

DEVELOPMENT SERVICES DEPARTMENT

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January 11, 2023

New Cingular Wireless PCS, LLC
Attn: Gary Abrahams
590-1st Ave. South, #705
Seattle, WA 98104

Delivery via email to Gary@gmanetworksservices.com and USPS First Class Mail

Re: Appeal Request for DSRFY2023- 0001, CUPFY2023-0002, and CUPFY2023-0003

Dear

On **December 19, 2022**, the Design Committee approved DSRFY2023- 0001 a request for a Design Review, and on **December 21, 2022**, the Planning and Zoning Commission approved Conditional use permits CUPFY2023-0002 and CUPFY2023-0003 for modifications to an existing cell tower at 8247 W. State Street, Garden City, ID 83714. The signed decisions are attached to this notice.

An appeal for the conditions of approval for each of these applications was received on **January 11, 2023**.

The appeals will not be processed as they are not timely.

Appeals:

Pursuant to Garden City Code 8-6A-9 (Appeals), there is a **15 day** right to appeal the decision to the City Council. Once the appeal period ends, the decision is final.

Regulatory Takings Analysis:

Pursuant to Idaho Code 67-6535(3), you are hereby notified of the right to request a regulatory takings analysis pursuant to Idaho Code 67-8003. If such a request is to be filed, it must be submitted in writing to the Development Services Department not more than 28 days after the final decision. Requests submitted after 28 days will not be accepted.

Sincerely,
Development Services Department

BEFORE THE PLANNING AND ZONING COMMISSION
GARDEN CITY, ADA COUNTY, IDAHO

In the Matter of:) CUPFY2023-0002
)
Conditional Use Permit) FINDINGS OF FACT,
8247 W. State Street) CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho) AND DECISION
)

THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on December 21, 2022. The Planning and Zoning Commission reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The request is for the use of Wireless Communication Facility defined by Garden City Code 8-7A-1 as "A steel monopole, guywire tower, lattice tower or other similar structure designed to support directional antennas, parabolic dishes or antennas, microwave dishes; in addition to associated ground equipment and other similar equipment used in the wireless communications industry."
2. The applicant is Gary Abrahams.
3. The property owner of record is DBII LLC.
4. The location of the project is 8247 W. State Street.; Ada County Assessor parcel number R0719420250; Azalea Sub, Lot 11, Block 2.
5. The property is a legal parcel of record.
6. The subject property is 0.567 acres.
7. The project is located in the C-2 General Commercial zoning district.
8. The project is located in the Green Boulevard Corridor and the Low Density Residential designations of the Garden City Comprehensive Plan Land Use Designation.
9. The project is not located in the SFHA according to the 2003 FIRM.
10. The project is not located in the SFHA according to the Flood Insurance Model utilized for the 2020 FIRM.

11. The existing use on the site is Wireless Communications Facility.
12. The following standards apply to this proposal:
 - a. Garden City Code 8-1A-4 Applicability
 - b. Garden City Code 8-1B Existing Nonconforming Properties, Structures, and Uses
 - c. Garden City Code 8-2B Base Zoning District Regulations
 - d. Garden City Code 8-2C Land Use Provisions
 - e. Garden City Code 8-4A Design and Development Regulations- General Provisions
 - f. Garden City Code 8-4D Parking and Off-Street Loading Provisions
 - g. Garden City Code 8-4E Transportation and Connectivity Provisions
 - h. Garden City Code 8-4I Landscaping and Tree Protection Provisions
 - i. Garden City Code 8-6A Administration
 - j. Garden City Code 8-6B-2 Conditional Use
13. The following plans and policies apply to this proposal:
 - a. Garden City Comprehensive Plan
 - b. Garden City Sidewalk Policy
 - c. Garden City Street Light Policy
14. The following previous approvals apply to this proposal:
 - a. 03-17-CU
 - b. 05-05-CU
 - c. CUPFY2016-05
 - d. DSRFY2016-0014
 - e. DSRFY2023-0001
 - f. DR2014-0007
15. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Conditional Use Permit		
Provided		
Yes	No	NA
X		Compliance Statement
X		Neighborhood Map
	X	Will Serve

16. Additional application materials submitted include:
 - a. Site Plan;
 - b. Landscape Plan;
 - c. 300' Neighborhood List;
 - d. Neighborhood Map;
 - e. Site Photos;

- f. Structural Analysis;
- g. Warranty Deed;
- h. Project Plans;
- i. Affidavit of Legal Interest;
- j. Ada County Assessor Information;
- k. FCC 6409 Rule;
- l. Site Expansion Rule;
- m. 5G Upgrade Order;
- n. Application;
- o. Statement of Intent.

17. Agency Comments were received from:

- a. Garden City Engineer, November 25, 2022
- b. Idaho Transportation Department, November 23, 2022

18. Public comments were received from:

- a. None

19. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Receipt of application	11/15/2022	10/17/2022
Letter of Acceptance (30 days after receipt of application)	11/17/2022	11/09/2022
Radius Notice (15 days prior to hearing)	12/06/2022	12/06/2022
Interested Parties	None	None
Legal Notice (19 days)	12/02/2022	12/02/2022
Agency Notice (15 days)	12/06/2022	11/17/2022
Property Posting Sign (10 days)	12/11/2022	12/09/2022
Affidavit of Property Posting and Photos (7 days)	12/14/2022	12/12/2022

20. On December 21, 2022, a public hearing before the Planning and Zoning Commission was held:

- a. Chairman Rasmussen introduced the application.
- b. Gary Abrahams presented the applications
- c. Hanna Veal provided a staff report.
- d. There was no testimony.
- e. Gary Abrahams provided a rebuttal.
- f. Commissioner Wilde moved to approve CUPFY2023-0002
- g. Commissioner Brown seconded the motion
- h. The motion passed on a 5/0 vote.

21. The record contains:

- a. Application Documents
- b. Noticing Documents
- c. Agency Comments
- d. Written Public Comments
- e. Staff report
- f. December 21, 2022, Planning and Zoning Commission Hearing Minutes and Audio
- g. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

22. In order to approve a conditional use permit application, the Planning and Zoning Commission shall make the following findings:

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
Conclusion			
Compliant	Not Applicable to this Application	Not Compliant	Standard
X			<p>Finding 1. The use is appropriate to the location, the lot, and the neighborhood, and is compatible with the uses permitted in the applicable zoning district;</p> <p>Explanation: The use expansion's limited scope does not change the nature of the use and appears to comply with this finding.</p>
X			<p>Finding 2. The use will be supported by adequate public facilities or services to the surrounding area, or conditions can be established to mitigate adverse impacts;</p> <p>Explanation: There are public services available that can accommodate the proposed development. The use expansion does not appear to require additional public facilities or services and appears to comply with this finding.</p>
X			<p>Finding 3. The use will not unreasonably diminish either the health, safety or welfare of the community;</p> <p>Explanation:</p>

			<p>The use expansion appears to comply with this finding. No evidence on the record can be found demonstrating the use expansion would unreasonably diminish either the health, safety or welfare of the community.</p>
X			<p>Finding 4. The use is not in conflict with the comprehensive plan or other adopted plans, policies or ordinances of the city.</p> <p>Explanation: The application is cohesive with the Comprehensive Plan's designation of the Green Boulevard Corridor. The designation notes that existing uses may remain in the Corridor. The use expansion does not expand the height of the tower and does not appear to generate new traffic. The use expansion does not appear to affect development in the designation.</p> <p>The application is supported by the Comprehensive Plan's:</p> <p>Goal 1. Nurture the City</p> <ul style="list-style-type: none"> a.) 1.4 Objective: Create a premier destination place to live, work, and recreate. <p>Goal 7. Connect the City</p> <ul style="list-style-type: none"> a.) 7.4 Objective: Maintain and improve standards for sidewalks, curbs and gutters. <p>Goal 12. Evolve as a Destination</p> <ul style="list-style-type: none"> a.) 12.1 Objective: Support a positive business environment b.) 12.2 Objective: Continue to support commercial and industrial land uses.

18. The record was reviewed by the Planning and Zoning Commission to render the decision.

CONCLUSIONS OF LAW

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets** the standards of approval under **GCC 8-6B-2 Conditional Use**.

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **APPROVES** of the application subject to the following conditions:

CONDITIONS FOR APPROVAL DECISION

Application Specific Requirements:

Scope of Permit:

1. The scope of this permit is to allow for the use of a wireless communications facility.
2. The scope of the conditional use permit is an expansion of a legal nonconforming use. The expansion consists of the addition of:
 - a. Bringing power/fiber to site location
 - b. Adding AT&T Approved 8'x8' concrete walk-in cabinet, and associated interior equipment
 - c. Adding new compound fencing
 - d. Adding (1) 30KW AC diesel generator
 - e. Adding (1) GPS unit
 - f. Adding (3) VFA12-HD-WLL sector mounts on (E) monopole
 - g. Adding (6) antennas, (2) per sector
 - h. Adding (9) RRHs, (3) per sector
 - i. Adding (3) DC9 surge suppressors, (1) per sector
 - j. Adding (6) DC trunks
 - k. Adding (3) fiber trunks

Prior to Issuance of Building Permit:

1. All landscaping shall be installed in accordance with the following conditions set forth in this decision document; or a surety for all landscaping improvements shall be provided for and approved prior to the issuance of the building permit.
2. Landscaping that was approved upon the original 03-17-CU and 05-05-CU applications shall be re-installed.
3. At least 5% of the site shall consist of landscaping.
4. Landscaping shall be 70% or more of living material.

5. Perimeter landscaping shall be installed along the southern property boundary line.
 - a. At least one tree shall be planted for every fifteen (15) linear feet of perimeter length (or as appropriate to the selected species) to quickly establish continuous canopy coverage.
 - b. The perimeter landscaping area shall be at least five feet (5') wide measured from the property line to the interior of the lot.
 - c. Perimeter landscape shall be 75% comprised of evergreens. The evergreens shall be at least 6' in height at the time of planting and interspersed with evergreen shrubs.
 - d. A screen consisting of vegetation shall be at least six feet (6') wide and six feet (6') in height at maturity.
 - e. Perimeter landscaping shall not be installed within the 7' wide pedestrian/bicycle easement.
6. The tower facilities shall be landscaped with a buffer outside the perimeter of the compound.
7. Landscaping shall be continually maintained, and in good health. Should the landscaping die, it shall be replaced within 6 months.
8. Landscaping shall be continuously maintained with a permanent, underground and automatic sprinkler system.
9. There shall be one class II or III tree installed for every 50' of lineal frontage adjacent to State Street.
 - a. Two Class II or III street trees shall be installed within the landscape buffer adjacent to W. State Street.

Prior to Occupancy:

1. A building permit shall be applied for and approved by Garden City Development Services Department.
2. Commencement of the use/use expansion shall not commence until after a Certificate of Occupancy or Compliance has been obtained from Garden City Development Services Department.
3. The site and building must be constructed in accordance with the approved design review file DSRFY2023-0001.
4. A public works and utility permit shall be submitted for review and approval of the site work that will be required to bring the site into compliance with:
 - a. Landscaping and street trees shall be installed and inspected for compliance with Garden City Code 8-4I.

5. All chain-link fencing shall be removed and replaced with code compliant fencing materials.
6. Privacy fencing shall be installed to shield all mechanical equipment from view of the public right-of-way and adjacent properties.

Site Specific Requirements for the Duration of the Use:

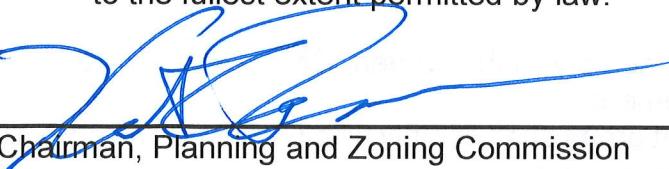
1. The tower facilities shall be landscaped with a buffer outside the perimeter of the compound.
2. A wireless communication facility that is no longer in use shall be completely removed and the site restored to its preexisting condition within six (6) months of the cessation of operation.
3. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
4. All conditions of approval related to the site as required through the Garden City conditional use permit approvals 03-17-CU and 05-05-CU and the Design Review Committee approvals of DSRFY2016-0014 and DSRFY2023-0001 shall be adhered to.

General Requirements

1. Any changes in the design, construction, operation, or use shall be brought to the immediate attention of the Planning Official for determination if the changes are in substantial conformance with the City's action. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
2. This Conditional Use Permit shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to a permit, the permit shall be granted to the applicant and successors in interest to the premises for which it was approved.
3. This approval is only approval of the conditional use permit. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
4. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
5. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.

6. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations.
7. The property owner is responsible to maintain the site to edge of roadway asphalt.
8. If there are any tree grates, they shall be widened to accommodate the growing tree trunk and prevent girdling of any trees planted in tree wells within sidewalks or other public right of way.
9. Plant materials which exhibit evidence of insect pests, disease, and/or damage shall be appropriately treated to correct the problem. Dead and diseased plant materials shall be replaced.
10. Where landscaping might impact motorist or pedestrian sight distance, shrubs shall be maintained below three feet (3') in height and trees shall be pruned so that the lowest branches will be at least seven feet (7') above the ground level.
11. A three foot (3') clearance zone shall be maintained around the circumference of fire hydrants.
12. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
13. If trees are staked, the stakes shall be removed within twelve (12) months to prevent damage to the tree.
14. All planting areas that border driveways, parking lots, and other vehicle use areas shall be protected by curbing, wheel stops, or other approved protective devices.
15. Trees shall be planted at least three feet (3') from curbs, sidewalks, driveways and other hard surfaces to buffer from stress caused by vehicle overhang and compacted soils, or planted with sufficient space to provide for the full maturity of the particular tree species. All other plant material, except sod or ground cover, shall be set back a minimum of one foot (1') from any curb edge to protect from vehicle overhang and mechanical damage.
16. The landscape installation shall stabilize all soil and slopes.
17. All required landscaping shall be provided with an automatically controlled irrigation system in conformance with the best management practices for automatic irrigation systems.
18. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
19. This approval is for this application only. Additional permits, licenses and approvals may be necessary.
20. Property maintenance standards shall be maintained as required by Garden City Code.
21. The property owner is responsible for the maintenance of all landscaping and screening devices required.
22. All outdoor living spaces must comply with Garden City Cod 8-3C General Provisions- Living Space Requirements.
23. All outdoor service and equipment areas shall comply with Garden City Cod 8-4A-5 Outdoor Service and Equipment Areas.
24. All stormwater systems must comply with Garden City Code 8-4A-7.

25. Cross-Connections: All cross-connections between the domestic water lines and the irrigation water lines shall be in accord with the City's adopted standards, specifications and ordinances.
26. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision-making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
27. No change in terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his or her authorized representative and an authorized representative of the reviewing agency. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Garden City.
28. The Commission may revoke a conditional use permit for any of the following: A) Violation of Garden City Code or State or Federal Laws; B) Failure to abide by any conditions of this permit; C) Causing or allowing a nuisance as determined by Garden City Code, in connection with the use for which the permit is granted.
29. Any violation of the conditions of this application is a criminal offence.
30. A certificate of occupancy or an application for a building permit shall be considered commencement of the use.
31. All previous uses are null and void unless otherwise conditioned.
32. Should there be a change in use, there is a clear intent to cease the use, or the use is discontinued for more than one year without written documentation submitted to the City, legal noticing, and property posting indicating intent to continue the use, this approval shall become void.
33. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within 15 days after the action of the decision.
34. This approval shall expire 365 days from its approval, unless otherwise extended as allowed by Garden City Code .
35. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
36. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
37. A takings analysis pursuant to Idaho Code may be requested on final decisions.
38. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.



Chairman, Planning and Zoning Commission

December 21, 2022

Date