



Provo City Board of Adjustment

Report of Action

March 20, 2023

ITEM #1 David D. Jeffs requests an Appeal of an Administrative Decision by the Planning Commission for denial of a revocation of a conditional use permit (PLCUP20220126) for a monopole tower, located at 1499 N 2200 W in the Agricultural (A1) Zone. Grandview South and North Neighborhoods. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLABA20230027

The following action was taken by the Board of Adjustment on the above-described item at its regular meeting of March 20, 2023:

DENY APPEAL

On a vote of 3:0, the Board of Adjustment denied the above-noted request.

Motion By: Maria Winden

Second By: Eric Chase

Votes in Favor of Motion: Andrew Renick, Eric Chase, and Maria Winden.

- *Laurie Urquiaga was present but recused herself because she was on the Planning Commission when the subject conditional use permit was granted*
- *Andrew Renick was present as Chair*

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

STAFF PRESENTATION

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

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on May 10, 2022.

APPLICANT PRESENTATION

- The applicant claimed the subject conditional use permit should be revoked because the Planning Commission failed to meet Provo City Code requirements in §14.02.040 and 14.34.250(11)(h). More specifically, the applicant claims the Planning Commission failed to make certain findings when it granted the conditional use permit, as per §14.34.250(11)(h). Also, the applicant claims the public hearing (on June 8, 2022) and an additional public meeting were not properly noticed.
- Mr. Jeff's claims that because the public hearing for the June 8, 2022, Planning Commission meeting was not properly noticed, his client, Rhoda Zobell, was not aware the Planning Commission had granted the conditional use permit, especially in a location different than the one they been informed was the correct one. Mrs. Zobell did not become aware of the change in location of the tower until it started going up in November 2022.

- The Zobells, and another adjacent neighbor—the Terrys, claim they had conversations with Atlas Tower, prior to the granting of the conditional use permit. The Zobells and Terrys claim Atlas Tower led them to believe the tower or monopole would be located in the originally proposed location—approximately 150 feet to the south of its current location. They also claim they were told the tower would only be a few feet taller than an adjacent billboard.
- Mr. Jeffs stated his belief that the Planning Commission granted the conditional use permit without making the specific findings in §14.34.250(11)(h). He claims such an action is illegal, and he is frustrated that the Planning Commission acting illegally is not a codified finding upon which the conditional use could be revoked.
- The applicant stated his belief that the height and appearance is not compatible with the neighborhood.
- Mr. Jeffs strongly encouraged the Board to fix what he described as illegal activity that had been committed by the Planning Commission, namely the alleged failure to make the findings required in § 14.34.250(11)(h), Provo Code, and meeting the noticing requirements for a public meeting and public hearing associated with the conditional use permit application.

PRESENTATION FROM PROPERTY OWNER

- Jay Springer represented Atlas Tower and explained that the subject monopole tower meets the applicable height requirements and complies with the aesthetic conditions imposed by the Planning Commission.
- He provided a timeline for the required approvals, meetings, appeals, and revocation requests for the conditional use permit for the tower.
- Mr. Springer explained that a lengthy Planning Commission meeting was held on June 8, 2022. He noted members of the public attended. He also referenced the following statement in the Report of Action for the subject conditional use permit, dated June 8, 2022: “Atlas Towers meets the conditions for a monopole tower outlines [sic] in Provo City Code 14.34.250 (11).” Mr. Springer explained the Report of Action notes all applicable requirements had been met. And the approval of the subject conditional use permit was not “something sprung at the last minute...It hardly arises to the level of an illegal action.”
- Mr. Springer further noted that an appeal of the conditional use permit is untimely. He noted the revocation request is trying to appeal the conditional use permit. The revocation application does not address any of the possible six findings that could be made. The Planning Commission made none of the six potential findings.

COMMENTS FROM THE NEIGHBORHOOD

- Mindy Jeppsen, former Chair of the Grandview South Neighborhood, expressed frustration with noticing issues, including her belief that the application address is not for the property on which the monopole lies. She also noted alleged noticing failures that she believes led to people in her neighborhood not being given the opportunity to review proposed plans. Ms. Jeppsen expressed a belief that Atlas Tower (owner of the monopole tower) should have provided an updated site plan showing the updated monopole location prior to the June 8, 2022, Planning Commission meeting, and such plan should have been shared with local residents.
- Keith Morey, Development Services Assistant Director, read a letter from Richard Jaussi, former Grandview South Neighborhood Chair. A portion of the letter states: “I was the neighborhood chair for the Grandview North neighborhood and we held the hearing on this pole. Only two people attended, myself and a citizen from the South neighborhood. We also had Councilmember MacKay in attendance. The meeting was properly noticed as instructed by Karen Tapahe who worked in the Council office at the time.”
- Beth Hedengren stated her opinion that there must be some flaw in the noticing system because many people did not receive required notices for public meetings or hearings.

CONCERNS RAISED BY PUBLIC

Key issues raised by the public during the public hearing included the following:

- Travis Hoban of the Grandview South Neighborhood stated that either the Board of Adjustment's decision will harm Atlas Tower or the citizens of Provo. He believes that citizens need to be able to trust their local government, and the least harm from this situation would come from requiring the monopole to be removed.
- Doug Gale, former Chair of the Grandview South Neighborhood, attended the neighborhood meeting for the tower and was in favor of the tower where it was originally proposed to be located. Having come to this meeting tonight he can understand the neighbor's objections.
- Merliee Terry, Grandview South Neighborhood, stated that she met personally with Atlas Tower and was told the tower would be erected in the originally proposed location. Atlas Tower never told her about the change in location. She described what she felt were noticing failures in relation to the proposed tower.
- Richard Terry, Grandview South Neighborhood, also stated that he had met personally with Atlas Tower, and feels he was deceived. The representative from Atlas Tower said the monopole tower would not be much taller than trees near the proposed monopole location, which trees are now gone to make way for the tower. The Terrys were not apprised of the change of location of the tower until it was being erected in November 2022.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Board of Adjustment included the following:

- The applicant referenced what he believes is a possible finding that could have been made by the Planning Commission to revoke the conditional use permit. He highlighted §14.02.070(4)(e), Provo City Code, which reads as follows: "that the use is detrimental to the health, safety, or general welfare of persons residing in the vicinity or injurious to property in the vicinity, except that a change in the market value of real estate shall not be considered an injury to property."
- Mr. Jeffs claims that an injury has occurred to the property, regardless of whether it relates to market value or not. The illegal action by the Planning Commission needs to be addressed.

PROPERTY OWNER RESPONSE

- Mike Powers, representative for Atlas Tower, spoke in support of an Atlas representative who he felt was being disparaged through public comment. He said this representative did not guarantee the tower would not be moved. This representative lacked knowledge. He stated he knows the representative well and this person has high character.
- Mr. Powers expressed frustration that his company is being mischaracterized as deceitful. Atlas went through the process and followed up with everything they had been asked to do.

BOARD OF ADJUSTMENT DISCUSSION

Key points discussed by the Board of Adjustment included the following:

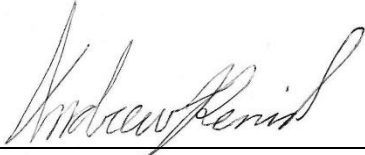
- Board Member Urquiaga noted the Planning Commission asked Atlas to preserve and replace vegetation in the subject area. She directly asked Atlas if there is an intention to replant trees around the monopole. Mike Powers, representative for Atlas Tower, said he would prefer to stick to the record, and knows the staff had specific requirements for building of the site. Mike Powers stated that there absolutely was discussion about the need to remove trees that were over grown, and some where dead. Mr. Powers noted this issue was reviewed by the Planning Commission. Ms. Urquiaga said she put her signature on the Report of Action for the June 8, 2022, Planning Commission meeting. She believes the Report of Action records a condition of approval requiring vegetation to be replaced. Mr. Powers replied that revegetation will occur if it is required. We regularly vegetate our sites.
- Board member Chase expressed a belief the Planning Commission would have approved the conditional use permit if all the public noticing had been executed perfectly. Perhaps the conditions of approval would have been different. I do not see where we can overturn the Planning Commission's decision.

- Board member Winden stated the Board of Adjustment has been tasked with the question of whether the Planning Commission made mistakes in interpreting the code. She stated that based on what they have heard tonight, she does not believe the Board can overturn the Planning Commission's decision because there are no findings to justify such an action.
- The Board voted 3-0 to deny the appeal and uphold the Planning Commission's decision.

FINDINGS / BASIS OF BOARD OF ADJUSTMENT DETERMINATION

The Board of Adjustment identified the following findings as the basis of its decision or recommendation:

- The Planning Commission acted within their rights when they made their decision.



Board of Adjustment Chair



Director of Development Services