

Conditional Use Permit for Telecommunications Tower at 4110 South Highway 191

Background

San Juan County received an application for approval of a 155-foot telecommunications tower at 4110 South Highway 191. The applicant is Russell Curry representing APC Towers IV, LLC. The 4110 South Highway 191 property is owned by Morgan and Vicky Kuykendall.

The proposed tower is in the Community Controlled (Cd-C) District.

The San Juan County land use ordinance authorizes the Planning Commission to review and approve a conditional use permit for any conditional use – identified either in the zoning district where the use is proposed or “elsewhere” in the County zoning code. “Radio and television transmitting stations or towers” are listed as conditional uses in the A-1 Agricultural District which would carry over as a conditional use in the Community Commercial District. The Planning Commission shall make findings supporting a recommendation for a CUP and adopt appropriate conditions. (See attached Appendix A San Juan County ordinances).

Project Summary

San Juan County requested the applicant provide specific information relating to the proposed telecommunications tower. On 22 January 2024 the project applicant provided details of the project to San Juan County Planning & Zoning Administrator Kristen Bushnell. The following summarizes the tower project proposed for 4110 South Highway 191. Also summarized here are relevant County resources.

The project is an unmanned communication facility consisting of an antenna mounted to a new lattice tower with outdoor equipment and emergency generator.

The project’s 155-foot tower is intended to fill communication gaps in the area. A radio engineer determined that the area requiring coverage was a search ring, with a radius of about one mile. The tower is located near the center of the search ring.

Rocky Mountain Power will provide power.

The tower supports a priority objective of the 2018 San Juan County General Plan. The Plan identifies Broadband infrastructure as needed for economic development, for health care, and for schooling.

The tower will enhance emergency services in the following ways: Sheriff and Fire responders use wireless services to respond to 911 calls, to residences through GPS systems, to utilize medical equipment, and to provide other critical emergency services; and with the rise in wireless households, wireless services allow citizens to place e911 calls.

The tower will enhance citizen health services in the following ways: with telemedicine starting to replace in-office patient visits, wireless services allow citizens and medical professionals to communicate; and telemedicine supports persons with disabilities to obtain medical support where these individuals may not have prompt access to in-person health services.

The tower will support online schooling and a remote work environment. Wireless broadband is becoming essential to secondary schools and higher education – which require students to use wireless services to participate in virtual classrooms. Employers have allowed employees to work remotely or have hybrid schedules from home. Wireless services enhance and strengthen education and employment in the areas served by the tower.

The tower will support economic activity in San Juan County. Visitors and consumers can search online for restaurants, recreation, and sightseeing opportunities. Similarly, visitors and consumers use phone-equipped GPS and mapping to get them where they need to go.

After zoning approval, the tower applicant will go through a federal regulatory screening process and will fully comply with all federal regulations. The screening process takes about six (6) months. Presently, the tower applicant is unaware of any impacts on endangered species, national historic sites, migratory birds, or Native American/Tribal lands.

Once constructed and operational, a technician will visit the tower once a month for regular maintenance. About every 2 or 3 years a team will be at the tower to upgrade the equipment and antenna on the tower. These visits will generate little noise and create little traffic or safety concerns.

The tower will have site identification signs and signs required by the FCC and other government agencies. The tower applicant understands that no advertising or other signs will be displayed on the tower – without approval of San Juan County.

The tower will have no climbing pegs and will be surrounded by a 6-foot high chain-linked fence with barbed wire to prevent unauthorized access. Access ladders will only be on site during maintenance.

The tower will not block or encroach on vehicle or pedestrian access. A path will lead to the tower and continue around the tower. No portion of the path will be obstructed.

The tower will have no accessory buildings. The tower will be supported by two equipment cabinets on a 6" thick concrete slab (8' x 10') and a diesel generator on a 6" thick concrete slab (4' x 9'). The antenna and support structures will be grounded as required by the National Electrical Code.

The San Juan County Code sets a maximum height for buildings in the associated district Agriculture (A-1) District at 35 feet. Consequently, the proposed tower of 155 feet will require a variance.

The proposed tower would be subject to certain building codes and related standards which have been adopted by San Juan County.

The operation of the tower would require a County business license and be subject to regular inspections for compliance with County ordinances and the CUP conditions.

Prior to construction the applicant would be required to apply for and receive a building permit from San Juan County.

Findings

The San Juan County Planning Commission makes the following findings relating to the proposed tower.

The proposed tower will have a positive, beneficial impact on the economy, security, safety, and welfare of San Juan County residents and businesses. Specifically, the proposed project will support and enhance emergency services, schooling, health care services, and remote employment.

The proposed tower has unique characteristics which are appropriately addressed with conditions as part of a conditional use permit.

The proposed tower furthers a priority objective of the 2018 San Juan County General Plan to increase Broadband capacity to promote economic development and enhance public health and education.

The construction and operation of the tower will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.

The construction and operation of the tower will comply with the intent, spirit, regulations and conditions specified in the County land use code for such use and the zoning district where the use is to be located, as well be harmonious with the neighboring uses in the zoning district. Additionally, the project will comply with all federal regulations which protect and conserve San Juan County resources.

The Federal Aviation Administration Southwest Regional Office conducted an aeronautical study which revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation.

The proposed 155 feet height of the tower exceeds the maximum 35 feet in the San Juan County land use ordinance. Consequently, the tower will require a variance.

Conditions

a. Prior to construction, the applicant shall apply for and receive a San Juan County building permit.

b. The applicant shall apply for, receive, and maintain a San Juan County business license and be subject to regular inspections associated with the business license – to include a review of compliance with the CUP conditions.

c. The construction and operation of the tower shall comply with the International Fire Code and the San Juan County Fire Policy – and be subject to inspection by fire authorities.

d. The tower shall be operated in compliance with federal regulations.

e. The tower shall not be used for outdoor advertising, signage, or similar uses without first obtaining permission from San Juan County.

f. This permit shall be null and void if the tower is abandoned as a telecommunication facility or the tower is not maintained for 90 days. After abandonment or non-maintenance, the tower shall be removed.

g. Any neighbor or adjacent property owner or person reasonably expected to be at or near the facility during construction, maintenance, or other activity which has the potential to harm an individual shall be informed of the activity and provided with safety information, as appropriate.

h. The facility shall be kept clean and free from rubbish, flammable waste material or other noxious or nuisance substances.

i. The tower will require a variance from the San Juan County land use code which establishes a maximum height for structures at 35 feet.

Conditional Use Permit approved by the San Juan County Planning Commission.

Trent Shafer Chairman, San Juan County Planning Commission

Date

Appendix A

San Juan County Land Use Ordinances

The following provisions in the San Juan County land usage ordinances are relevant to this application.

- County Code § 150.001 (Adoption of Uniform Codes) and § 153.028 (Adoption of Building Codes). San Juan County adopts the International Building Code¹ and related building standards.

- County Code §153.002 (Purpose) states: “This chapter [Zoning] is designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the county, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing access to adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering agricultural and other industries, and the protection of both urban and non-urban development.”

- The County Code includes certain definitions which are relevant to this application. § 153.005 (Definitions).

CONDITIONAL USE. A land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

STRUCTURE. Anything constructed or erected, which requires location on the ground or attached to something having a location on the ground.

- County Code § 153.075 set a maximum height of structures at 35 feet. Since the proposed tower is 150' a variance is required.

- County Code § 153.006 (Building Permit Required; Application and Review) includes the following relevant to this application.

1 Included in the 2021 International Building Code is § 3108 (Telecommunication and Broadcast Towers). Section 3108 includes several building construction requirements for telecommunication towers, including: seismic load standards; prohibitions against tower guy wires and other accessories crossing or encroaching on public streets, private property (where permission has not been obtained from the property owner), or above-ground electric utility lines; requirements for tower climbing and working facilities; and adoption of all EPA, OSHA, and FCC standards applicable to a tower and its location.

A building standard referenced in § 3108 is Telecommunications Industry Association 222 (Standards for Towers and Antenna Supporting Structures).

- “The use of land or the construction or alteration, of any building or structure or any part thereof, as provided or as restricted in this chapter shall not be commenced, or proceeded with, except after the issuance of a written permit for the same by the Building Inspector² .”
- “Design review for buildings and uses covered by conditional use permits or planned unit development approval shall be incorporated within such conditional use permit or planned unit development approval.” (Based on design review requirements for non-CUP projects in § 153.006, a design review of the subject tower may include the following: architectural and site development plans to scale, which shall show structure (tower) location, landscaping, prominent existing trees, ground treatment, fences, location and size of the adjacent streets, north arrow and property lines, existing grades and proposed new grades.)

- The following sections from the San Juan County Zoning Code relate generally to conditional uses.

- § 153.185 (Definition) “A Conditional Use is a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.
- § 153.186 (Permit Required). A conditional use permit shall be required for all uses listed as conditional uses in the district regulations where they are, or will be located, or if the use is specified as conditional use elsewhere in this chapter.
- § 153.187 (No presumption of approval) The listing of a conditional use in any table of permitted and conditional uses found in § 153.071 of this chapter for each category of zoning district does not constitute an assurance or presumption that such conditional use will be approved. Rather, each proposed conditional use shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth in this chapter and with the standards for the district in which it is located, in order to determine whether the conditional use is appropriate at the particular location.
- § 153.188 (Application). A conditional use permit application shall be made to the Zoning Administrator as provided by this chapter. The Zoning Administrator shall submit the application to the Planning Commission; except that, the Planning Commission may authorize the Zoning Administrator to grant, attach conditions

² County Code § 153.023 (Building Inspector; Powers and Duties) states “It shall be the duty of the Building Inspector to inspect or cause to be inspected all buildings in course of construction or repair.”

or deny conditional use permits, subject to such limitations or qualifications as are deemed necessary.

- § 153.189 (Determination) (A) The Planning Commission, or upon authorization, the Zoning Administrator, shall approve a conditional use to be located within any district in which the particular conditional use is permitted by the use regulations of this chapter. In authorizing any conditional use, the Planning Commission shall impose such requirements and conditions as are necessary for the protection of adjacent properties and the public welfare.

(B) The Planning Commission shall not authorize a conditional use permit unless the evidence presented is such to establish:

(1) Such use will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity; and

(2) The proposed use will comply with intent, spirit, regulations and conditions specified in this chapter for such use and the zoning district where the use is to be located, as well as make the use harmonious with the neighboring uses in the zoning district.

(C) The Planning Commission shall itemize, describe or justify the conditions imposed on the use.”

- The 2011 Zoning Code includes “radio and television communication towers” as conditional uses. In the table of uses for three zoning districts (A-1 Agricultural, RR-1 Rural Residential, MU-1 Multiple Use) the following uses are listed as “conditional uses”; “Public use, quasi-public use, essential services, including private school, with a curriculum corresponding to a public school, church, dams and reservoirs, radio and television transmitting stations or towers, cemetery.”

- The 2018 San Juan County General Plan emphasizes economic development throughout the County. The General Plan gives priority to the development of Broadband as an infrastructure need. The chapter on Economic Development (pages 21 – 30) identifies several goals to promote economic development. The “vision” for County Economic Development has the following components: Broadband, Transportation, Business Expansion and Retention, Diversification, and Celebration of

History and Culture. The first component, Broadband, is needed not only for economic development – but also for healthcare and education³.

Other San Juan County Ordinances

- County Code §§ 93.004 and 93.005 require that building permit applications and all constructed buildings comply with the County Fire Policy.
- County Code Chapter 110 requires businesses to obtain and maintain a business license. § 110.010 authorizes inspections of properties which have or are required to obtain a County business license.

3 An important report on Broadband in rural communities was published by the United States Department of Agriculture. "Broadband Services for Rural America," October 2021, USDA. See also a KUER story by Lexi Peery, dated 25 May 2022 titled "Utah taps into federal 'Internet for All' initiative to boost rural broadband."