

Provo City Planning Commission

Report of Action

January 25, 2023

ITEM 1 David D. Jeffs requests a Revocation of a Conditional Use Permit (PLCUP20220126) for a telecommunications monopole tower, located at 1499 N 2200 W, in the Agricultural (A-15) Zone. Grandview North Neighborhood. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLCUP20220409

The following action was taken by the Planning Commission on the above-described item at its regular meeting of January 25, 2023:

DENY REVOCATION

On a vote of 4:1, the Planning Commission denied the above noted request.

Motion By: Andrew South
Second By: Robert Knudsen

Votes in Favor of Motion: Lisa Jensen, Robert Knudsen, Daniel Gonzales, and Andrew South

- Jeff Whitlock was present but abstained from voting
- Melissa Kendall voted against the motion
- *Lisa Jensen was present as Chair*

Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

- Planning staff reviewed details of the subject site, the conditional use process, the revocation requirements, the requested revocation, and staff's recommendation. Staff was very clear that only the required findings for a revocation, set forth in §14.02.070, Provo City Code, should be considered when determining whether to grant or not grant the subject request.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was not required for this item.

CONCERNS RAISED BY PUBLIC

Key issues raised in written comments received prior to the public hearing or comments during the public hearing included the following:

- Multiple people who identified themselves as living near the site of the subject monopole claimed to have not received notice information for public meetings or hearings held prior to the Planning Commission granting the subject conditional use. There were accusations of noticing failure in the meeting.
- A citizen stated her opinion emphatically that the monopole tower, which was designed to look like a coniferous tree, did not blend well with the surrounding vegetation.
- There were claims that the holder of the permit for the monopole tower (Atlas Tower) has misrepresented the truth to the property owners living near the tower.
- Atlas Tower refuted claims they misrepresented the truth in their communication with property owners. They offered best available information to nearby residents.
- Atlas Tower's attorney, Jay Springer, stated that believes Rhoda Zobell and Merliee Terry received actual notice, as set forth in §10-9a-801, Utah Code, of the conditional use permit application for the monopole tower, which notice would trump any failings in meeting notice requirements.
- At least one participant of the public hearing asserted that the monopole clearly did not have a similar height as structures around it.
- Atlas Tower claimed the tower was strictly built to plans approved by the city.
- One citizen expressed concerns about the safety of 5G technology.
- A representative of Atlas Tower stated that right of views, market value, and concerns relative to 5G technologies should not be considered in this hearing. Safety issues related to 5G technologies are regulated by the Federal Communications Commission (FCC).

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- The applicant elaborated on claims that noticing requirements had not been met for public meetings and/or hearings held prior to the Planning Commission deciding to grant the conditional use for the tower. He suggested that if the meetings had been properly noticed more neighbors, including the property owner he represents (Rhoda Zobell), would have given their input on the tower before the Planning Commission granted a conditional use permit for it.
- Mr. Jeffs elaborated on his claim that the Planning Commission failed to make the findings required in §14.34.250(11)(h), Provo City Code. He presented the Report of Action for the granting of the subject conditional use permit and stated there is no reference to the Planning Commission having made the findings required by §14.34.250(11)(h).
- The applicant stated the monopole tower has had a substantial detrimental impact on the Zobell's enjoyment of their property.
- The applicant's surveyor/engineer believes the tower is taller than 80 feet, which Mrs. Zobell appeared to believe was the approved height for the tower.
- The applicant claimed Atlas Tower made misrepresentations about the following two issues: (1) the tower would be located by a billboard at the south-end of the property, and (2) the tower would only be a couple of feet taller than the billboard.
- Mr. Jeffs presented an email that was apparently sent on June 1, 2022, which notified Atlas Tower about the need to move the tower to the north to meet applicable setback requirements.
- The property owner (Mr. Zobell) who enlisted the services of the applicant explained the monopole could be moved north and then their view to the west would not be obstructed.
- Mrs. Zobell expressed how important an unobstructed view to the west is to the enjoyment of her family's property. She also said that Atlas Tower stated the Zobell's would have no blockage of their view.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Commissioner Jensen told the residents living near the monopole, which were present, that the Commission is sympathetic to their concerns about the monopole.

- Commissioner Whitlock asked questions to ensure he understood the applicant's allegations of misrepresentation on the part of the monopole owner.
- Commissioner Jensen expressed her belief that the Planning Commission issued the subject conditional use permit based on sound judgement and information.
- Commissioner Kendall expressed that she would have voted differently on the conditional use permit if she had known the neighborhood's feelings. She felt all the commissioner would have voted differently had they known their feelings. Kendall also expressed a belief that residents did not know the tower was going to be moved 150 feet.
- Commissioner Gonzales stated that he felt the main concern—for those who spoke at the public hearing for the conditional use permit on June 8, 2022—was health and safety.

The requested revocation was denied by the Planning Commission 4-1. Commissioner Whitlock abstained from voting.



Planning Commission Chair



Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Community and Neighborhood Services Department, 445 West Center St., Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS