

CITY OF GARDEN CITY

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BEFORE THE GARDEN CITY COUNCIL

April 24, 2023

APPEAL PURSUANT TO THE GARDEN CITY CODE SECTION 8-6A-9

APPEAL OF GARY ABRAHAMS WITH CROWN CASTLE: RE CONDITIONS OF APPROVAL OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF GARDEN CITY, RELATED TO CUPFY2023-0002, AND PLANNING OFFICIAL DECISION DSRFY2023-0001 FOR THE MODIFICATON OF A WIRELESS FACILITY AT8247 W. STATE STREET, GARDEN CITY IDAHO, 83714.

Elizabeth A. Koeckeritz with Givens Pursley for appellant

Jenah Thornborrow with Garden City Development Services Department for respondent

John G. Evans, Mayor

Gary Abrahams with Crown Castle appeals Conditions of Approval of CUPFY2023-0002 and the Planning Officials Decision of DSRFY2023-0001 regarding a wireless facility located at 8247 W. State Street in Garden City, Ada County, Idaho. Specifically, the request is to vacate all conditions: Prior to Issuance of Building Permit, Prior to Occupancy, and Site Specific.

BACKGROUND

On December 19, 2022, a Design Review application was approved for DSRFY2022-0001 and on December 21, 2022, the Planning and Zoning Commission approved the application CUP2023-0002, for modifications to an existing wireless facility. Both approvals included conditions of approval that the pre-existing conditions from previous applications for the same wireless facility for landscaping and fencing be adhered to.

On January 11, 2023, an appeal of the conditions of approval was filed to the Garden City Council. The initial appeal was to nullify all conditions of approval. The appeal was amended to request that only the conditions related to landscaping and fencing be removed and addressed through code enforcement processes.

ACTION TO BE TAKEN

The City Council is tasked with determining whether the Planning and Zoning Commission and Planning Official made the decision in accordance with applicable laws and regulations. The Council makes its decision on the record presented in front of the Commission and Planning Official and supplemental evidence provided by the appellant or respondent.

The City Council decision may include, in part, or entirety, the action to ***grant the appeal, grant with conditions, remand to the Planning and Zoning Commission/staff for additional proceedings, and/or deny the appeal.***

EVIDENCE FOR APPEAL

The evidence provided by the appellant to support the appeal is:

1. The conditions adversely affect the appellant by contravening rights under federal law because the requested changes are not substantial as identified by section 6409.
2. There is no health and safety basis for the conditions.

FINDINGS OF FACT CUPFY2022-0002 and DSRFY2023-0001

1. The request is for the expansion of a 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 with GMA Network Services, LLC for Crown Castle.
3. The property owner of record is DBII LLC.
4. The affidavit of Legal Interest indicates that Global Signal Acquisitions IV LLC is the authorized agent for Ulyssess the wireless facility easement holder.
5. The location of the project is 8247 W. State Street.; Ada County Assessor parcel number R0719420250; Azalea Sub, Lot 11, Block 2.
6. The property is a legal parcel of record.
7. The subject property is 0.567 acres.

8. The project is located in the C-2 General Commercial zoning district.
9. The project is located in the Green Boulevard Corridor and the Low-Density Residential designations of the Garden City Comprehensive Plan Land Use Designation.
10. The project is not located in the SFHA according to the 2003 FIRM.
11. The project is not located in the SFHA according to the Flood Insurance Model utilized for the 2020 FIRM.
12. The existing use on the site is Wireless Communications Facility.
13. The following standards apply to the 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
14. 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
15. 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
16. Application materials submitted include:
 - a. Compliance Statement
 - b. Will Serve
 - c. Site Plan;
 - d. Neighborhood Map;

- e. Landscape Plan;
- f. 300' Neighborhood List;
- g. Site Photos;
- h. Structural Analysis;
- i. Warranty Deed;
- j. Project Plans;
- k. Affidavit of Legal Interest;
- l. Ada County Assessor Information;
- m. FCC 6409 Rule;
- n. Site Expansion Rule;
- o. 5G Upgrade Order;
- p. Application;
- q. 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 conditional use permit noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Completion Date
Receipt of application	10/17/2022
Letter of Acceptance	11/09/2022
Radius Notice	12/06/2022
Interested Parties	None
Legal Notice	12/02/2022
Agency Notice	11/17/2022
Property Posting Sign	12/09/2022
Affidavit of Property Posting and Photos	12/12/2022

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

Noticing Requirement	Completion Date
Neighborhood Meeting	09/13/2022
Receipt of application	10/17/2022
Letter of Acceptance	11/18/2022
Radius Notice	12/02/2022
Agency Notice	11/17/2022
Property Posting Sign	12/09/2022
Affidavit of Property Posting	12/12/2022

and Photos

2. On December 19, 2022, a Design Consultation was held.
3. 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.
4. The record contains:
 - a. Application Documents
 - b. Noticing Documents
 - c. Agency Comments
 - d. Written Public Comments
 - e. Staff report for Conditional Use Permit, CUPFY2023-0002
 - f. Staff Report and Decision for Design Review Application, DSRFY2023-0001
 - g. December 21, 2022, Planning and Zoning Commission Hearing Minutes and Audio
 - h. Planning and Zoning Commission CUPFY2023-0002 Decision Document
5. In order to approve a conditional use permit application, the Planning and Zoning Commission made the following findings:

GCC 8-6B-2 CONDITIONAL USE: REQUIRED FINDINGS			
CONCLUSION			FINDING AND REASONED STATEMENTS
Compliant	Not Applicable to this Application	Not Compliant	
X			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;

			Explanation: The use expansion's limited scope does not change the nature of the use and appears to comply with this finding.
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: 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 no 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</p>

			<p>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> <p>a.) 1.4 Objective: Create a premier destination place to live, work, and recreate.</p> <p>Goal 7. Connect the City</p> <p>a.) 7.4 Objective: Maintain and improve standards for sidewalks, curbs, and gutters.</p> <p>Goal 12. Evolve as a Destination</p> <p>a.) 12.1 Objective: Support a positive business environment</p> <p>b.) 12.2 Objective: Continue to support commercial and industrial land uses.</p>
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6. In order to approve the design review application after a recommendation by the design review consultant(s), the Planning Official made the following findings:

GCC 8-6B-3 DESIGN REVIEW: REQUIRED FINDINGS			
	DETERMINATION	FINDING AND REASONED STATEMENT	
<p>1. The proposed design shall comply with all design standards in Garden City Code, Title 8.</p> <p>2. The proposed design shall provide effective bicycle and pedestrian access and movement to, from, within, and across the site.</p>	Complaint Conditioned	as	The application is complaint with all required findings. The application is in conformance with the reviewed sections of code noted in this decision.

<p>3. The proposed design shall be compatible with or improve the public's use of existing and planned public spaces, including but not limited to the greenbelt and pathways, sidewalks, parks, roadways, open space, public facilities, Boise river and waterways, canals, and other surface irrigation.</p> <p>4. The proposed design shall be compatible with the neighborhood in scale and intensity.</p> <p>5. The proposed design shall not create an adverse impact on the surrounding neighborhood.</p> <p>6. The proposed architecture and site improvements shall have facades, features, materials and building form, and other physical improvements that are compatible with or enhance the neighborhood.</p> <p>7. The proposed design and landscape shall improve the design and function of the site and be consistent with the southwest Idaho climatic conditions; and</p> <p>8. The proposed design shall be compatible with applicable natural, scenic, and historic features, including but not limited to wetlands, the Boise River, waterways, and historic structures.</p>		<p>The application as conditioned, is in compliance with the original approval, and any subsequent approvals for the use of a wireless communications facility.</p>
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18. The Planning Official reviewed the design review application regarding Garden City Code Title 8, and based on the conditions of approval concluded that the application meets the standards of approval under **GCC 8-6B-3 Design Review**.

19. **Garden City Code 8-6A-7C.2.d.** Requires that when a design review consultation is required as part of an application that requires a public hearing, public testimony regarding design will be heard by the planning and zoning commission at the planning and zoning commission's scheduled hearing.
20. The record was reviewed by the Planning and Zoning Commission to render the decision.
21. The Planning and Zoning Commission reviewed the conditional use permit application regarding Garden City Code Title 8, and based on the conditions of approval concluded the application **meets** the standards of approval under **GCC 8-6B-2 Conditional Use**.
22. On January 11, 2023, the appellant submitted an appeal.
23. The record is augmented with the following materials:
 - a. Appeal Procedures
 - b. Appeal Applications
 - c. Appellant Supplemental letter
 - d. Appeal Noticing
 - e. Appeal memorandum from staff/ respondent
 - f. Design Review Transcript
 - g. Conditional Use Transcript
 - h. City Council Decision to grant final authority to the Planning and Zoning Commission
 - i. Email providing applicant staff reports and decisions
 - j. Respondent Presentation

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, the City Council concurs with and adopts Planning Official and Planning and Zoning Commission findings of fact and conclusions of law, and as augmented above to include the appeal record. Furthermore, the Council finds that the Planning Official and Planning and Zoning Commission's findings, inferences, conclusions, and decisions are not in violation of constitutional or statutory provisions; are not in excess of the statutory authority; are not made upon unlawful procedure; are based on substantial evidence; and are not arbitrary, capricious, or an abuse of discretion. However, based on legal advice, the city is unwilling to adjudicate this issue. Therefore, the City Council **VACATES AND REVERSES** the conditions of approval regarding landscaping and fencing, finding that the removal of these conditions is a better form of construction, and thereby **GRANTS** the appeal.

REVISED CONDITIONS OF APPROVAL
CUPFY2023-0002 and DSRFY2023-0001

Application Specific Requirements:

Scope of Permit:

1. The scope of this permit is to allow for the expansion of the use of a wireless communications facility as applied for and herein conditioned is approved with this application in conjunction with the associated Conditional Use Permit (CUPFY2023-0002) and Design Review approval (DSRFY2023-0001)..

2. The scope of the conditional use permit is an expansion of a 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 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. Materials, colors, textures, and screening shall be used that blend the tower facility to the natural and built environment. Supporting electrical and mechanical equipment installed on the tower shall use colors that are similar to the tower.

Site Specific Requirements for the Duration of the Use:

1. 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.

2. Except as required by the federal aviation administration (FAA) or the federal communications commission (FCC), transmission structures shall not be artificially lighted. Equipment shelters may use lighting consistent with the lighting

standards set forth in section 8-4A-4, "Outdoor Lighting" or otherwise approved by the Design Review Committee.

General Conditions:

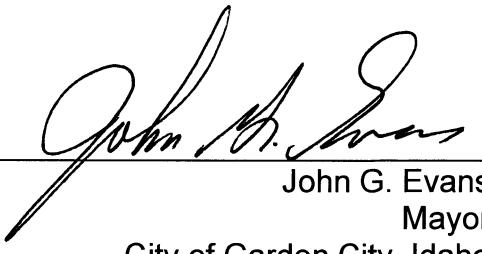
1. This review and approval are specific to the design and use of the project. Final approval is subject to the approval of other reviewing agencies. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail. This approval shall not annul any portion of the Garden City Code or other applicable regulation unless specifically noted.
2. 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.
3. 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; 8-4I-3 and Landscape Maintenance Provisions 8-4I-9; and Standards for Transportation and Connectivity Provisions identified in 8-4E.
4. All utilities on the site, including telephone, cable television, and electrical systems shall be underground and in compliance with Garden City Code 8-4A-8.
5. Driveway openings in curbs shall comply with the requirements of the Transportation Authority. The driveway shall be straight or provide a 28-foot inside and 48-foot outside turning radius.
6. Demonstrate compliance with or an exemption from Garden City Code 8-4G prior to certificate of occupancies.
7. This approval is for this application only. Additional permits, licenses and approvals may be necessary. All other applicable permits must be obtained prior to a Certificate of Occupancy.
8. Property Maintenance Standards shall be maintained as required by Garden City Code.
9. All outdoor service and equipment areas shall comply with Garden City Code 8-4A-5 Outdoor Service and Equipment Areas.
10. All stormwater systems must comply with Garden City Code 8-4A-7.
11. 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.
12. 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 modification to approved plans shall require submittal and approval of these modifications prior to construction.

Final approval is based on substantial conformance with the plans reviewed and approved.

13. Occupying the site prior to Certificate of Occupancy is a criminal offense.
14. This approval shall expire 365 days from its approval, unless otherwise extended as allowed by Garden City Code.
15. 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.
16. Final decisions are subject to judicial review pursuant to The Idaho Administrative Procedures Act, Chapter 65 Title 67 Idaho Code. Any applicant or affected person seeking judicial review of compliance must first seek reconsideration of the final decision within fourteen (14) days. A takings analysis pursuant to Idaho Code may be requested on final decisions.

The decision of the Council shall be final.

Russ Heller, Bill Jacobs, James Page **CONCUR.**
Dated this 8th day of May 2023



John G. Evans
Mayor
City of Garden City, Idaho