

**BONNER COUNTY PLANNING and ZONING COMMISSION  
PUBLIC HEARING MINUTES  
THURSDAY, SEPTEMBER 2, 2021**

**PLEDGE OF ALLEGIANCE**

**CALL TO ORDER:** Chair Bailey called the Bonner County Planning and Zoning Commission hearing to order at 5:33 p.m. in the 1<sup>st</sup> Floor Conference Room, of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, via Zoom webinar, and YouTube live streaming.

**PRESENT:** Commissioners Chair Brian Bailey; Vice Chair Don Davis; Dave Frankenbach; and Sheryl Reeve

**ABSENT:** Suzanne Glasoe and Taylor Bradish

**ALSO PRESENT:** Planning Director Milton Ollerton; Assistant Planning Director Jacob Gabell; Planner I Swati Rastogi; Planner I Chad Chambers; Administrative Manager Jeannie Welter; Administrative Assistant III Da Niel Scott; and Administrative Assistant III Janna Berard

**CONSENT AGENDA:**

**APPROVAL OF MINUTES:** The Chair requested the Commissioners declare if they had any corrections or changes to the approval of minutes as written for: August 19, 2021. Hearing no changes or objections, the Chair declared the minutes approved as written.

**PUBLIC HEARINGS:**

**DISCLOSURE OF CONFLICT:** Chair Brian Bailey disclosed he owns property in the area pertaining to both files and this creates a conflict of interest for him. He, therefore recused himself from all the hearing proceedings on the agenda. Vice Chair Don Davis took the Chair for these proceedings.

**CONDITIONAL USE PERMITS**

**CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE:** The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

**File CUP0011-21 – Conditional Use Permit – Communication Tower - Nathan & Lisa Weis** are requesting to revise their original application for a Conditional Use Permit for the construction of a new 73' monopole communications tower, not to exceed 75' in height to support new panel antennas, MW dishes and other associated equipment for Inland Cellular on a 5-acre parcel. The applicant is also proposing to build a 30' x 30' fenced compound which will include an 8' x 12' equipment building, and H-frame for power and telephone connections. The applicants previously

proposed to construct a 80' communications tower to allow for a future 43' collocation, amounting to a potential height of 114' to be housed in a 30' x 30' compound, including an 8' x 12' equipment building and H-frame for power and telephone connections. The property is zoned Rural 5-acre. The project is located off Eastshore Road in Section 9, Township 61 North, Range 4 West, Boise-Meridian.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted no additional conflicts of interest for this file.

**STAFF PRESENTATION:** Staff planner Chad Chambers presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Project Representative Justin Abbott, Inland Cellular, submitted exhibit C (a coverage map of the area), and provided comments on cellular service coverage for both Inland Cellular and T-Mobile. Mr. Abbott stated T-Mobile's desire to expand their service area through use of the proposed tower.

Applicant Nathan Weis provided background on the company, their focus, and location of proposed tower. Mr. Weis explained agreements already in place with AT&T, Inland Cellular, T-Mobile, and Zply Fiber to work together in providing service and maintenance on proposed and current cellular towers in area.

**PUBLIC/AGENCY TESTIMONY:** The following individuals spoke on the record:

Brent Kellogg

Mary Porter submitted Exhibit B.

Ed Porter submitted Exhibit A.

**APPLICANT REBUTTAL:** Mr. Abbott responded to public comment regarding height, appearance, construction, Verizon tower/co-location, and coverage objective.

**COMMISSION DELIBERATION:** The Chair closed the hearing to public testimony. The Commission discussed Findings and Conclusions.

**MOTION TO DENY:** Commissioner Frankenbach moved to deny this project FILE CUP0011-21, conditional use permit for the construction and operation of a new communications tower/facility to be used for Inland Cellular on a 5-acre parcel, zoned Rural 5-acre, based upon the following conclusions: conclusions 1, 2, 3, 4, & 5. The decision is based upon the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. Commissioner Frankenbach further moved to adopt the following findings of fact and conclusions of law as amended. This action does not result in a taking of private property. The action that could be taken, if any, to obtain the conditional use permit is to: 1) File a new application with the Planning Department and meet the standards required by Bonner

County Revised Code; or 2) Appeal the Planning and Zoning Commission's decision to the County Commissioners.

Commissioner Reeve seconded the motion.

**VOTED** upon and the Chair declared the motion carried, unanimously.

**Background:**

**A. Site data:**

- Unplatted
- Size: 5-acre
- Zone: Rural 5-acre (R-5)
- Land Use: Rural-Residential

**B. Access:**

- The property is accessed by Eastshore Road, a County owned and maintained road.

**C. Environmental factors:**

- Site does contain mapped slopes between 15-29%. (USGS)
- Site does not contain mapped wetlands. (USFWS)
- Site does not contain a river/stream/frontage on lake.
- Bonner County Floodplain Review: *Parcel is within SFHA Zone X, per FIRM Panel 16017C0150F, Effective Date 07/07/2014.*

**D. Services:**

- Water & Sewage: per the application "N/A – no water or sewer is associated with the proposal."
- Fire: the property does not appear to be in a mapped fire district.
- Power: Northern Lights Inc.
- School District: Bonner School #83

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Rural-Residential	Rural 5-acre	Rural-Residential
North	Rural-Residential	Rural 5-acre	Rural-Residential
East	Rural-Residential	Rural 5-acre	Bare forest land (Northeast) Rural Residential (Southeast)
South	Rural-Residential	Rural 5-acre	Bare forest land
West	Rural-Residential	Rural 5-acre	Bare forest land

**F. Standards review**

- BCRC 12-223 specifies that the Commission shall review the particular facts and circumstances of each proposal. To grant a conditional use permit, the Commission must find there is adequate evidence showing the proposal is in accord with the general and specific objectives of the comprehensive plan and Title 12 and the proposed use will neither create a hazard nor be dangerous to persons on or adjacent to the property

- BCRC 12-220, et seq, conditional use permit, application and standards
- BCRC 12-335, Public Use Table
- BCRC 12-4.2, Performance standards for all uses
- BCRC 12-4.3, Parking standards
- BCRC 12-4.4, Sign standards
- BCRC 12-4.5, Design standards
- BCRC 12-4.6, Landscaping and screening standards
- BCRC 12-4.88, Communication Towers
- BCRC 12-7.2, Grading, stormwater management and erosion control

**G. Comprehensive Plan Land Use Designation:** The Rural-Residential comprehensive land use designation provides "for residential development in areas where urban services are not available, and slopes may vary up to 30%. These areas include hazard areas and critical wildlife habitats, where lower densities reduce potential impacts to resources and exposures to loss of property or lives. Small-scale agricultural uses and residential development are permitted."

**H. BCRC 12-488: Communication Towers**

1. Communication towers and attendant facilities shall be enclosed by a fence not less than six feet (6') in height.
  - ✓ **Staff:** The proposed tower/facility fence is 6' in height (7' including the barbed wire).
2. The base of any tower shall not be close to any property line than a distance equal to the tower height.
  - ✓ **Staff:** Per updated site plan submitted, the communication tower setbacks are 78.62' to the northern property line and 178.82' to the eastern property line respectively.
3. The commission shall consider the public convenience and necessity of the communication tower and any adverse effect the facility would have upon properties in the vicinity and may require such reasonable restrictions and conditions of development as to uphold the purpose and intent of this title and the comprehensive plan.
  - ✓ **Staff:** In general, the Rural-Residential comprehensive land use designation permits residential development as "lower densities reduce potential impacts to resources and exposures to loss of property or lives". A condition of approval has been added to the file requiring the applicant

illustrate the necessity of the communication tower in the area (see condition **A-8**).

- Communication towers shall be built to telecommunication industry association/electronic industry association (TIA/EIA) 222 revision F standards, or as amended, for steel antenna support structures.

✓ **Staff:** Construction plans were prepared by an Idaho licensed architect, and per the architect will be built to industry standards. Per the 'TRANSMITTING NOTES' - '**APPLICABLE BUILDING CODES AND STANDARDS**' (Sheet Number **G - 1**):

"TELECOMMUNICATIONS INDUSTRY ASSOCIATION (TIA) 222-G, STRUCTURAL STANDARD FOR STRUCTURAL ANTENNA TOWER AND ANTENNA SUPPORTING STRUCTURES."

- Communication towers shall be constructed to accommodate other future communication services where technically feasible ("collocation").

✓ **Staff:** Per the General Notes (Sheet Number **G -1**), prepared by an Idaho Licensed Architect '**TOWER/POLE NOTES**':

"2. PROVIDE SUPPORTS FOR THE ANTENNA COAX CABLES TO THE ELEVATION OF ALL INITIAL AND FUTURE ANTENNAS, ANTENNA COAX CABLES ARE TO BE SUPPORTED AND RESTRAINED AT THE CENTERS SUITABLE TO THE MANUFACTURER'S REQUIREMENTS"

- Communication towers shall meet all operational, construction and lighting standards of the federal aviation administration.

✓ **Staff:** Per the application, "the tower does not require FAA lighting and no other outdoor lighting is associated." The FAA was notified twice and did not respond with any specific recommendations or requirements for lighting.

- Communication towers shall not penetrate any airspace surface on or adjacent to any public or private airfields as set forth at [subchapter 5.2](#) of this title.

✓ **Staff:** Per the TOWAIR results provided by the applicant:

**DETERMINATION Results**

**Structure does not require registration. There are no airports within 8 kilometers (5 miles) of the coordinates you provided.**

**Your Specifications**

**NAD 83 Coordinates**

Latitude 48-39-00.6 north  
Longitude 116-51-05.5 west

**Measurements (Meters)**

Overall Structure Height (AGL) 22.9  
Support Structure Height (AGL) 22.3  
Site Elevation 817.8

**Structure Type**

MTOWER - Monopole

- ✓ **Staff:** The coordinates provided by the applicant were verified using Google Maps.
- 8. Upon termination of use of a communication tower for a period of not less than one year, the landowner and/or tower operator/applicant shall remove the tower along with all supporting equipment, apparatus, and foundation.
- 9. Flammable material storage shall be in accordance with international fire code standards.
  - ✓ **Staff:** No flammable material storage was proposed for this project.
- 10. Communication towers shall not be used for signage, symbols, flags, banners or other devices or objects attached to or painted or inscribed upon any communication facility for the purposes of displaying a message of any kind, except as required by a governmental agency. (Ord. 501, 11-18-2008)
  - ✓ **Staff:** Signage proposed in this project meets sign standards in BCRC 12-4-4.

**I. Stormwater plan:** A stormwater management plan was required pursuant to BCRC 12-7.2 (E) which states that "new building construction or development which occurs on or within three hundred feet (300') of a slope within fifteen percent (15%) or greater incline as determined from the applicable seven and one-half (7.5) minute quadrangle map published by the United States geological survey or by actual survey, and which is subject to provisions of title 11 of this code, as amended; (Ord. 524 1-11-2012)."

**J. Agency Review:** The following agencies were notified of the original application for the communication tower on **May 18, 2021**:

Panhandle Health District	Idaho Department of Water Resources
North of the Narrows Fire	U.S. Fish and Wildlife Service
Northern Lights Inc.	Idaho Department of Lands (Sandpoint)
Applicable School District #83	U.S. Forest Service

Bonner County Schools – Transportation	Idaho Department of Environmental Quality
Idaho Department of Fish and Game	Federal Aviation Admin

**1. The following agencies commented:**

- Department of Environmental Quality: June 8, 2021
  - “DEQ has no environmental impact comments at this stage of the project.”

**2. The following agencies replied “no comment:”**

- Panhandle Health District, May 28, 2021

**3. All other agencies did not respond.**

**K. The following agencies were notified of the updates to the application on August 3, 2021:**

Panhandle Health District	Idaho Department of Water Resources
Northern Lights Inc.	U.S. Fish and Wildlife Service
Applicable School District #83	Idaho Department of Lands (Sandpoint)
Bonner County Schools – Transportation	U.S. Forest Service
Idaho Department of Fish and Game	Idaho Department of Environmental Quality
Federal Aviation Admin	Bonner County Road & Bridge

**1. The following agencies commented:**

- Department of Environmental Quality, August 26, 2021:
  - “DEQ submitted comments for this project on June 8, 2021. After reviewing the revision, we have no changes to our original comments.”

**2. The following agencies replied “no comment:”**

- Panhandle Health District, August 11, 2021

**3. All other agencies did not respond.**

**L. Public comments:** The following quotes were pulled from each public comment and represent a wide array of concerns that members of the public have about the proposed tower. These quotes represent only a sample of each public comment submitted in writing.

- Received June 11, 2021: “Numerous independent studies (i.e. not government sponsored or conducted by technology companies) have

shown significant health problems for people living close to a cell phone tower”

- Several authors were listed with date(s) of publications. Staff concluded it was unclear as to whether these publications were peer reviewed, based on the information provided in the public comment.

- Received June 14, 2021

“Nathan...assured us that he would be erecting a etree tower that would blend in with the natural landscape and would take steps to become the neighbor he wanted to be rather than the neighbor he had been.”

“Contrary to the applicant’s undocumented statements regarding how this proposal is in accordance with the Comprehensive Plan, this proposed facility will not have a positive impact on associated functions, nor is it needed for enhanced communications in this area”

“I take exception to the findings in the staff report. Conclusions 1, 3, 4 and 5 are unproven and incorrect and can only be made by not considering the admitted, stated negative impact on us and our neighbor. Upon inspection, staff will find that substantial earth removal and construction work has been completed without meeting Standard Permitting Requirements A-5, A-6, and A-7, or at least without completing the hearing process”

- Received July 7, 2021

“Applicant admits the tower design is obstructive and obtrusive, in stating that attempts would be made to minimize the impact, and then asked that this unsightly puce green monolith be excused by saying that the effects would be seen by only a few people – that would be us. That would be unfair to us, and that would be a taking of our right to continued, unobstructed enjoyment of the property we have owned for 17 years, and it would be a taking in a reduction in the value of our property attested by several real estate agents – no one wants to live next to a cell tower.”

“Staff conclusion 5 is incorrect. There is no basis for claiming that this tower is necessary facility. Since moving to Priest Lake, we have not been without communication services. In fact, there has been an increase in both service providers and services. Inland Cellular, Verizon, ATT, Moosebytes, T1 Wifi, Hughesnet, DISH Network, DirecTV and Starlink are all operational in our area, as is sufficient emergency bandwidth available to public service providers. Verizon, unlike the Weis’, has legally built a new tower on the opposite side of the lake, which is now live, and has increased our cell phone reception to 4 bars.”

- Received July 8, 2021

"I hope that Bonner County takes into consideration that the applicant bypassed all laws and requirements set forth by Bonner County in the Conditional Use Permitting Application process"

"The level of risk and liability of an 80ft -113ft tower without critical oversight and engineering of the construction of the foundation is unmeasurable"

The public comment contained several specific questions related to the engineered design of the tower, and how the commission will determine that it meets those standards if it is to approve of the conditional use permit.

- Received July 8, 2021

"My property sits at a higher elevation on the hillside directly to the east of the applicant with direct views of Priest Lake...this property was purchased for its remote located R-5 zoning, and lake views with the intent to hold long term and develop a home on the north end of this 10.41 acres without risk of conflicting development"

"In conflict with the applicant's prior testimony to this board that towers do not impact property values, extensive research exists documenting negative impacts to value after cell towers are developed nearby, particularly in scenarios where views are obstructed (references can be provided on request)."

"It is my understanding that the foundation and supporting infrastructure was developed without a conditional use permit, building permit, or any required approvals as described above"

"I feel manipulated and treated like a fool by the applicant as should this board. This behavior unquestionably dilutes the legitimacy and sustainability of this board and Bonner County's critical public services associated with zoning, permitting and public safety."

- Received August 26, 2021

"Verizon provided a detailed site analysis and propagation maps showing areas with little or no reception without their tower, and the enhanced coverage that would be achieved by towers at heights of 130, 140, 150, 160, and 170 feet. To my knowledge, Inland Cellular/Weis has not provided propagation maps or any other documentation showing, 1) specific areas currently with poor or no cell phone reception; or 2) the increased coverage that would be provided by his 75-foot tower."

"The applicant states that construction (i.e. CX) will start in October 2021. I would like to remind the commission that construction of a permanent nature (i.e. the entire base of the tower) was illegally completed in the

spring of this year, prior to the original June hearing on the proposed tower."

"In summary, I respectfully request that the Bonner County Planning and Zoning Commission deny Inland Cellular/Weis's application for a Conditional Use Permit for the following reasons:"

"1. Inland Cellular/Weis has failed to demonstrate in any way the need for or benefits to be derived from a 75-foot tower in our tiny residential neighborhood just over a mile and a half from the existing 175-foot Verizon tower."

"2. The proposed tower would not easily allow for collocation by other carriers. The 175 foot Verizon tower has the capacity and height to accommodate Inland Cellular and many other carriers, and enhance communication for far more residences and businesses around Priest Lake. The applicant stated that his tower was designed to accommodate "a" (i.e. one) future collocation."

"3. The proposed tower is not tall enough to provide the required line of sight because the "... existing trees will block and diminish signal levels." (Quoted from the Conditional Use Permit Application under consideration.)"

"4. The customers potentially served by this proposed 75-foot tower are few, if any, in comparison to the number who would be served if Inland Cellular were to collocate on the Verizon tower - another indication that this tower is unnecessary."

"5. The proposed tower will have an unnecessary, adverse impact on the properties and residents in a small residential neighborhood."

"6. The tower base was completed many months ago without the Planning Department's oversight or the Commission's approval, a clear indication that Inland Cellular/Weis has no respect for this Commission's authority or Bonner County's rules and regulations. Additionally, it is impossible to know at this point if the materials and procedures used to construct the tower base would have met county and TIA/EIA standards. This sets a dangerous precedent for the future."

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#### **Conditional Use Permit Findings of Fact**

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- The subject property is accessed by Eastshore Road, a county owned and maintained road.
- The property is in the Rural-Residential comprehensive land use designation and Rural 5-acre zoning district.

- There are no mapped wetlands on the property and one (1) soil type, Klotch gravelly sandy loam which is not prime farmland soil.
- The proposed communication tower will be 73' high, not to exceed 75'. The site plan shows the setback to the northern property line at 78.62', and a 178.82' setback to the eastern property line. This meets the standard per BCRC 12-488 (B).
- The proposed fencing that encloses the tower/facility meets the 6' minimum standard as prescribed by BCRC 12-488(A).
- There are no minimum off-street parking standards for communication towers per BCRC 12-431. Per the application, the proposed facility/tower will be visited once a month for maintenance.

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**Conditional Use Permit Conclusions of Law:**

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Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposed conditional use permit is in accord with the Bonner County comprehensive plan.

- |                       |                         |                                    |
|-----------------------|-------------------------|------------------------------------|
| •Property Rights      | •Population             | •School Facilities, Transportation |
| •Economic Development | •Land Use               | •Natural Resources                 |
| •Hazardous Areas      | •Public Services        | •Transportation                    |
| •Recreation           | •Special Areas or Sites | •Housing                           |
| •Community Design     | •Implementation         |                                    |

Conclusion 2

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Chapter 4, Title 12, Subchapter 2.2, environmental standards of Chapter 7, Title 12, and storm water management criteria and standards set forth in Chapter 7, Title 12, Bonner County Revised Code.

Conclusion 3

The proposed use **will not** create a hazard or **will not** be dangerous to persons on or adjacent to the property.

Conclusion 4

The proposed use **will** adversely affect properties in the vicinity.

Conclusion 5

The proposed use is a public convenience and is not necessary facility.

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**Conditions of approval:**

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**Standard continuing permit conditions. To be met for the life of the use:**

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- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The Conditional Use Permit shall not supersede deed restrictions.
- A-3** All county setbacks shall be met.
- A-4** The Conditional Use Permit shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the Conditional Use Permit, the applicant may make a written request to the Planning Director for an extension of the Conditional Use Permit for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the Conditional Use Permit.
- A-5** The applicant shall install, prior to ground disturbing activities, all temporary erosion control measures as designed and approved. The applicant shall provide to the Planning Department, prior to ground disturbing activities, a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved. The applicant shall install upon completing ground disturbing activities and shall maintain thereafter all permanent erosion control and stormwater management measures as designed and approved. The applicant shall provide to the Planning Department upon completing ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved.
- A-6** The applicant shall obtain and submit a grading and stormwater management plan, prepared by an Idaho State Licensed Engineer to the Bonner County Planning Department to mitigate any site disturbance during and after the tower/facility construction. This plan must be reviewed and approved by the Bonner County Engineering department prior to the commencement of construction.
- A-7** The applicant must obtain an approved Building Location Permit prior to the commencement of construction of the monopole communication tower.
- A-8** The applicant must provide proof of why the communication tower is a convenience and necessity, given the proposed geographic location.

**CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE:** The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

**File CUP0013-21 – Conditional Use Permit – Communication Tower - Weis Towers, LLC** are requesting to revise the original application for a Conditional Use Permit to construct a 190’ self-supporting communications tower in a 100’ x 100’ compound. The proposed 190’ tower would be situated within a 100’ x 100’ enclosed compound which will house a 8’ x 12’ equipment building and H frame for power and telephone connections. The revised application shows the 190’ self-supporting tower is to remain the same, but the site plan and location of the compound, equipment building, and tower have changed. The new proposed equipment compound will be 75’ x 75’ and the revised site plan shows the compound 40’ further to the north. The property is zoned A/F-10. The project is located off Mud Gulch Road and Poloma Lane in Section 16, Township 58 North, Range 4 West, Boise-Meridian.

**CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS:** The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

**STAFF PRESENTATION:** Staff presented a PowerPoint summary of the project and previously circulated staff report, concluding this project is consistent with Bonner County Revised Code.

**APPLICANT PRESENTATION:** Applicant’s representative Justin Abbott, Inland Cellular, provided comments on cellular service coverage and lack of power concerns.

**PUBLIC/AGENCY TESTIMONY:** The following individuals spoke on the record:

Mary Mallone

Mike Susso

Kim Susso

**APPLICANT REBUTTAL:** Mr. Weis responded to public comment regarding location, height, population, construction, service coverage, number of towers, and setbacks.

**COMMISSION DELIBERATION:** The Chair closed the hearing to public testimony. The Commission discussed Findings and Conclusions.

**MOTION:** Commissioner Frankenbach made motion to open applicant testimony. Commissioner Reeve seconded the motion. Voted upon. Motion passed unanimously.

**MOTION TO DENY:** Commissioner Reeve moved to deny this project FILE CUP0013-21, conditional use permit for the construction and operation of a new communications tower/facility to be used for Inland Cellular on a 14.90-acre parcel, zoned Agricultural/forestry 10-acre, based upon the following conclusions: conclusions 1, 2, 3, 4, & 5. The decision is based upon the evidence submitted up to the time the Staff Report was prepared, and testimony received at this hearing. Commissioner Reeve further moved to adopt the following findings of fact and conclusions of law as amended. This action does not result in a taking of private property. The action that

could be taken, if any, to obtain the conditional use permit is to: 1) File a new application with the Planning Department and meet the standards required by Bonner County Revised Code; or 2) Appeal the Planning and Zoning Commission’s decision to the County Commissioners.

Commissioner Frankenbach seconded the motion.  
**VOTED** upon and the Chair declared the motion carried, unanimously.

**Background:**

**A. Site data:**

- Size: 14.90-acre parcel
- Zone: Agriculture/forestry 10-acre (A/f-10)
- Land Use: Ag/Forest Land

**B. Access:**

- The property is accessed by Mud Gulch Road which is a privately owned and maintained road.

**C. Environmental factors:**

- Site does contain mapped slopes between 15-29% and slopes 30% or greater. (USGS)
- Site does contain mapped Freshwater Forested/shrub wetlands. (USFWS)
- Site does not contain a river/stream/frontage on lake.
- There are four (4) soils on site including: Bonner silt loam (prime farmland), Bonner gravelly silt loam (not prime farmland), Selle fine sandy loam (prime farmland), and Pywell-Hoodoo complex (prime farmland soil).
- JRJ, 5.11.2021: Parcel is within SFHA Zone X, per FIRM Panel 16017C0440E, Effective Date 11/18/2009. No further floodplain review is required on this proposal.

**D. Services:**

- Water & Sewage: per the application “N/A – no water or sewer is associated with the proposal.”
- Fire: the property is not located within a fire district.
- Power: Northern Lights Inc.
- School District: Bonner School #83

**E. Comprehensive Plan, Zoning and Current Land Use**

Compass	Comp Plan	Zoning	Current Land Use & Density
Site	Ag/Forest Land (10-20 AC)	A/F-10	Currently vacant
North	Ag/Forest Land (10-20 AC)	A/F-10	Rural residential
East	Ag/Forest Land (10-20 AC)	A/F-10	Rural residential
South	Ag/Forest Land (10-20 AC)	A/F-10	Rural residential



West	Remote Ag/Forest (40+)	State land	Idaho State land
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**F. Standards review**

- BCRC 12-223 specifies that the Commission shall review the particular facts and circumstances of each proposal. To grant a conditional use permit, the Commission must find there is adequate evidence showing the proposal is in accord with the general and specific objectives of the comprehensive plan and Title 12 and the proposed use will neither create a hazard nor be dangerous to persons on or adjacent to the property
- BCRC 12-220, et seq, conditional use permit, application and standards
- BCRC 12-335, Public Use Table
- BCRC 12-4.2, Performance standards for all uses
- BCRC 12-4.3, Parking standards
- BCRC 12-4.4, Sign standards
- BCRC 12-4.5, Design standards
- BCRC 12-4.6, Landscaping and screening standards
- BCRC 12-4.88, Communication Towers
- BCRC 12-7.2, Grading, stormwater management and erosion control

**G. Comprehensive Plan Land Use Designation:** The comprehensive land use designation for Ag/Forest Land "recognizes areas where steeper slopes prevail (30% Land Use Component Bonner County Comprehensive Plan CHAPTER 6-4 or greater) and transportation is provided by private roads or U.S. Forest Service or state roads. Urban services are not available and residential development challenges are present due to slope, poor soil conditions, hazard areas and lack of police or fire services."

**H. BCRC 12-335: Public Use Table**

Use	Zoning District								
	F	A/F	R	S	C	I	RSC	REC	AV
Communication towers	C (3)	C (3)	C (3)	C	C	C	C	C	C

"(3) Where access to the site is by road, the road shall be located within a recorded easement or public right-of-way, and constructed to the appropriate standard set forth in title 2 of this Code or [appendix A](#) of this title, except where subject to the terms of an approved special use permit issued by a State or Federal agency."

1. Per email correspondence with the applicant’s representative:
  - **State of Idaho Easement No. 4044 – Instrument No. 928629**

"Based on the information available in the public record, the State of Idaho granted an easement to Reforestation, Inc. in January of 1969. A certificate and affidavit of that easement is attached as document 928629. The map and image attached seems to show Mud Gulch Road extending westerly

from Jack Pine Flats County Road (now called East Side Road) over the two parcels that are owned by the State of Idaho."

"Reforestation then granted that right to all other parties, successors and owners of the land in which it sold – of which the parcel owned by Weis Towers, LLC is one (there are several). We can provide the chain of title if the County requests."

• **Recorded Easement – Instrument No. 153236**

"REFORESTATION, INC., Washington corporation, for value received does hereby grant to the owners of record, and to those purchasers under contract whose deed from reforestation will become of record, in severalty, and upon the same tenure as their interest appear of record, of each and every part of (more particularly described on the attached map marked Exhibit A, attached hereto and made a part thereof):

- o SouthEast Quarter (SE1/4) of Section 8, Township 58 North, Range 4 W
- o SouthWest Quarter (SW1/4) of Section 9, Township 58 North, Range 4 W
- o SouthHalf (S1/2) SouthEast Quarter (SE1/4) Section 9, Township 58 North, Range 4W
- o NorthHalf (N1/2) of Section 16, Township 58 North, Range 4 W
- o All of Section 17, Township 58 North, Range 4 W
- o EastHalf (E1/2) of Section 19, Township 58 North, Range 4 W
- o NorthHalf (N1/2) NorthWest Quarter (NW1/4) of Section 21,
- o Township 58 North, Range 4 W: All in Bonner County State of Idaho.

"and their successors and assigns, an easement for road purposes for ingress and egress, over and across all roads presently existing or heretofore reserved by the grantor herein in deeds executed and to be placed of record, or already of record within the above-described property. Said easement to be for the benefit of and appurtenant to each and every part of the subject legal description."

- ✓ **Staff:** per the application, an "existing Public ROW – Mud Gulch Road & new private driveway provides access to the subject lease area"

**I. BCRC 12-431: Parking Standards:**

**Applicant:** "One parking area will be located on the driveway extension for technician parking."

- ✓ **Staff:** There are no parking standards for communication towers.

**J. BCRC 12-488: Communication Towers**

- A. Communication towers and attendant facilities shall be enclosed by a fence not less than six feet (6') in height.



- ✓ **Staff:** The proposed tower/facility will be 6' in height, 7' including the barbed wire.
- B.** The base of any tower shall not be close to any property line than a distance equal to the tower height.
- ✓ **Staff:** Per the proposed communication tower site plan, the proposed setbacks from the property line are 38'-7" (East), 257'7" (West), 195'2" (North) and 204'7" (South). The applicant is requesting a deviation from the required BCRC setbacks per BCRC 12-488 (B) from the easterly parcel (owned by the State of Idaho).
- C.** The commission shall consider the public convenience and necessity of the communication tower and any adverse effect the facility would have upon properties in the vicinity and may require such reasonable restrictions and conditions of development as to uphold the purpose and intent of this title and the comprehensive plan.
- ✓ **Staff:** In general, the comprehensive plan for Ag/Forest Land "recognizes areas where steeper slopes prevail (30% or greater) and transportation is provided by private roads or U.S. Forest Service or state roads...residential development challenges are present due to slope, poor soil conditions, hazard areas and lack of police or fire services." A condition of approval has been added to the file requiring the applicant illustrate the necessity of the communication tower in the area (see condition **A-8**).
- D.** Communication towers shall be built to telecommunication industry association/electronic industry association (TIA/EIA) 222 revision F standards, or as amended, for steel antenna support structures.
- ✓ **Staff:** Construction plans were prepared by an Idaho licensed architect, and per the architect will be built to industry standards. Per the General Notes (Sheet Number G-1), '**APPLICABLE BUILDING CODES AND STANDARDS**':  
  
"TELECOMMUNICATIONS INDUSTRY ASSOCIATION (TIA) 222-G, STRUCTURAL STANDARD FOR STRUCTURAL ANTENNA TOWER AND ANTENNA SUPPORTING STRUCTURES"
- E.** Communication towers shall be constructed to accommodate other future communication services where technically feasible ("collocation").
- ✓ **Staff:** Per the General Notes (Sheet Number G-1), prepared by an Idaho Licensed Architect '**TOWER/POLE NOTES**':  
  
"2. PROVIDE SUPPORTS FOR THE ANTENNA COAX CABLES TO THE ELEVATION OF ALL INITIAL AND FUTURE ANTENNAS, ANTENNA COAX

CABLES ARE TO BE SUPPORTED AND RESTRAINED AT THE CENTERS SUITABLE TO THE MANUFACTURER'S REQUIREMENTS"

- F.** Communication towers shall meet all operational, construction and lighting standards of the federal aviation administration.
- ✓ **Staff:** Per the application, "the tower does not require FAA lighting and no other outdoor lighting is associated." The FAA was notified twice about the proposed communication tower and did comment about lighting requirements.
- G.** Communication towers shall not penetrate any airspace surface on or adjacent to any public or private airfields as set forth at [subchapter 5.2](#) of this title.
- ✓ **Staff:** Per the TOWAIR results provided by the applicant: DETERMINATION Results, **Structure does not require registration. There are no airports within 8 kilometers (5 miles) of the coordinates provided.**

**DETERMINATION Results**

**Structure does not require registration. There are no airports within 8 kilometers (5 miles) of the coordinates you provided.**

**Your Specifications**

**NAD 83 Coordinates**

Latitude	48-22-56.8 north
Longitude	116-51-03.6 west

**Measurements (Meters)**

Overall Structure Height (AGL)	59.1
Support Structure Height (AGL)	57.9
Site Elevation	740.7

**Structure Type**

LTOWER – Lattice Tower

- ✓ **Staff:** The coordinates provided by the applicant were verified using Google Maps.
- H.** Upon termination of use of a communication tower for a period of not less than one year, the landowner and/or tower operator/applicant shall remove the tower along with all supporting equipment, apparatus, and foundation.
- I.** Flammable material storage shall be in accordance with international fire code standards.

✓ **Staff:** No flammable material storage was proposed for this project.

**J.** Communication towers shall not be used for signage, symbols, flags, banners or other devices or objects attached to or painted or inscribed upon any communication facility for the purposes of displaying a message of any kind, except as required by a governmental agency. (Ord. 501, 11-18-2008)

✓ **Staff:** Signage proposed in this project meets sign standards in BCRC 12-4.4.

**K. Stormwater plan:** A stormwater management plan was required pursuant to BCRC 12-7.2 (E) which states that "new building construction or development which occurs on or within three hundred feet (300') of a slope within fifteen percent (15%) or greater incline as determined from the applicable seven and one-half (7.5) minute quadrangle map published by the United States geological survey or by actual survey, and which is subject to provisions of title 11 of this code, as amended; (Ord. 524 1-11-2012)."

**L. Agency Review**

Panhandle Health District	Idaho Department of Water Resources
Coolin Cavanaugh Bay Fire	U.S. Fish and Wildlife Service
Northern Lights Inc.	Idaho Department of Lands (Sandpoint)
Bonner School District #83	U.S. Forest Service
Idaho Department of Fish and Game	Federal Aviation Admin
Idaho Department of Environmental Quality	

**1. The following agencies commented:**

- Idaho Department of Fish and Game, June 2, 2021

"We have reviewed the above proposal to construct a 190-foot, self-supporting, Communication Tower and associated ground-based equipment within an enclosed 100x 100 foot lease area."

"Construction techniques do not require guy wires, FAA obstruction lighting will not be necessary, and pole is less than 200 feet tall; these practices should help minimize collision risk to birds. The footprint of the tower is relatively small, and the location is within private property. There will be no additional lighting required for the proposed facility."

"Due to the proximity to Priest River (> 1 mile), piscivorous birds of prey, such as osprey or bald eagle, may attempt to nest on the tower. These birds are federally protected under the Migratory Bird Treaty Act. If a nest must be removed, we recommend waiting until hatchlings fledge in the fall. Maintenance crews should contact the U.S. Fish and Wildlife Service North

Idaho Field Office prior to disturbing nests. We recommend designing the tower to discourage nesting."

"We do not anticipate significant adverse impacts to fish or wildlife due to the proposed communication towers."

- Idaho Department of Fish and Game, June 2, 2021  
"Despite revisions to the original application, our previous comments (attached) remain relevant to the project"
- Department of Environmental Quality, June 8, 2021  
"DEQ has no environmental impact comments at this stage of the project."
- Department of Environmental Quality, August 26, 2021  
"DEQ submitted comments for this project on June 8, 2021. After reviewing the revision, we have no changes to our original comments"

**2. The following agencies replied "no comment:"**

- Panhandle Health District, May 28, 2021 and August 11, 2021

**3. All other agencies did not reply.**

**M. Public comments**

- Received June 8, 2021: The public comments for this file were broadly concerned about setbacks, visual impacts, property values, use and potential damage to existing private roads.
  - Setback concerns:** "The proposed tower location is not only well within the 190-feet of our private property to the south (100-130 feet), it does not allow for any setback from the adjacent state property, as well as our Apocalypse Drive easement."
  - Visual impact & property value concerns:** "The application states that "the minor visual impacts associated with a tower will not have any negative impacts on adjacent uses". This is also inaccurate, as there will be a major visual impact to neighboring properties, as the applicant does state they will have to remove trees to create the 100' x 100' "compound" around the tower from adjacent property. (Attachments B and C). This will drastically lower our property value"
  - Concerns about Mud Gulch Road:** "Mud Gulch is a privately maintained road and the locals work hard to keep it up year-round. Nowhere does it state in the application that any road maintenance or

improvements will be done to help out, despite the addition of commercial traffic to the road.”

- Received August 20, 2021:
  - “I would like to see some assurance by the local power company that the availability of power down our line on Mud Gulch Road that services all the homes in our neighborhood is adequately sized, not only for this project, but for the future...if that assurance cannot be met, then for the benefit of all property owners who have yet to develop their land and may need services in the future, the transformer size and or capacity should be required to be increase as a condition of approval to this variance. This request is also consistent with the County’s own criteria “to prevent adverse impacts to neighboring properties.”

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**Findings of Fact**

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- The 14.90-acre parcel property is accessed by Mud Gulch Road and Poloma Lane, both are privately owned and maintained roads.
- The property is in the Ag/Forest Land comprehensive land use designation and in the Agricultural/forestry zoning district.
- There are mapped Freshwater Forested/shrub wetlands on the property and four (4) soil types, Bonner silt loam (prime farmland), Bonner gravelly silt loam (not prime farmland), Selle fine sandy loam (prime farmland), and Pywell-Hoodoo complex (prime farmland soil).
- The proposed communication tower will be 190’ high. Per the proposed communication tower site plan, the proposed setbacks from the property line are 38’-7” (East), 257’7” (West), 195’2” (North) and 204’7” (South). The applicant is requesting a deviation from the required BCRC setbacks per BCRC 12-488 (B) from the easterly parcel which is owned by the State of Idaho.
- The proposed fencing that will encloses the tower/facility meets the 6’ minimum standard as prescribed by BCRC 12-488(A).
- Per the ‘transmitting notes’ on the application construction drawing ‘Applicable Building Codes and Standards:’

“ALL TRANSMITTING ANTENNAS WILL BE INSTALLED IN A MANNER SET FORTH BY THE MANUFACTURER AND BY THE FEDERAL COMMUNICATIONS COMMISSION AS MEETING THE CURRENT AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) STANDARD FOR NONIONIZING ELECTROMAGNETIC RADIATION (NIER).”
- There are no minimum off-street parking standards for communication towers per BCRC 12-431. Per the application, the proposed facility/tower will be visited once a month for maintenance.

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**Conditional Use Permit Conclusions of Law:**

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Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposed conditional use permit is in accord with the Bonner County comprehensive plan.

- |                       |                         |                                    |
|-----------------------|-------------------------|------------------------------------|
| •Property Rights      | •Population             | •School Facilities, Transportation |
| •Economic Development | •Land Use               | •Natural Resources                 |
| •Hazardous Areas      | •Public Services        | •Transportation                    |
| •Recreation           | •Special Areas or Sites | •Housing                           |
| •Community Design     | •Implementation         |                                    |

Conclusion 2

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Chapter 4, Title 12, Subchapter 2.2, environmental standards of Chapter 7, Title 12, and storm water management criteria and standards set forth in Chapter 7, Title 12, Bonner County Revised Code.

Conclusion 3

The proposed use **will** create a hazard or **will** be dangerous to persons on or adjacent to the property.

Conclusion 4

The proposed use **will** adversely affect properties in the vicinity.

Conclusion 5

The proposed use **is** a public convenience and is not a necessary facility.

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**Conditions of approval:**

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**Standard continuing permit conditions. To be met for the life of the use:**

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- A-1** The use shall be developed and shall be operated in accordance with the approved site plan.
- A-2** The Conditional Use Permit shall not supersede deed restrictions.
- A-3** All county setbacks shall be met.
- A-4** The Conditional Use Permit shall expire if not issued within two (2) calendar years from the date of approval, or once issued, if the use has not commenced within two (2) calendar years from the date of issuance. At any time prior to the expiration date of the Conditional Use Permit, the applicant may make a written request to the Planning Director for an extension of the Conditional Use

Permit for a period up to two (2) years. The Planning and Zoning Commission may consider such request for extension at any public hearing. The extension request must be approved or denied prior to the expiration date of the Conditional Use Permit.

- A-5** The applicant shall install prior to ground disturbing activities all temporary erosion control measures as designed and approved. The applicant shall provide to the Planning Department prior to ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved. The applicant shall install upon completing ground disturbing activities and shall maintain thereafter all permanent erosion control and stormwater management measures as designed and approved. The applicant shall provide to the Planning Department upon completing ground disturbing activities a signed statement from the project engineer or design professional stating that these measures have been installed as per the design specifications as approved.
- A-6** The applicant shall obtain and submit a grading and stormwater management plan, prepared by an Idaho State Licensed Engineer to the Bonner County Planning Department to mitigate any site disturbance during and after the tower/facility construction. This plan must be reviewed and approved by the Bonner County Engineering department prior to the commencement of construction.
- A-7** The applicant must obtain an approved Building Location Permit prior to the commencement of construction of the monopole communication tower.
- A-8** The applicant must provide proof of why the communication tower is a convenience and necessity, given the proposed geographic location.

**COMMISSIONER & STAFF UPDATES:**

2005 – 2021 Building Location Permit stats, DES permit code changes, boundary line adjustments, permit fees, permit review process, family exemption permit, zoning minimums, Priest Lake Sub-Area committee, and future applications.

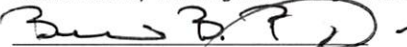
At 8:15p.m., the Chair declared the hearing adjourned until September 16, 2021.

Respectfully submitted,

  
Milton Ollerton, Planning Director

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The above Minutes are hereby approved this 16<sup>th</sup> day of September 2021.  
Bonner County Planning and Zoning Commission

  
Brian Bailey, Chair