimony about the property owner being able to do what he wants speaks volumes to him because a person's property rights and ability to do things ends when it injures a neighbor's property. He referenced AT&T's response letter (Exhibit #7E, No. 6) which addressed the claim that there will be a loss in property value(s) due to the proposed monopole is a proxy for radio frequency (RF) concerns. He personally has no concerns about the RF and it cannot be used as cited here, but what is not substantiated is the claim that this will not affect the integrity or harm the value of the surrounding properties. The response in the letter states studies show that cell towers greatly enhance the surrounding area, but none of those are cited in the letter, there are no references for him to read. Commissioner Brooks understands the tower greatly enhances the usefulness of devices, but he disagrees that it enhances the area where these people live. The property owner has not attended the public hearings to state his case nor respond to questions and it seems a lot of the discussion is centered around the concern of the tower falling over, and in this location, it could potentially land on other properties so why wouldn't the property owner move it?

Commissioner Holton is in agreement with the points brought up and it bothers him that the applicant owns a large parcel but has chosen to place the tower where it will impact his neighbors. This is prime agricultural ground and there could have been other choices made. There is no submittal about what it would do for the performance of the tower so he goes back to the question of *what is injurious to the neighborhood* and it appears the property owner has many other options to consider that would not impact the adjoining neighbors. Commissioner Van Beek is in favor of upholding the appeal by Matt and Christy Perry and overturning the Hearing Examiner's decision, and giving staff and Legal time to prepare amended FCO's. She said there was testimony from Mr. Packard and Mr. McGaugh that the height of this tower is significantly different than what's in the area. It would be injurious and would negatively change the essential character of the area. This is a nice area and to put that kind of infrastructure out there diminishes the quality of life for people around it and the views they purchased. The property values will change, and it will change from prime agricultural farm ground with an economic return to Canyon County because of the investment on the part of those homeowners. Commissioner Brooks said in reading the Hearing Examiner's deliberation it sounds like he could have just as easily denied the request because he was conflicted with many of the same concerns the Board has expressed today. Commissioner Van Beek said the applicants could investigate the alternative sites that were mentioned including the gravel pit and gun range. Commissioner Holton said it appears that even moving it back inside the property could mitigate the Board's concerns. Commissioner Van Beek made a motion to overturn the Hearing Examiner's decision to approve the CUP, and uphold the appeal by Matt and Christy Perry, Case No. CU2022-0029-APL, and to direct staff and Legal to amend the conclusions of law and bring the FCO's back for the Board's review and final determination at a continued hearing to be held on March 8, 2023 at 1:30 p.m. The motion was seconded by Commissioner Brooks and carried unanimously. The public testimony portion of the hearing was closed. The hearing concluded at 3:08 p.m. An audio recording is on file in the Commissioners' Office.