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KITTITAS COUNTY HEARING EXAMINER

IN THE MATTER OF

Appeal of Administrative CUP
Decision 10/26/23

Atlas Tower Project

No. ACU-23-00003

COUNTY’S BRIEF

OVERVIEW

COMES NOW RESPONDENT KITTITAS COUNTY by and through its attorney of record Stephanie L. Hartung, and files its brief in the above captioned appeal of an Administrative Conditional Use Permit (CUP). Kittitas County Community Development Services (hereinafter referred to as CDS) approved an Administrative Conditional Use Permit submitted by Atlas Towers 1, LLC and landowner, Victor Strand (hereinafter referred to as the Applicants). The CUP authorizes the Applicants to install a wireless communication facility, which consists of a 100-foot monopole telecommunication tower within a 50x50 wireless facility on property owned by Victor Strand, with certain conditions that are detailed in the Findings of Fact, Decision, and Conditions of Approval prepared by CDS, which is included in the record. The purpose of the facility is to provide wireless coverage to the surrounding area. Approval of the CUP has been appealed by neighboring property owner, Francis Ceraolo (hereinafter referred to as the Appellant). The Appellant’s complaint is generally focused on the aesthetics of the tower which she claims will interfere with her enjoyment of her property. The County properly applied the law when evaluating the application for the CUP and the approval should be upheld.

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I. FACTS

The Applicants submitted an application for an Administrative CUP to CDS on July 13, 2023. The application was deemed incomplete on July 28, 2023. (IR # 6). An updated site plan was submitted to CDS on August 1, 2023. (IR #7). The application was deemed complete on August 2, 2023. (IR #8). A Notice of Application for the Atlas Administrative Conditional Use Permit (ACU-23-00003) was mailed to adjacent landowners (11) located within 500 feet of any portion of the boundary of the proposal’s tax parcel and associated agencies (38) on August 8, 2023. (IR # 10, 11). The Notice was also published in the County’s official newspaper, the Daily Record on August 8, 2023. (IR #11). The original 15-day comment period was extended for an additional 15 days, due to the abundance of comments received (IR #12). The comments were transmitted to the Applicants on September 8, 2023 (IR #49). The Applicants responded to the comments and provided an updated site plan. (IR #50, 51). Conditional preliminary approval was granted on October 26, 2023. (IR #52). The State Environmental Protection Act (SEPA) review was also completed but is not challenged in this Appeal. CDS prepared Findings of Fact, Decision, & Conditions of Approval on October 26, 2023. (IR #56). A notice of appeal was filed by the Appellant on November 16, 2023. (IR #58).

II. STANDARD OF REVIEW

Appellant bears the burden of proving that the decision made was wrong. Kittitas County Code (KCC) 15A.07(1)(c). Relief from an agency order may be granted on constitutional, legal, or factual grounds. RCW 34.05.570(3)(a), (d),(e). Constitutional and legal issues are reviewed de novo; however, we accord substantial weight to any agency’s interpretation of the law within its area of expertise. *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 728, 730, 818 P.2d 1062(1991). Any agency’s factual findings are reviewed for substantial evidence, which is evidence of “sufficient quantity to persuade a fair-minded person of the truth or correctness of the agency order.” *Hahn v. Dep’t of Ret. Sys.*, 137 Wn. App. 993, 939, 155 P.3d 177 (2007).

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III. ARGUMENT

The subject property has a zoning designation of Agriculture 20 (A-20) with a land use designation of Rural Working. The (A-20) zone is an area wherein farming, ranching and rural lifestyles are dominant characteristics. The proposed project is classified as a utility. Chapter 17.61 of the Kittitas County Code addresses Utilities. KCC 17.61.010(5) defines Communication Facilities to mean any real property or portion thereof used for the reception, transmission and/or regeneration of electromagnetic and light signals, including but not limited to cellular, fiber-optic, microwave, mobile radio, satellite, and television mediums. It further explains that communication facilities consist of all buildings, transmission structures, and other appurtenant improvements necessary for the support, shelter and operation of applicable communication equipment. KCC 17.61.040 provides for the authorization of Communication Facilities by the CDS director as an administrative conditional use in all zoning districts pursuant to the criteria and procedures of this chapter and KCC Title 15A and KCC 17.60. Title 15A establishes the permit review process for development activities as required by RCW 36.70A.040. It provides the criteria CDS must apply before issuing an administrative CUP. CDS complied with all applicable code provisions during the review and approval process of the Atlas Tower Project.

Appellant argues that CDS did not use due diligence in the processing of the application. Appellant does not cite any law to support this claim. What standard of due diligence is owed according to the Appellant? CDS is required to follow the process outlined in the code and as required by state law. CDS did that. Appellant has not provided any evidence to the contrary.


Appellant argues that communication facilities and utilities are not the same thing. (Br. of Appellant pg. 5). Appellant further argues that communication facilities are not listed a permitted use under KCC 17.15.060(1) Rural-Non-LAMIRD Use Table: H (Br. of Appellant pg. 5). As cited above, communication facilities are defined and regulated as a utility in Kittitas County Code. Further, the Code provides that utilities may be permitted in all zoning classifications with an administrative CUP per KCC 17.61.040, making the Appellant's claim incorrect.

1 Appellant complains about non-sequiturs and common sense but fails to identify a single
2 legal theory that would afford relief from the decision made by CDS. The Appellant cites
3 many statutes without explanation that are entirely irrelevant to the cause of action. The
4 Appellant includes maps in her materials that she claims indicate adequate coverage, without
5 citing any authority for the maps or how or why they require overturning the administrative
6 CUP. The Appellant includes snippets of cases, unpublished opinions, and a thesis as a
7 means to support her argument. The materials that represent the Appellant's arguments are
8 not well-organized and do not resemble a legal brief. They are used incorrectly, are
9 irrelevant, and do not comprise a legal argument.

10 IV. CONCLUSION

11 The Appellant bears the burden of proving that the decision to approve the administrative
12 CUP was wrong. The materials submitted by the Appellant in no way present a coherent
13 legal argument and certainly do not demonstrate that CDS issued the administrative CUP in
14 error or in violation of any law. CDS properly and consistently applied the required code
15 provisions to the submitted application and their decision to issue the administrative CUP
16 should be affirmed.

17 Dated this 7th day of February 2024

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21 Stephanie L. Hartung WSBA# 38115
22 Kittitas County Deputy Prosecutor
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