

Administrative Law Judge
San Juan County, Utah

Request for Land Use Variance by	:	Decision of Administrative Law Judge
Infra Towers LLC for a 125-foot	:	Lyn Loyd Creswell
Telecommunications Tower at	:	17 November 2023
4326 East Sunny Acres Lane,	:	
Spanish Valley, Utah	:	

Tierney Rowe, representing Infra Towers LLC, applied¹ for a variance to a 75-foot height restriction and a set-back requirement for “utility buildings” in the San Juan County land use code. The proposed Infra Towers LLC project involves the construction and operation of a 125-foot telecommunications tower. The planned tower is 28 feet from a public storage building located on an adjacent parcel. It is 115 feet from the closest residential dwelling – which is on the parcel where the tower will be erected.

The San Juan County Administrative Law Judge – as the County’s land use appeal authority – may grant a variance to the requirements of the land use code. San Juan County Code § 153.042 (B).

Administrative Law Judge (ALJ) Lyn Creswell requested the project applicant provide information relevant in determining whether a variance was appropriate for the proposed tower. The applicant has the burden of proving that all the conditions justifying a variance have been met. San Juan County Code § 153.042 (F).

¹ Infra Towers LLC submitted a variance application to San Juan County Chief Administrative Officer Mack McDonald on 20 October 2023.

Proposed Telecommunications Tower

The planned telecommunications tower will be developed, owned, and operated by Infra Towers LLC, with Verizon Wireless collaborating as the anchor tenant. The tower will be a 125-foot monopole with a 5-foot lightning rod.

The proposed tower at 4326 East Sunny Acres Lane is intended to fill a “gap” in wireless services in the vicinity. On 2 November 2023 TeleMtn Engineering² submitted to Infra Towers LLC a “coverage analysis”³ for the proposed tower. That analysis included the following.

- The wireless indoor coverage in Spanish Valley can be broadly characterized as marginal. Some areas with line of sight to existing cell sites may experience adequate service, while others may have unreliable or no service at all. Likewise, in-vehicle coverage may also be “spotty” depending on location, especially along US Highway 191 south of the Grand/San Juan County line.
- The proposed new wireless facility will provide substantial new coverage in and around Spanish Valley, as well as on US Highway 191 south of Spanish Valley. The coverage enhancements will be particularly pronounced for in-building use. This point is significant given that the latest survey released by the Centers of Disease Control and Prevention shows that about 75% of Utahns live in a “wireless only” household. In addition to the in-building coverage improvements, the proposed site will improve coverage and reliability for vehicular usage along US Highway 191 through Spanish Valley, and to the south.

² TeleMtn Engineering is a professional engineering firm. TeleMtn specializes in providing engineering services to the wireless telecommunication industry. TeleMtn has extensive experience in Radio Frequency engineering and network planning as well as in physical design.

³ The TeleMtn Engineering analysis included the following: Coverage predictions were created using an industry-standard tool, Atoll 3.5; Atoll’s Standard Prediction Model was used with slope, diffraction, and clutter loss parameters tuned for the environment; The terrain and land use/land clutter resolution was 30 meters; All site predictions were based on three-sector designs with antennas oriented so as to maximize the coverage in the desired area; and The coverage predictions depict LTE coverage in the AWS band (about 2100 MHz).

- The designed height (125 feet) of the proposed tower is necessary to provide the needed service and to allow for additional future tenants⁴.
- An analysis of five existing wireless sites within a seven-mile radius of the proposed site did not show significant coverage improvements in the desired coverage area of Spanish Valley.

Infra Towers LLC has designed the proposed tower to limit potential hazards.

1. To limit access to the tower for trespassers, Infra Towers LLC will install a security fence around the tower site and install step bolts above 10' to deter any unauthorized person from climbing the tower. The fence will be a 6-foot slatted chain-link fence with 3 strands of barbed wire for a total of 7 feet.
2. In-service failures of telecommunications towers due to weather induced overloading are very rare, but to bolster safety in the event of an in-service failure, Infra Towers LLC has designed the tower with a "zero fall zone." The theoretical failure point is at the structure midpoint or above by purposely over designing the structural component below this point. The predicted mode of wind induced failure would be local buckling of the shaft at or above the midpoint with the upper section(s) folding over onto the intact lower section(s). The result, if it were to fail, would be a theoretical "zero fall zone" at ground level.

⁴ Part of the height design involves the anticipation of multiple cell service providers with elevations on the tower that are adequate to provide the needed coverage/service for facilitating optimal interaction with the service providers' existing tower locations.

The proposed tower location at 4326 East Sunny Acres Lane includes the following characteristics.

- The tower will be located on a 50' x 50' area (0.057 acres) leased by Infra Towers LLC from Kolleen Conger – who owns and resides on Tax Parcel 26S22E3542044 (4326 East Sunny Acres Lane) in Spanish Valley, San Juan County, Utah.
- 4326 East Sunny Acres Lane is a 0.87 acres parcel, with a single-family dwelling, storage containers, a horse corral, and one accessory building. The distance from the proposed tower to the residential dwelling is 115 feet.
- The Infra Towers LLC leased area is on the southeast corner of the Kolleen Conger property – with a 20' wide access and utility easement (0.117 acres) from East Sunny Acres Lane to the Infra Towers LLC leased area.
- 4326 East Sunny Acres Lane is approximately 675 feet from US Highway 191.
- 4326 East Sunny Acres Lane is immediately south of the Grand and San Juan County line.
- The area around 4326 East Sunny Acres Lane is sparsely developed. Adjacent or nearby properties include the following.
 - o Immediately east of 4326 East Sunny Acres Lane is property owned by Earl Dwight Johnson and operated as Sunny Acres Storage (4336 East Sunny Acres Lane). The property includes a main office building with a storage facility on the south property line. The south building is at the southwest corner of 4336 East Sunny Acres Lane and 28 feet from the Infra Towers LLC tower. The distance from the tower to the office building is 110 feet.
 - o Immediately west of 4326 East Sunny Acres Lane is a parcel owned by Savage Brothers Inc. The property is undeveloped.

- Across East Sunny Acres Lane to the northwest (and on US Highway 191) is Zurich Bros Mechanical. Their services include septic tank cleaning, grease trap cleaning, and portable toilet rental. There is an industrial type building on the parcel.
 - Directly north of 4326 East Sunny Acres Lane is property operated by Moab Bronco Rentals. The property includes several buildings which support vehicles used by off-road enthusiasts.
 - The property northeast of 4326 East Sunny Acres Lane includes parking and hookups for RVs. On the property is a building which may serve as a residence or office.
- Beyond these adjacent and nearby properties are scattered residential properties and a few businesses (including auto repair, ATV rentals, an RV park, a campground, and a vineyard/winery). There are no business parks or residential subdivisions close to 4326 East Sunny Acres Lane.

Infra Towers LLC intends to construct the tower in compliance with the International Building Code, the National Electrical Code, and ANSI/TIA/EIA 222.

Infra Towers LLC will comply with all local, state, and federal laws and regulations governing wireless communication facilities. An airspace analysis was conducted and indicated that no additional consultation is necessary with the FAA or FCC for the proposed tower. In addition, all new wireless communication facilities are required to go through the National Environmental Policy Act (NEPA) screening, prior to construction, to determine whether the proposed action (construction) will have a significant environmental effect. The screening reviews impacts to wilderness areas, wildlife preserves, endangered species or designated critical habitats, historic places, Indian religious sites, floodplains, and wetlands. Infra Towers LLC will not start construction of the proposed tower without a completed NEPA report indicating the facility will not result in significant environmental effect.

Once constructed, maintenance of the tower will include the following. Twice a month wireless technician maintenance personnel will visit the site. This work is performed on the ground and technicians typically drive a truck or SUV to carry their maintenance measuring equipment. If ground measurements indicate an antenna or feedline coaxial cable fault, which happens infrequently, a boom truck may be required to facilitate technician access to the antennas and cables. The ground space will be maintained by Infra Towers LLC, as frequently as needed, to keep it clear of weeds and easily accessible by maintenance technicians. Infra Towers LLC reported that “there will be no distinguishable impact to existing traffic patterns or infrastructure, noise levels, or safety impacts created by the periodic maintenance anticipated for the proposed tower and facility.”

The tower will only have the identification signage required by federal regulation. No commercial or other advertising will be on the tower or facilities.

The proposed tower will not encroach on or block vehicular traffic. The proposed tower is in the rear of the host property. Infra Towers LLC has a 20-foot-wide access/utility easement which will accommodate ingress/egress to the proposed tower and facility.

The proposed tower will have no accessory buildings. However, tower-support equipment will be located on cement pads adjacent to the tower.

San Juan County Plans, Land Use Code, Other San Juan County Ordinances

Spanish Valley Area Plan. In 2017 San Juan County began focusing on land uses in the Spanish Valley community. In 2017 San Juan County contracted with Landmark Design (a landscape architect company) to prepare an “area plan” for the Spanish Valley community. The creation of a “Spanish Valley Area Plan” began with a presentation by Landmark Design to the San Juan County Planning Commission on 14 August 2017. This meeting was followed by interviews with select residents, neighborhood groups, and government agencies during a three-day period 18 to 20 September 2017. These interviews were followed by public scoping meetings on 20 September 2017 and two public workshops on 7 and 8 November 2017.

On 13 February 2018 Landmark Design hosted a public Open House to receive comments about a draft San Juan County Spanish Valley Area Plan. Fifty people attended the Open House. Following the Open House, the County provided a website and email address for individuals to comment on the draft Area Plan. Comments were received from 13 February to 11 March 2018. After comments were received, Landmark Design created a document with the verbatim comments from citizens about the Spanish Valley Area Plan.

After the interviews, workshops, open house, and receipt of comments from individuals, Landmark Design summarized the community ideas and concerns about the future of Spanish Valley. Among the summarized responses were the following:

- “Height limits because of fire resources/restricts? Not an issue (everything can be served)”
- “Height uses would change based on land use”
- “The area needs commercial, particularly along the highway [191]”

On 22 March 2018 the San Juan Planning and Zoning Commission received a presentation regarding a possible Spanish Valley Area Plan. After public comments, comments from San Juan County official Walter Bird, and discussion among the commissioners; the Planning and Zoning Commission moved to send the Spanish Valley Area Plan to the County Board of Commissioners.

On 17 April 2018 the San Juan County Board of Commissioners adopted the *San Juan County Spanish Valley Area Plan*. The Plan was unanimously adopted.

The *Spanish Valley Area Plan* states that it “is an official document intended to guide future development in the San Juan County portion of Spanish Valley⁵.” When adopted, the *Spanish Valley Area Plan* became a chapter of the *San Juan County General Plan*.

Relevant to the location of short-term/overnight rentals in Spanish Valley residential neighborhoods, the *Spanish Valley Area Plan* included the following guidelines.

- “Encourage and support business development and job generation through the location of well-situated business development zones adjacent to the highway [191]”
- “Locate a small commercial center – comprised of small, local businesses – in a central location and bigger, more regional-type commercial uses near Highway 191.”

San Juan County General Plan. In 2018 San Juan County updated and adopted the *San Juan County General Plan*. Of interest here is an objective repeated in the *San Juan County General Plan* – to increase *broadband* infrastructure in San Juan County. Included in the chapter titled “Economic Development” (pages 21 – 30) of the *General Plan* is the following.

“The County’s economic strategy plan has been broken into five key areas of focus, with a vision and planned development of these areas over one, five, and ten years. The five key areas of focus are: *Broadband*, Transportation, Business Expansion and Retention, Diversification, Celebration of Culture and History.

One Year Vision

BROADBAND – In partnership with the Seven County Infrastructure Coalition, the county has identified *Broadband*⁶ as one of the primary infrastructure goals. Year one includes the development of a county-wide *Broadband* plan that includes connectivity in the communities fanning the Utah Education Network projects to have Broadband in all

⁵ The San Juan County portion of Spanish Valley is approximately six miles long and 2.5 miles wide (encompassing fifteen square miles of land). The remainder of Spanish Valley is in Grand County (north of San Juan County).

⁶ San Juan County’s need for Broadband infrastructure is illustrated by the County’s experience with a 14 October 2023 eclipse event. The eclipse event was held at Gooseneck State Park the morning of 14 October 2023. The number of people allowed to attend was 200. Local lodging was reported at 100% capacity for the event. Unfortunately, the temporary rapid deployable cellular units brought in for the event did not function. The result was ineffective public safety communication in support of the event.

the public schools. Planning also includes establishing right of way agreements and initiating collaboration during roadwork discussions. Healthcare, a primary industry of the County, is one example of the necessity of *broadband* expansion with the development of telemedicine programs.

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Five Year Vision

BROADBAND – A key infrastructure hurdle for business is the cost of *Broadband* in rural Utah. A key goal would be identifying a way to reduce cost of service and creating competitive prices compatible to the Wasatch Front.

...

Ten Year Vision

BROADBAND – *Broadband* will allow for expansion of remote and telecommuting opportunities. Creation of redundancy allowing for reliability in the system.”

San Juan County Zoning Code. On 5 June 1978 San Juan County adopted its first zoning ordinance. The future tower project property (4326 East Sunny Acres Lane) was in the Agriculture District (A-10) of the 1978 Ordinance.

On 12 September 2011 San Juan County adopted an amended Zoning ordinance. The tower property was in the 2011 Zoning Code’s Agricultural District⁷ (re-designated A-1), which identified permitted, conditional, and prohibited uses within that District.

The 2011 Zoning Code states its “purpose” as follows. “This Ordinance 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 San Juan County.”

The 2011 Zoning Code included several sections (or provisions) which applied to all zoning districts in San Juan County. Among these general sections are yard space requirements, relationship of dwellings and lots, private garages with side yard requirements, prohibitions

⁷ The 2011 Zoning Code identified five “zoning districts”: Multiple Use District (MU-1), Agricultural District (A-1), Rural Residential ((RR-1), Controlled District (CD), and Indian Reservation District (IR).

against selling or leasing “required space,” restrictions on sale of lots below minimum size, exceptions to unobstructed side yards, area restrictions of accessory buildings, heights for main and accessory buildings, clear view of intersecting streets, and height restrictions and set back requirements for public, semi-public utility buildings.

Relevant here is the following general provision of the 2011 San Juan County Zoning Code. San Juan County Code § 153.135 (Height of Buildings) (A) “Public, semi-public utility buildings, when authorized in a zone may be erected to a height not exceeding 75 feet if the building is set back from each otherwise established building line at least one foot for each additional foot of building height above the normal height limit required for the zone in which the building is erected.”

The 2011 Zoning Code does not define “utility buildings.” In some local government zoning codes “utility buildings” are defined as structures for the “storage” of materials. However, with a height standard of 75 feet (or seven stories) it was the likely intent of the San Juan County Commission to include any structure which served a “utility” function in the definition of “utility building.” (It is difficult to image a “storage” building seven stories tall.) Consequently, it is assumed that the height restrictions here applies to the proposed tower.⁸

The “Height of Buildings” provision includes a “set back” requirement. That requirement can reasonably be interpreted as requiring a set back at a distance equivalent to the height of the “utility building.” Here that distance would be 125 feet.

Spanish Valley Development Ordinances. After the adoption of the *Spanish Valley Area Plan*, San Juan County spent several months preparing a zoning ordinance for Spanish Valley. The process of adopting a Spanish Valley land use ordinance began on 17 May 2018 when the San Juan County Planning Commission first considered proposed zoning changes for Spanish Valley. A draft ordinance was presented by Landmark Design. On 8 November 2018 the Planning Commission received another presentation relating to a draft Spanish Valley zoning ordinance. On 13 December 2018, 7 February 2019, and 30 October 2019 the Planning Commission again discussed a draft San Juan County Spanish Valley Development Ordinance.

⁸ A New York State appellate decision involved a 400-foot cellular telephone tower which the local government and the appellate court assumed was included in the definition of “public utility building.” *Payne v. Taylor*, 178 A.D.2d 979, 578 N.Y.S.2d 327 (1991)

On 19 November 2019 the San Juan County Board of Commissioners approved the Spanish Valley Development Ordinances as an amendment (or sub-ordinance) to the 2011 San Juan County Zoning Ordinance.

The Spanish Valley Development Ordinances created six (6) zoning districts which replaced the previous two districts in Spanish Valley under the 2011 Zoning Code. The six districts were: Spanish Valley Residential (SVR) District, Spanish Valley Planned Community (PC) District, Spanish Valley Residential Flex Planned Community (RF) District, Spanish Valley Business Flex Planning Community (BF), Spanish Valley Highway Flex Planned Community (HF) District, and *Spanish Valley Highway Commercial (HC) District*.

The Infra Towers LLC tower property lies within the Highway Commercial (HC) District. The HC District defines “permitted uses” within the zoning district.

San Juan County Permitted Use Decision. On 9 November 2023 the San Juan County Planning Commission considered and approved the Infra Towers LLC project as a “permitted use” in the HC District. Supporting its decision, the Planning Commission made the following findings.

1. The Infra Towers LLC telecommunications tower at 4326 East Sunny Acres Lane, Spanish Valley will benefit economic development, health care, emergency response services, remote work, and education in Spanish Valley and San Juan County⁹.
2. The proposed tower supports an important objective of the 2018 *San Juan County General Plan* by adding critical Broadband infrastructure in San Juan County.

⁹ In its decision, the Planning Commission reported the following in its “project summary” of the proposed Infra Towers LLC project.

The tower will enhance the following services in Spanish Valley and in San Juan County.

- Enhanced remote work capability. Digital connectivity has been shown to increase productivity and innovation in companies and workers.
- Improved connection to education platforms for students and teachers.
- Accessibility to telehealth providers. Wireless services provide clinicians with access to continuous, real-time information and analysis. These services improve patient outcomes and reduces costs.
- Accessibility to emergency responders. Fast and reliable connection with 911 dispatchers reduces emergency response time and allows for better call location accuracy.

Additionally, the 7 June 2022 *San Juan County Emergency Operations Plan* lists “Operational Communications” as a core capability for emergency response.

San Juan County Variance Provisions

San Juan County land use code § 153.042 (Variances) authorizes the Appeal Authority to grant a variance of the requirements of the land use ordinance as applied to a parcel of property.

The Appeal Authority may grant a variance only if the following requirements are met.

1. The literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance. In determining whether enforcement of the ordinance would cause an undue hardship the Appeal Authority must find a) that the undue hardship is located or associated with the property where the variance is sought and b) that the hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. Also, the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone. In determining special circumstances, the Appeal Authority may find special circumstances only if the special circumstances a) relate to the hardship complained of and b) deprive the property of privileges granted to other properties in the same zone.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the land use ordinance is observed, and substantial justice done.

Relevant to the findings of “unreasonable hardship” and “special circumstances” in cases of wireless communication facilities are the requirements of federal law. Where the hardship and special circumstances claimed by a land use applicant includes a gap in wireless services, the authority considering a variance must consider the federal Telecommunications Act (TCA). The TCA “imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification” of telecommunication facilities. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 – 16 (2005). TCA 47 U.S.C. § 332 (c) (7) (B) (i) provides, among other things, as follows:

- (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof –
 - (I) Shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) *Shall not prohibit or have the effect of prohibiting the provision of personal wireless services.*

Regarding the matter of “hardship” and “special circumstances” in variance decisions, the applicant of a proposed wireless cell tower may satisfy this requirement by showing a gap in service without necessarily demonstrating a hardship associated with the unique shape, topography, or other physical feature of the property. See *Nextel Communications of Mid-Atlantic v. Town of Wayland*¹⁰, 231 F. Supp. 2d 396 (D. Mass. 2002) (“Under the Telecommunications Act, the [local government] cannot deny the variance if in doing so it would have the effect of prohibiting wireless services. 47 U.S.C. § 332 (c) (7) (i) (II). In other words, the need for closing a significant gap in coverage, in order to avoid an effective prohibition of wireless service, constitutes another unique circumstance when a zoning ordinance is required.”)

A recent decision of the United States Court of Appeals for the Third District affirmed the federal Telecommunications Act affect on local government approvals of telecommunication towers. “Congress passed the TCA in 1996. ‘Its primary purpose was to reduce regulation and encourage the rapid deployment of new telecommunication technologies.’ *Reno v. ACLU*, 521

¹⁰ *Wayland* involved an application for a variance from a zoning law’s height restriction to build a wireless communications facility.

U.S. 844, 857 (1997). Congress preserved local zoning authority over the ‘placement, construction, and modification of personal wireless service facilities,’ like cell towers. 47 U.S.C. § 332 (c) (7) (A). But it specified that such regulation “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.’ Id. § 332 (c) (7) (B) (i) (II).” *Cellico Partnership v. The White Deer Township Zoning Hearing Board*, Third Circuit Court of Appeals, decided 14 July 2023.

The Third District Court found that the following facts supported a conclusion that the denial of variance to Verizon Wireless triggered the preemptive authority of the TCA.

- Verizon Wireless provided evidence that there was a “significant gap” in its wireless coverage in the White Deer Township and that the proposed monopole cell tower would fill that gap.

Findings

Administrative Law Judge Lyn Loyd Creswell makes the following findings relevant to a determination of whether the Infra Towers LLC proposed telecommunications tower qualifies for a variance from the height and set back restrictions in the San Juan County land use code.

1. The literal application of the San Juan County height and set back requirements for “utility buildings” would cause an undue and unreasonable hardship on applicant Infra Towers LLC by preventing the applicant from erecting the planned telecommunication tower designed to cover an identified gap in wireless services in Spanish Valley, San Juan County, Utah.
2. A qualified engineering company, using industry standard evaluation methodologies, has identified a wireless communication gap in Spanish Valley and south of Spanish Valley along US Highway 191.
3. The Infra Towers LLC proposed tower at 4326 East Sunny Acres Lane was designed for and supports the objective of eliminating or reducing the identified gap in services.
4. The proposed height (125 feet) of the tower was certified by a professional communications engineer to achieve the necessary elimination or reduction of the identified gap by multiple wireless service providers.
5. The construction and operation of the Infra Towers LLC tower at 4326 East Sunny Acres Lane carries out the general purposes of the *San Juan County General Plan* and the San Juan County Zoning Code by benefitting economic development, health care, emergency response services, remote work, and education in Spanish Valley and San Juan County.
6. The proposed tower supports a primary objective of the 2018 *San Juan County General Plan* by adding critical Broadband infrastructure in San Juan County.
7. The proposed Infra Towers LLC tower at 4326 East Sunny Acres Lane supports the following purposes stated in the 2011 San Juan County Zoning Ordinance: “[P]romoting

the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of San Juan County.”

8. The undue hardship is specifically associated with the Infra Towers LLC tower structure proposed and located at 4326 East Sunny Acres Lane.
9. The undue hardship relates to and comes specifically from the peculiar technical requirements supporting the Infra Towers LLC tower designed to provide gap coverage in an area with marginal or incomplete wireless communication services.
10. The special circumstances associated with the planned telecommunications tower apply to that structure as it is designed to transmit wireless communications signals and do not apply to other “utility buildings” in Spanish Valley which are not designed and intended to support wireless communications.
11. In this case, both the undue/unreasonable hardship and the special circumstances relate to the peculiar technical requirements of the planned tower designed to provide gap coverage in an area with marginal or incomplete wireless communication services.
12. The special circumstances associated with the technical requirements of the Infra Towers LLC structure at 4326 East Sunny Acres Lane allow the tower to participate as a business and commercial service along with other business and commercial enterprises in the Highway Commercial (HC) District in Spanish Valley.
13. The wireless communication services created by the operation of the Infra Towers LLC tower will provide a much-needed service to residents and business owners in the Highway Commercial (HC) District.
14. The provided benefit is essential to the enjoyment of a substantial property right – to effectively communicate and receive government-provided emergency services, accessible health care, enhanced education opportunities, and economic security – possessed by other property owners in the HC District.

15. The operation of the planned telecommunications tower is fully consistent with and does not deviate from the *San Juan County General Plan*.
16. The risk of physical harm to the public or adjacent property caused by the construction, operation, and maintenance of the tower is minimal.
17. Infra Towers LLC has anticipated and designed the tower to limit access to unauthorized persons who might seek to climb the tower, and to reduce the potential for a tower collapse in event of a catastrophic in-service failure.
18. If Infra Towers LLC complies with all federal and state requirements; applies for and obtains a San Juan County building permit; applies for and maintains a San Juan County business license; and maintains the subject property in good condition – the proposed tower will not be contrary to the public interest.
19. The construction and operation of the Infra Towers LLC tower at 4326 East Sunny Acres Lane meets the spirit of the San Juan County land use ordinance and is substantially just.
20. Based on the established wireless gap analysis and other factors, a denial of the Infra Towers LLC tower variance application would violate the federal Telecommunications Act (as interpreted by federal courts) by prohibiting or having the effect of prohibiting the provision of personal wireless services to wireless service users in Spanish Valley, San Juan County, Utah.

Mitigation

To safeguard the public interest associated with the proposed Infra Towers LLC tower at 4326 East Sunny Acres Lane, the following mitigation measures are required as part of the approval of a variance.

1. Infra Towers LLC will provide San Juan County (through the County's Chief Administrative Officer) a copy of a completed National Environmental Protection Act (NEPA) screening report, indicating the tower and facility will not result in a significant environmental effect, prior to applying for a building permit.
2. Prior to construction, Infra Towers LLC shall apply for and receive a San Juan County building permit. If requested by San Juan County, Infra Towers LLC will contract and pay for the services of an independent and qualified engineer to inspect and certify to San Juan County that the tower and associated equipment were constructed in compliance with the International Building Code, the National Electrical Code, and any other governing engineering or related codes or standards.
3. Prior to operating the tower, Infra Towers LLC shall apply for and receive – and continue to maintain – a San Juan County business license and be subject to regular inspection associated with the business license, to include a review of compliance with the mitigation requirements of the approved variance.
4. Any neighbor or person reasonably expected to be at or near the tower site during construction, maintenance, or equipment upgrades or replacement which has the potential to harm an individual shall be informed of the activity and provided with safety information, as appropriate.
5. The tower lease areas shall be kept clean and free of rubbish, flammable waste materials or other noxious or nuisance substances.

Decision

Administrative Law Judge Lyn Loyd Creswell, acting as the San Juan County land use appeal authority, grants Infra Towers LLC a variance to the “utility building” height and set back requirements of the 2011 San Juan County Zoning Code for a proposed telecommunication tower and associated equipment located at 4326 East Sunny Acres Lane, subject to the five (5) mitigation requirements contained herein.

Administrative Law Judge Lyn Loyd Creswell shall continue jurisdiction over the subject variance for twelve months after the date the tower begins operating. Continuing jurisdiction includes assuring compliance with the five (5) mitigation requirements or modifying the mitigation measures of this decision.

A handwritten signature in cursive script, reading "Lyn L. Creswell", is written over a horizontal line. The signature is fluid and extends to the right, ending in a long, sweeping tail.

Lyn Loyd Creswell
San Juan County Administrative Law Judge

17 November 2023