



BEFORE THE BOARD OF COUNTY COMMISSIONERS

In re:

Application of Doug Kofford

Project No. 201502328 ZOA

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. All other information contained in Ada County Development Services File for Project No. 201502328 ZOA.

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

1. On July 29, 2015, Development Services accepted Project No. 201502328 ZOA and scheduled it for public hearing before the Ada County Planning and Zoning Commission on October 15, 2015.
2. On August 14, 2015, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.
3. Legal notice of the Commission's hearing was published in The Idaho Statesman on September 29, 2015 and October 6, 2015.
4. In accordance with Section 8-7A-5E of the Ada County Code, a public service announcement was issued on September 18, 2015.
5. On October 15, 2015, the Commission voted 7-0 to recommend denial of this application to the Board of Ada County Commissioners and scheduled it for public hearing before the Board of Ada County Commissioners on December 10, 2015. The item was tabled to the January 14, 2016 hearing.

6. On October 19, 2015, staff notified other agencies of this application and solicited their comments. Any comments received were incorporated into the staff report and are attached as Exhibits.
7. Legal notice of the Board's hearing was published in The Idaho Statesman on December 29, 2015. A second notice will be published prior to the hearing.
8. In accordance with Section 8-7A-5E of the Ada County Code, a public service announcement was issued on December 11, 2015.

C. 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.

1. The Board finds **Section 8-7-3C of the Ada County Code** is applicable because the applicant is proposing a zoning ordinance text amendment to the Ada County Code. The Board finds that the application complies with **Section 8-7-3C of the Ada County Code**. Regarding Section 8-7-3C the Board finds the following:

1. *The zoning ordinance amendment is in accordance with the applicable comprehensive plan;*

The Board finds that the **Ada County Comprehensive Plan and the comprehensive plans of the six Ada County cities as adopted by Ada County** is applicable because these comprehensive plans serve as a decision-making framework and policy guide for land use decisions within unincorporated Ada County.

The Board finds that the proposed zoning ordinance text amendment is not in accordance with the Ada County Comprehensive Plan and the comprehensive plans of the six (6) Ada County cities as adopted by Ada County because the proposed zoning ordinance would allow for any cell tower applicant to submit an application that would not require them to identify vital information needed to evaluate the request fully to protect the public and adjacent property owners. Ada County Comprehensive Plan Policy 1.2-3: "Property owners acknowledge and expect Ada County will preserve private property rights and values by enforcing regulations that will prevent and mitigate against incompatible and detrimental neighboring land uses." Garden City Comprehensive Plan, Objective 1.3: "Consider the needs of all citizens, businesses and the environment." City of Eagle implementation Strategy 2.4: "(b) The protection and preservation of private property rights should be a strong consideration in the development of land use policies and implementation standards and regulations and as required by law. (c) The Comprehensive plan and implementing ordinances should strive for stable and consistent policies regarding development densities and requirements. Implementation Strategy 12.4: (g) New residential, commercial, and industrial development shall be required to meet minimum design standards as specified by City Ordinances." Processing an application for a commercial tower without the necessary engineering data, height, design (including a cross section and elevation), and verification that the structure can structurally support collocation does

not provide enough information for the county make a determination that would protect the public and adjacent property owners.

2. *The zoning ordinance amendment complies with the regulations outlined for the proposed base district, specifically the purpose statement;*

The Board finds that the zoning ordinance text amendment is county-wide and would be applicable to all base districts. The Board finds that the proposed zoning ordinance text amendment complies with the regulations outlined for all base districts, specifically the purpose statements.

3. *The zoning ordinance amendment shall not be materially detrimental to the public health, safety, and welfare;*

The Board finds that the proposed zoning ordinance text amendment is materially detrimental to the public health, safety, and welfare as the proposed ordinance amendment would allow for an applicant of a commercial tower to provide insufficient information regarding the location, height, design (including a cross section and elevation), and verification that the structure can structurally support collocation. This would require the county to consider conditional use applications without the benefit of those key pieces of information.

Additionally, Ada County's requirement for engineering data at the time of application submittal is in line with other jurisdictions in the county as identified in their respective zoning ordinances. (See Below)

City of Eagle (8-3-5) *S. Personal Wireless Facilities, Spires, Poles, Antennas, Steeples, Towers, And Other Such Structures:*

10. Additional Application Submittal Requirements:

a. In addition to the information required elsewhere in this code, development applications for personal wireless facilities, shall include the following supplemental information:

(1) Documentation from a qualified and licensed professional engineer showing that the proposed facility will be in compliance with the FCC standards regarding radio frequency (RF) emissions.

(2) A report from a qualified and licensed professional engineer which describes the tower height and design (including a cross section and elevation); documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas; describes the tower's capacity, including the number and type of antennas that it can accommodate; documents what steps the applicant will take to avoid interference with established public safety telecommunications; includes an engineer's stamp and registration number; and includes other information necessary to evaluate the request.

City of Boise: Wireless Communication Facility (WCF)

(1) Required Documentation

(a) A report from a licensed professional engineer describing the tower height and design. The report shall include the following: a cross section of the tower; elevations that document the height above grade for all potential mounting positions for co-located antennae; and the minimum separation distances between antennae. The report also must include a description of the tower's capacity regarding the number and type of antennae that it can accommodate and what precautions the applicant will take to avoid interference with established public safety telecommunications. This report must be stamped by the structural engineer.

Garden City: 8-2C-45: Wireless Communication Facility:

C. Collocation: No new towers shall be allowed unless there has been an analysis certified by a qualified engineer and specific to the site that collocation on an existing wireless communication facility is infeasible.

The Board finds that addition of the language “This information shall be submitted as a part of the building permit application. Failure to do so shall result in revocation of the conditional use permit and shall preclude the issuance of a building permit” to both items D(1) and D(2) is an attempt to circumvent the need to vet out any issues with the design, location, or height prior to approval. The Ada County Engineer mentioned in her memo (Exhibit #11) that the applicant should be aware that the change of use for any structure that site conditions can vary significantly, requiring unique design elements. These considerations need to be vetted as part of the CU application so an evaluation can be made based on thorough and complete site specific engineering design data.

The Board also finds that amending the specific use standard for “Tower or Antenna Structure, Commercial” in Section 8-5-3-114 with the addition of the language: “This information shall be submitted as a part of the building permit application. Failure to do so shall result in revocation of the conditional use permit and shall preclude the issuance of a building permit” to both items D(1) and D(2) is detrimental to the public health and safety because the proposed language would eliminate the requirement to provide vital information needed for the decision makers to evaluate the proposed tower and to verify that it is not materially detrimental to the public health, safety, and welfare. Additionally, if the engineering and design information were provided after the conditional use process, and the applicant found that the soil or location originally proposed on the site would not facilitate the proposed tower and needed to relocate to a different site on the property, then a new process would need to be conducted, subjecting the adjacent property owners to additional hearing processes.

4. *The zoning ordinance amendment shall not result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts, and;*

The Board finds that the zoning ordinance text amendment will not result in demonstrable adverse impact upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts. The proposed amendment was transmitted to agencies and political subdivisions who indicated whether the ordinance would affect their delivery of public services. The Ada County Building Official replied in Exhibit #7 that the Building Division has no objection to the proposed amendment. The State of Idaho Public Safety Communications responded in Exhibit #8 that they request that at a minimum, the structure height and location be submitted on the permit request, so that it can be identified for interference to Vital Emergency Public Safety Microwave Paths. The Pioneer Irrigation District responded in Exhibit #9 that the proposal is outside of their boundaries and does not impact any Pioneer owned facilities. The Eagle Fire Department responded in Exhibit #10 that they have no comment or concern at this time. The Ada County Engineer responded in Exhibit #11 that she is concerned with the proposed text amendment. She stated that site conditions can vary significantly, requiring unique design elements. These considerations need to be vetted as part of the CU application so an evaluation can be made based on thorough and complete site specific engineering design data. She recommends the zoning ordinance wording remain unchanged. Boise City Public Works Department responded in Exhibit #12 that they had no comment. The Idaho Transportation Department responded in Exhibit #13 that they have no issues with the proposed change. Central District Health responded in Exhibit #14 that they have no objections to this proposal. The Nampa and Meridian Irrigation District responded in Exhibit #15 that they have no comment on the application.

5. *For zoning ordinance text amendments within a planned community (PC) base district, the amendment complies with the planned community implementation plan;*

The Board finds that the proposed zoning ordinance text amendment is not applicable to properties located in the Planned Community (PC) District. The Planned Community (PC) Districts do not specifically address application requirements for a commercial tower; therefore commercial towers would be subject to Ada County Ordinance requirements.

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 Project No. 201502328 ZOA does not comply with Section 8-7-3C of the Ada County Code.

ORDER

Based upon the Findings of Fact and Conclusions of Law contained herein, the Board denies the proposed amendment to the Ada County Code, Project No. 201502328 ZOA.

DATED this _____ day of _____, 20__.

Board of Ada County Commissioners

By: Jim Tibbs, Chairman

By: Rick Yzaguirre, Commissioner

By: David L. Case, Commissioner

ATTEST:

Christopher D. Rich, Ada County Clerk