

**WALLOWA COUNTY PLANNING COMMISSION**  
WALLOWA COUNTY COURTHOUSE  
101 S. River Street, Room B-1  
Enterprise, OR 97828

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IN THE MATTER OF THE REQUEST )  
FOR A CONDITIONAL USE PERMIT ) **FINDINGS OF FACT, CONCLUSIONS,**  
IN THE FORM OF A PUBLIC ) **AND DECISION OF THE WALLOWA**  
SERVICE UTILITY FACILITY ) **COUNTY PLANNING COMMISSION**  
(CELLULAR TOWER) IN THE M-1 )  
ZONE )

**RE: AT&T Cell Tower, CUP# 12-04**

The request was deemed to be complete on September 11<sup>th</sup>, 2012 and was properly advertised in the Wallowa County Chieftain on September 12<sup>th</sup>. It was noticed to property owners and others on September 11<sup>th</sup>, 2012, and came before the Wallowa County Planning Commission for a public hearing on September 25<sup>th</sup>, with Decision on October 30<sup>th</sup>, 2012. The Planning Commission having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral and written testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and decision.

01. **APPLICANT:** AT&T and ATC, represented by Steven W. Topp, AICP
02. **OWNER:** Zacharias Land Company
03. **REQUEST:** To permit a public service utility facility (cellular tower).
04. **LOCATION:** The property description is Township 2 South, Range 45, Section 30, tax lot 2000
05. **PARCEL CHARACTERISTICS:** The total parcel contains 5.35 acres and is zoned Industrial (M-1). Access is via Russell Lane, a county road. Although the proposed tower is located in the county, the driveway passes through a portion of the city of Joseph (and, therefore, has a Joseph address). The parcel is bordered on all sides by industrial zoned properties, either in the county or the city.
06. **REVIEW CRITERIA:** Article 5, Public Hearing Review, Sections 5.025(01-03) and 5.040(01); Article 9, Conditional Use Permit, Section 9.015 and Section 9.020; Article 22, Industrial, Section 22.020(03); Article 57, [.....] Wireless Communication Towers, Section 57.015(03), Section 57.025, Review Criteria (01), (03), and (04); and other applicable zoning

ordinances or goals of Wallowa County and or laws of the State of Oregon; and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.

**SECTION 5.025, NOTICE OF PUBLIC HEARING:**

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:
  - A. One hundred (100) feet of the exterior boundary of the subject property where the subject property is wholly or in part within an urban growth boundary;
  - B. Two hundred and fifty (250) feet of the exterior boundary of the subject property where the subject property is outside an urban growth boundary and not within a farm or forest zone;
  - C. Seven hundred fifty (750) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.
03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

**FINDING 6.01:** The Planning Commission finds the public hearing was properly noticed to all property owners within 250 feet of the subject property, in a newspaper of general circulation and was posted on the Wallowa County Courthouse Public Notice Board prior to the hearing within the required time frame.

**SECTION 5.035, REVIEW PROCESS AND DECISION:**

01. The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to insure the use or development complies with the applicable standards and criteria.

**FINDING 6.02:** The Planning Commission has determined that the use or development, as proposed, is, overall, compatible with the M-1 zone. The Planning Commission also finds that, with regard to this request, conditions of approval are necessary to address concerns expressed in testimony, such as visual impacts.

**SECTION 9.015, REVIEW PROCEDURE:** Application for a Conditional Use Permit shall be subject to the public hearing review process.

**FINDING 6.03:** The Commission finds that this application was heard at a properly advertised public hearing on September 25<sup>th</sup>, 2012.

**SECTION 9.020, REVIEW CRITERIA:** After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.

01. The proposed use will be consistent with the purpose of [and is allowed conditionally in the zone in which the use proposed.
02. The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.
03. The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.
04. The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.
05. The proposed use will not interfere with uses permitted on adjacent parcels.
06. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.

**FINDING 6.04:** The Commission finds, via testimony and other evidence presented, that AT&T/ATC's communications facility and tower will be consistent with the purpose of [and is allowed conditionally in] the Industrial (M-1) zone, will not create excessive traffic congestion or noise, will not overburden public services, is suitable for the site, will not interfere with uses permitted on adjacent parcels, and does not need to be considered under Article 36.

[.....]

**SECTION 22.020, BUILDINGS AND ACTIVITIES PERMITTED CONDITIONALLY:** In the Industrial Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the provisions of Article 9, Conditional Use Permit.

[.....]

03. Other industrial uses where the impacts on surrounding properties and uses is greater than that of uses permitted in Section 22.015.

**SECTION 57.015, REVIEW PROCESS:** No person shall place, erect, construct, or otherwise maintain any wind towers or wireless communication towers which are not in compliance with the provisions contained in this ordinance.

[.....]

03. New towers not exempt from this ordinance shall be subject to the level of review required by the underlying zone, as shown below. Additionally, any development under the purview of this Article, which may impact a Goal V scenic view or site shall be subject to Public Hearing Review.

Zone	Wind Tower	Cell Tower	Type of Review
M-1	Prohibited	Conditional Use	Public Hearing

**FINDING 6.05:** The Commission finds that this application was correctly heard at a public hearing as required above. The proposal is for a 120 foot monopole within a 50 foot by 50 foot compound.

**SECTION 57.025, REVIEW CRITERIA:**

01. General:

A. No tower shall be permitted within, or a distance equal to or greater than 1.5 times the height of the tower from, any road right-of-way.

**FINDING 6.06:** The Commission finds that the proposed tower is 120 feet in height and is set back from the nearest road right-of-way by a distance about 188 feet.

B. All towers and associated structures shall be maintained in operational condition. Documentation from the facility owner providing proof that adequate steps are being taken to re-enter the turbine into production is sufficient to determine that a structure meets the operational condition requirement.

**FINDING 6.07:** The Commission finds that the facility will be visited once a month by an ATC field representative and will be visited once a month by individual carriers' representatives for upkeep and maintenance.

C. Illumination other than that required by FAA shall be the minimum necessary and be shielded and downward directed so as to not shine onto neighboring parcels or impact scenic resources.

**FINDING 6.08:** The Commission finds that both the FAA and the ODA have made a determination of no hazard and therefore no lighting will be required on the tower. The equipment area will have lighting for maintenance, which will be downward directed and have an automatic shut off.

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- D. At a minimum, all setbacks and development standards in the underlying zone and applicable overlay zones must be met.

**FINDING 6.09:** The Commission finds that the lease area will be set back 28 feet from the closest property line and the tower over 188 feet from the closest road right-of-way.

- E. Applications must satisfy any applicable criteria of Article 36, Salmon Habitat Restoration.

**FINDING 6.10:** The Commission finds that this criteria is not applicable as the proposed facility does not affect any salmon habitat. Additionally, the facility is not within a 100 year flood zone.

- F. Applications must satisfy any applicable criteria of Article 32, Road Design and Article 33, Parking.

**FINDING 6.11:** The Commission finds that the facility will be accessed by a public road (Russell Lane) and the associated driveway will meet county standards. Parking for the facility will be on the driveway at the entrance to the lease area.

- G. Applications must satisfy any applicable criteria of Article 28, Resource Overlay, and Article 44 Wallowa Lake Moraine Goal V Resource Overlay.

**FINDING 6.12:** The Commission finds that this criteria is not applicable as the facility is not within the Goal V resource protection area.

- H. For all structures that are more than 200 feet above grade or that exceed airport imaginary surfaces as defined in OAR Chapter 738, Division 70, the proposed facility must comply with the air hazard rules of the Oregon Department of Aviation. The applicant shall verify compliance by written approval from the Department of Aviation.

**FINDING 6.13:** The Commission finds that both the FAA and the ODA have made determinations of no hazard.

- I. The applicant has reduced the visual impact of construction and operation of the proposed facility to the extent practical, by methods which may include, but are not limited to, the following:
  - a) Minimizing construction on ridgelines, state or federal scenic areas and unique or significant views and vistas listed in the comprehensive plan.
  - b) Building the facility near the edge of contiguous timber areas or using the natural topography to obscure the facility.
  - c) Using non-reflective materials and colors that blend with the background unless otherwise required by the Federal Aviation Administration or the Oregon Department of Aviation; and

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d) Setting the facility back from the edge of public arterial rights-of-way, state highways, county roads, Type F and Type D streams, viewpoints and other significant visual resources identified in the comprehensive plan and retaining or planting vegetation to obscure views of the facility from those areas.

**FINDING 6.14:** The Commission finds that the facility will be located on property zoned Industrial (M-1). It is monopole design to minimize the visual impact. The pole will be left as a galvanized steel coloration, to better blend into the background.

K. The proposed site is not within a scenic corridor. Scenic corridors include federal or state scenic byways, scenic highways, scenic areas, scenic waterways and local scenic view corridors listed in the comprehensive plan. A proposed project that is adjacent to a scenic corridor may be approved if the applicant proposes mitigation measures that would protect the resource values of the designated scenic corridor. Such measures may include, but are not limited to, using colors that blend with the background, setting the development back from a right-of-way or stream corridor, using the natural topography to screen the facility and retaining or planting vegetation that would obscure the view of the facility.

**FINDING 6.15:** The Commission finds that this site is not within a scenic corridor.

L. As part of their application, the applicant has on file fire protection measures for the construction and operation of the proposed facility that are acceptable to the county and other land management agencies adjacent to the facility.

**FINDING 6.16:** The Commission finds that the site will be an unmanned facility, consisting of a gravel yard, cyclone fencing, a steel monopole, and a pre-fabricated equipment shelter. Construction crews will have fire extinguishers for any fire started during construction. The equipment shelter will have 2 hour firewalls and an electronic monitoring system which will alert local officials in the event of a fire.

M. Signs are subject to the criteria of Article 34, Signs. Additionally, there may be no more than 2 signs relating to the name and operation of the facility on the site.

**FINDING 6.17:** The Commission finds that the site will have one sign with site identification and emergency contact information for American Tower Corporation (ATC) and for the primary tenant, AT&T Mobility.

N. The applicant must show that the construction and operation of the proposed facility is not likely to cause significant adverse impact to historic and cultural resources identified by the State Historic Preservation Office or identified in the County's Comprehensive Land Use Plan. The applicant must submit for approval as part of their application, a plan to preserve any previously undiscovered archeological, historical or cultural artifacts discovered during construction or operation of the proposed facility in compliance with applicable county, state, and federal law.

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**FINDING 6.18:** The Commission finds that, per testimony from the applicant, there are no known endangered or threatened plants, archeological, historical, or cultural sites or artifacts at the site. If any are uncovered during construction, the applicant will stop construction and notify the appropriate agency(ies).

[.....]

03. Criteria Specific to Wireless Communication Towers:

01. Existing wireless or other appropriate towers within two miles of proposed site must be utilized first. Applicant must supply compelling evidence if antenna cannot use an existing tower.

02. New towers may not exceed 180 feet. If applicant requires more height, a Variance application is required.

**FINDING 6.19:** The Commission finds that, per testimony from the applicant, there are no existing towers within two miles of the proposed site. Additionally, AT&T did investigate locating its antenna on an old grain elevator located south of the proposed site and determined that the elevator was not a suitable location because of concerns regarding access, structural integrity, and the possibility of fire or a dust explosion.

Also, the proposed tower is 120 feet in height, with allowance for up to 125 feet for antennas, lightning rod, and other appurtenances.

**07. CONCLUSION:**

All applicable criteria have been met, and the Planning Commission approves this application.

The Conditional Use Permit # 12-04, to operate a public service utility facility (cellular tower) will be valid until the permitted use is discontinued for one full year.

## 08. CONDITIONS OF APPROVAL:

The Planning Commission finds that all of the following conditions are able to be met as imposed since the applicant is willing and the Commission finds reasonable evidence to support the conclusion that each is feasible.

1. The tower shall be left unpainted, in its original galvanized finish, to better blend in with its surroundings
2. All FCC regulations shall be met.
3. As the FAA and the ODA have both found that this tower is not a hazard to aviation, the tower shall not be lit.



**09. DECISION:**

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this application satisfies all review criteria and is hereby approved as presented. The vote on the motion is \_\_\_\_\_ in favor and \_\_\_\_\_ opposed with \_\_\_\_\_ abstaining.

October 30<sup>th</sup>, 2012  
**DATE OF ACTION**

\_\_\_\_\_  
**KEN WICK, CHAIRMAN**  
**WALLOWA COUNTY PLANNING COMMISSION**

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 p.m. November 12<sup>th</sup>, 2012.