

1 Case No. 2025-CV-00097

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF DOUGLAS

9 BRIAN STEVENS, YVONNE STEVENS,
10 and DAVID MAGNOTTA, individually,
11 and as representatives of
MINDEN FOR SAFE TECHNOLOGY,

12 Petitioners,

13 v.

14 DOUGLAS COUNTY and DOUGLAS
15 COUNTY BOARD OF COUNTY
16 COMMISSIONERS, sitting as the
BOARD OF ADJUSTMENT,

ORDER

17 Respondents,

18 and

19 SACRAMENTO-VALLEY LIMITED
20 PARTNERSHIP d/b/a VERIZON
21 WIRELESS,

22 Real Party in Interest.
23 _____/

24 THIS MATTER comes before the court upon a timely filed Petition for Judicial
25 Review. The petition focuses upon the result of an appeal regarding a September 10, 2024,
26 approval by the Douglas County Planning Commission of Design Review Application DP
27 24-0170; that approval was memorialized within a September 12, 2024, written
28 notification, with a correction issuing on September 18, 2024. The appeal of the approval,

1 designated as DP 24-0202, was denied by the Douglas County Board of Commissioners on
2 April 3, 2025, with written notification issuing on April 7, 2025. Petitioners filed their
3 petition for judicial review of the appeal denial twenty-five days later on May 2, 2025.
4

5 The record of the appeal ("ROA") is present within the court record of this matter,
6 filed as Volumes I - VII on June 24, 2025. Petitioners' opening brief was filed on August
7 8, 2025. Respondent Douglas County's Answering Memorandum of Points and Authorities
8 and Real Party in Interest Verizon Wireless's Answering Brief were each filed separately
9 on September 8, 2025. Petitioners' Reply Brief was filed on September 26, 2025. On
10 September 29, 2025, petitioners filed and served a Request for Hearing.¹
11

12 Having now examined all relevant pleadings and papers on file herein, the court
13 enters the following order, good cause appearing:

14 THAT the judicial review petition is DENIED.

15 **Findings of Fact**

16 Design Review Application DP 24-0170 sought county approval for the proposed
17 installation of an 80 foot, monopole cell tower and associated network equipment in place
18 of an existing, non-operating 60 foot cell tower, described as abandoned within the record.
19 ROA 0172, ROA 0176-77. The existing tower is located at 1450 Stephanie Way in
20 Minden, Nevada. The parcel of real property, APN 1420-27-401-011, hosting the existing
21 and proposed towers is owned by the East Fork Fire Protection District and located within a
22 Public Facility (PF) zoning district. ROA 0172, ROA 0176-77. Fire Station 6 operates on
23
24

25
26 ¹ "After petitioner's time to reply has expired, the matter shall be submitted to the court for a decision
27 without hearing. Either party may request a hearing or oral argument at the time of filing the petition or
28 opposition. The court upon request or its own initiative may set the matter for hearing or oral argument
upon a finding that a hearing or oral argument is appropriate." NJDCR 22(e). The parties' written
stipulations allowed that any party may request a hearing by September 29th, with that date then extended
to October 3, 2025. After review of the record, the court does not find oral argument necessary.

1 that same parcel, which is adjacent to the Johnson Lane Park.

2 According to DCC 20.660.130(I),

3 "Telecommunications facility" means a wireless communications facility used for
4 the transmission or reception of electromagnetic or electro-optic information that does
5 not meet the definition of a telecommunications site and which may include accessory
6 equipment and equipment shelters. This use does not include any other use listed in
this code, devices not used for communication, or radio frequency machines which have
an effective radiated power of 100 watts or less.

7 1. Design review is required for facilities that do not exceed the height
8 requirement of the zoning district in which it is located; a special use permit is required
9 for facilities exceeding the height requirement of the zoning district in which it is
located.

10 2. See section 20.664.180 for specific standards

11 (The proposed tower does not meet the definition of a telecommunications site
12 because it is not placed on an existing structure and would exceed the existing roof height
13 of the fire station, if it were placed on it, by an excess of fifteen feet. See DCC
14 20.660.130(H).)

15 DCC 20.664.180 provides:

16 The following standards apply to all telecommunications facilities as defined in
17 this title:

18 A. Maximum heights. The height of telecommunications facilities includes all
19 antenna array structures. The following are the maximum facility heights permitted
within the applicable zoning districts:

- 20 1. NC, MUC, OC, GC, TC, PR and AP: 60 feet.
- 21 2. PF, LI, and SI: 80 feet.
- 22 3. GI and A-19: 100 feet.
- 23 4. FR-19 and FR-40: 120 feet.
- 24 5. Residential zoning districts: Prohibited.

25 "The director shall be the final decision-maker for design review applications.
26 Design review applications are subject to administrative review and do not require a
27 public hearing." DCC 20.614.030. "The director shall approve, deny or conditionally
28 approve the design review" DCC 20.614.050(A).

The director in his sole discretion may refer the design review for review and
decision by the planning commission in lieu of rendering a decision on the application.
In such event, the planning commission shall consider the design review at a public

1 hearing and render its decision in accordance with section 20.28.020. Appeal shall be
2 to the board in accordance with section 20.28.020. The planning commission and the
board shall apply the standards set forth in this chapter in acting on the design review.

3 DCC 20.614.050(B).

4 The director referred the application to the planning commission. ROA 0176-0183.
5 Although DCC 20.614.050(B) provides that the planning commission shall render its
6 decision in accordance with section 20.28.020, the Planning Commission Agenda Item
7 Cover Page for Agenda Item No. 2, ROA 0172-73, and the Community Development
8 Director's Memorandum prepared by Linda Doherty, Assistant Planner, ROA 0176-0183,
9 quote from DCC 20.10.020: "Whenever the planning commission has been delegated as
10 the final decision making authority for a development permit pursuant to this title, it shall
11 decide whether to approve, conditionally approve, deny or continue the application at a
12 public meeting, following receipt of the report and recommendation of the director." For
13 comparison, DCC 20.28.020(E) states: "The appellate body may affirm, reverse or modify
14 only those items raised in the appeal. The appellate body may attach any conditions
15 reasonably necessary when approving a permit that was denied by the director or the final
16 decision-maker, as provided in chapter 20.14."

17 Regardless, as previously referenced "[t]he planning commission and the board
18 shall apply the standards set forth in this chapter in acting on the design review." DCC
19 20.614.050(B). According to DCC 20.614.040:

20 When considering applications for design review, the director shall evaluate the
21 impact of the design review on and its compatibility with surrounding properties and
22 neighborhoods to ensure the appropriateness of the development and make the
23 following findings:

24 A. The proposed development is consistent with the goals and policies embodied in
25 the adopted master plan and the general purpose and intent of the applicable district
26 regulations;

27 B. The proposed development is compatible with and preserves the character and
28 integrity of adjacent development and neighborhoods and includes improvements or

1 modifications either on-site or within the public rights-of-way to mitigate development
2 related adverse impacts, such as traffic, noise, odors, visual nuisances, or other similar
3 adverse effects to adjacent development and neighborhoods. These improvements or
4 modifications may include but shall not be limited to the placement or orientation of
5 buildings and entryways, parking areas, buffer yards, and the addition of landscaping,
6 walls, or both;

7 C. The proposed development will not generate pedestrian or vehicular traffic
8 which will be hazardous or conflict with the existing and anticipated traffic in the
9 neighborhood;

10 D. The proposed development incorporates roadway improvements, traffic control
11 devices or mechanisms, or access restrictions to control traffic flow or divert traffic as
12 needed to reduce or eliminate development impacts on surrounding neighborhood
13 streets;

14 E. The proposed development incorporates features to minimize adverse effects,
15 including visual impacts, of the proposed development on adjacent properties;

16 F. The project is not located within an identified archeological/cultural study area,
17 as recognized by the county. If the project is located in a study area, an archeological
18 resource reconnaissance has been performed on the site by a qualified archeologist and
19 any identified resources have been avoided or mitigated to the extent possible per the
20 findings in the report;

21 G. The proposed development complies with all additional standards imposed on it
22 by the particular provisions of this chapter, the Douglas County design criteria and
23 improvement standards and all other requirements of this title applicable to the
24 proposed development and uses within the applicable base zoning district, including but
25 not limited to, the adequate public facility policies of chapter 20.100; and

26 H. The proposed development will not be materially detrimental to the public
27 health, safety, convenience and welfare, or result in material damage or prejudice to
28 other property in the vicinity.

DCC 20.614.040

The Community Development Memorandum addressed those findings at ROA 0178
- 0181.² Immediately thereafter the Memorandum contained "SUGGESTED
CONDITIONS APPLICABLE TO THE PROJECT" at ROA 0181-83. The memorandum
concluded by using the same language set forth within DCC 20.614.050(B):

In conclusion, the Planning Commission shall consider the design review at a
public hearing and render its decision in accordance with section 20.28.020. Appeal shall
be to the board in accordance with section 20.28.020. The planning commission and the
board shall apply the standards set forth in this chapter in acting on the design review.

² The language employed within the memorandum matches the writing set forth within ROA 0221-23,
which appears to be a continuation from ROA 0184, entitled "Project Description & Justification."

1 ROA 0183.

2 The Planning Commission Agenda Item Cover Page for Agenda Item No. 2
3 contained the following language: "RECOMMENDED MOTION: Approve, conditionally
4 approve, deny or continue the Major Design Review application DP 24-0170, based upon
5 the ability to make the required findings pursuant to 20.614.040 A-H, listed in the staff
6 report." ROA 0172.

7
8 According to the corrected letter of notification, at the conclusion of the September
9 10th public meeting the Douglas County Planning Commission approved Design Review
10 Application DP 24-0170 by a vote of 6-1, adopting the conditions previously suggested
11 within the memorandum. ROA 0287-90. Within the record, the minutes of that meeting,
12 regarding Agenda Item 2, begin at ROA 0624 and conclude at ROA 0639 with the
13 following: "MOTION TO: Approve Major Design Review application DP 24-0170, based
14 upon the ability to make the required findings pursuant to 20.614.04 A-H listed in the Staff
15 Report; carried."

16
17 In that regard, the minutes are as follows:

18 Chairman Walder speaks:

19 Thank you, Maureen. Any other comments or questions on this particular agenda item? If
20 we're ready to move to a motion, again, the findings are on page 217 to 219. They are the
21 same findings that we had for the first agenda item, although the facts and the circumstances
are different in this particular case. So, if you are commenting and voting for or against the
proposition, if you could keep those findings in mind. Maureen.

22 Member Casey speaks:

23 Mr. Chair, I'd like to make a motion. I would like to, my comment is, to me, this is a
24 completely different item than the one we had before. This is an existing tower, and it's not
25 in the center of an existing dense neighborhood, it is not the entrance to the town. Whether
26 it's Gardnerville, Gardnerville Ranchos, the Town of Minden, or even if this was down in,
27 the entrance to Wild Horse or any of the denser subdivisions, I would feel differently, but
28 this is out in the rural area. I feel it's a much safer area with regards to people. It's set back
in the back end of the lot, it's a very rural area. I just have a whole different feel for this. I
know we don't talk feelings, we talk facts, but sometimes I talk feelings. But anyway, I
would, again, like to note that Douglas Economic Development, and the FCC started this
rolling, and I believe that this meets all the findings. So, I'd like to make a motion to
approve the Major Design Review application DP 24-0170, based upon the ability to make
the required findings pursuant to 20.614.04 A-H listed in the Staff Report.

Chairman Walder speaks:
Is there a second to Maureen's motion of approval?

Member Bruno speaks:
I second the motion.

Chairman Walder speaks:
Paul seconds the motion. Any comments on the motion? Paul.

Member Bruno speaks:
I'm in agreement with the Commissioner. And I think that I depart with my colleague, Commissioner Nelson, in that the character of the neighborhood is distinctly different from the first application that we had today. H is satisfied, that is condition H, is satisfied in both, but this one particularly satisfies B because it is not a gateway circumstance, and in going out to the location it is compatible, obviously, because there already was an antenna out there. So, I think the circumstances are considerably different and I support the motion to allow the tower in this particular location satisfying all the conditions, including B.

Chairman Walder speaks:
Thank you, Paul. Dave.

Member Nelson speaks:
I'd like to make one other statement too, and that is I haven't been convinced that this will not harm children and it is across from a school. I don't think we'll know for another 50 years what kind of damage this can do to a child, so that's my other reason for not approving this.

Chairman Walder speaks:
Thank you. Other comments before we take a vote? Laurie.

Member Lile speaks:
Thank you. I'm a bit torn on this because I do think that the visual impact from the tower itself is actually potentially greater out here because it's designed for three antenna arrays and it seems that antennas are maybe a little bit larger than they were in the facility at Fire Station 14; however, it is not the same at all with respect to the impact on the community as a whole. It is not in that very prominent location where it's very visible by everyone. I appreciate the impact it may have on a few people and their view shed; that's never a happy thought. However, I don't know that there's a better location that would not impact anyone. And the thought that there is already an existing pole there, which is highly visible, to me feels like a different situation. So, I do believe that the findings for approval on this site can be met.

Chairman Walder speaks:
Thank you, Laurie. Bryce.

Vice Chairman Clutts speaks:
Thank you, Mr. Chairman. I agree with my colleagues that I think this is a completely different situation than the one before. As I mentioned earlier, if I was sitting in the crowd, whether I've got feelings about the health benefits, or what they are, or what they aren't, I have no idea, and I'm not at liberty to weigh those today based upon the rule of law, so I have to look at this from a design review perspective. I don't believe that this particular application is anywhere close to the one before in terms of that, and so I do believe it meets Finding B, and whether I believe it meets Finding H or not is irrelevant, and because it meets all the findings, I'll be voting in support of it.

Chairman Walder speaks:

1 Thank you, Bryce. Other comments? Mark.

2 Member Neddenriep speaks:

3 I too agree that this is a different situation. I drove around out there, it is a lot more rural. I
4 am sorry that cell phone towers are not the prettiest things. I just hope that maybe Tom can
5 help us revise the County code so that we could allow water towers or other objects out
6 there that might require more than just a monopoly, but I will be voting for this.

7 Chairman Walder speaks:

8 Thank you, Mark. Paul, additional comments?

9 Member Bruno speaks:

10 Yes, I think we do have the opportunity to look at Title 20, and I think this, if I may impose,
11 make a note by it so that the mandatory language with respect to the monopoly is modified
12 so that we can use all of the capabilities of the industry to make these stealth, and I think
13 that would be very helpful for the community as a whole. Thank you.

14 Chairman Walder speaks:

15 Thank you, Paul. If there's no other comments, then I think we can take this by voice vote.
16 All those in favor of Maureen's motion to approve the Major Design Review say aye. All
17 those opposed?

18 Member Nelson speaks:

19 Nay.

20 Chairman Walder speaks:

21 So, it's six votes in favor, and Dave is voting against, and the motion is approved. And that
22 concludes this agenda item.

23 ROA 0637 - 0639.

24 An appeal to the county board of commissioners regarding approval of the design
25 application was timely filed. After addressing the appellants' standing during a December
26 5, 2024, public meeting and then continuing consideration of the appeal until April of 2025,
27 the Douglas County Board of Commissioners fully considered the appeal as Agenda Item
28 No. 7 during the public meeting convened on April 3, 2025; the appeal was designated
Development Application DP 24-0202. The Agenda Item Cover Page proffered a
recommended motion which matches the language provided within the Community
Development Memorandum, at ROA 0719, regarding the appeal.

The Board of County Commissioners can:

1. Affirm the decision of the Planning Commission, upholding the approval of the Design
Review, because the findings listed in DCC 20.614.040 are met; or

- 1 2. Modify the decision, consistent with the provisions of Douglas County Code; or
2 3. Reverse the decision, denying the Design Review, subject to any applicable conditions,
3 because the findings listed in DCC 20.614.040 are not met.

4 ROA 0716.

5 A portion of the synopsis set forth within the Community Development

6 Memorandum regarding the appeal stated:

7 There will be space on the proposed tower for the collocation of antennas for up to two or
8 more additional wireless carriers. The proposed tower will also allow EFFPD to relocate its
9 narrow whip antenna from the existing 60-foot pole behind the station (current tower is of
10 insufficient height and structural capacity) to the proposed tower.

11 Per exhibits presented . . . there is an existing significant gap in coverage in the
12 Johnson Lane area. The proposed location is to provide the missing wireless coverage (in-
13 building and outdoor), including some of the gap area provided by a facility 4.6 miles
14 northwest that is experiencing wireless capacity exhaustion.

15 ROA 0721.

16 On March 12, 2025, Mr. Chris Hatch of Epic Wireless, on behalf of Verizon
17 Wireless, submitted a change to the location of the proposed monopole cell tower on the
18 parcel in question. It has been moved 294' 2" from the originally proposed location, in a
19 diagonal direction to the northwest corner of the parcel, further away from the Johnson Lane
20 Park and Pinion Hills Elementary School. An updated site plan and photo simulations have
21 been attached to this report.

22 ROA 0723.

23 The required Design Review Findings were then addressed individually. ROA 0728
24 - 30. An Appeal Justification Letter set forth appellants' position at ROA 0737 - 0751.
25 Within the record, the minutes of the April 3, 2025, public meeting convened by the county
26 board of commissioners begin at ROA 1143. The discussion regarding Agenda Item No. 7
27 begins at ROA 1198, concluding at ROA 1232-33. At ROA 1241 and again at ROA 1346,
28 a Community Development letter notified an appellant that DP 24-0202 was denied, stating
29 that "[i]n denying the appeal, the Board found insufficient evidence to overturn the
30 Planning Commission's decision, affirming that the findings for a Design Review - found
31 at Douglas County Code 20.614.040(A)-(H) - could be met."

1 During the public comment portion of the April 3rd meeting, at ROA 1148,
2 Chairwoman Hales referenced a federal prohibition to consider health as a factor when
3 deciding the location of cell towers. At ROA 1151, Chairwoman Hales noted that the facts
4 pertaining to Agenda Items Nos. 6, the appeal of a denial of an application to install an 80
5 foot monopole cell tower at 1699 County Road in Minden, Nevada, and 7 were very
6 different.
7

8 With regard to Agenda Item No. 6, the discussion at ROA 1172 addressed whether
9 there was a distinction between whether necessary findings can be met or affirmatively are
10 met. At ROA 1174, Chairwoman Hales and Maureen Casey, the Planning Commission
11 Chairwoman, discussed whether the planning commission's denial of the design review
12 only focused on the inability to enter a Finding B. Within their final deliberation, the
13 commissioners focused on multiple findings that could not be met, beginning at ROA 1191.
14 Within ROA 1191-94, the consensus expressed among several commissioners was that
15 Findings B, E, and H could not be met. However, the motion regarding Agenda Item No. 6,
16 at ROA 1195-97, was to continue that appeal for one year while county staff worked with
17 Verizon regarding other alternative feasible locations for that proposed cell tower.
18
19

20 With regard to Agenda Item No. 7, during the presentation Chris Hatch, the Epic
21 Wireless Group, LLC representative, requested the following at ROA 1205 (*see also* ROA
22 1213):
23

24 Moving the site 300 feet does not reduce the visibility of the tower, nor significantly reduce
25 the already low EAM levels expected in the surrounding areas. Both of which are the
26 primary concerns of the appellant, who do not support this alternative. While this
27 alternative may be feasible with fire district approval, we ask that this alternative not be
28 considered for the project as it does not satisfy the appellants or represent a less intrusive
means for development.

Mr. Hatch concluded his presentation with the following, at ROA 1209:

[N]o other alternative location could be identified that would provide a less intrusive means

1 for development. With many of the suggested alternatives putting the project closer to more
2 homes and possibly in more people's viewsheds than already affected by the existing fire
3 station tower. . . . The appealed project meets all code requirements and was recommended
4 for approval by the County staff. This is an 80 foot monopole replacing existing 60 foot
5 monopole in a Public Facilities Zone designated for future, designed for future co-locations
6 with no need for variance for height or setbacks. With these considerations, the County
7 Development staff reviewed the design and verified this project meets all the findings for
8 approval with a Major Design Review application.

9 During public comment, Greg Roaldson of Minden for Safe Technology, questioned
10 whether Finding H could be satisfied. ROA 1219. Susan Maclean, a realtor and local
11 resident, advocated that Findings B, E, and H could not be satisfied. ROA 1221. Adrienne
12 Sawyer, a Minden resident, questioned whether any location for a cell tower could satisfy
13 Finding B. ROA 1222.

14 The commissioners' deliberations then began at ROA 1225. At ROA 1230, Vice
15 Chairman Gardner indicated his belief that the same failures of the required Findings B, E,
16 and H with regard to Agenda Item No. 6 were similarly applicable to Agenda Item No. 7.
17 Both Commissioners Tolbert and Rice found no cause to overrule the Planning
18 Commission, with which Commissioners Tarkanian and Hales agreed, referencing the
19 significance of a tower already being present, and Commissioner Tolbert then noting that
20 he encountered both support for and opposition to replacement of the existing tower. ROA
21 1230-31. The commissioners then passed a motion to deny the appeal of the Planning
22 Commission's decision to approve Development Application DP 24-0170 by a vote of 4-1.
23 ROA 1232-33.

24 Conclusions of Law

25 When reviewing land use decisions made by a governing body, the reviewing court
26 is to "review the agency record to decide whether substantial evidence supports the
27 governing body's findings." *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271,
28 236 P.3d 10, 15 (2010). "Substantial evidence is that which a reasonable mind could

1 accept as sufficient to support a conclusion.” *Id.* “Substantial evidence need not be
2 voluminous.” *City of Reno v. Est. of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548
3 (1994). It may also consist entirely of public testimony. *See Redrock Valley Ranch, LLC v.*
4 *Washoe Cnty.*, 127 Nev. 451, 461, 254 P.3d 641, 648 (2011); *Stratosphere Gaming Corp.*
5 *v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d 756, 761 (2004). It may also include the
6 decision maker’s own knowledge of existing conditions, including personal observations
7 and experiences. *McKenzie v. Shelly*, 77 Nev. 237, 240-42, 362 P.2d 268, 269-70 (1961).
8 The court is not to substitute its judgment for that of a governing body if substantial
9 evidence supports the entity’s action. *Id.* Likewise, the court is to not re-weigh the
10 evidence. *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d
11 756, 761 (2004).
12

13
14 Petitioners opine that the findings required by DCC 20.614.040 were never formally
15 established nor supported by the record. Reviewing the record, the court locates a
16 continuing discussion and consideration of the required findings and whether they can be
17 fulfilled.³ For comparison, the record indicates a contrast between the two cell tower
18 applications at issue before the board during the same meeting. The appeal brought by
19 Verizon listed as Agenda Item No.6 was triggered by the planning commission’s
20 determination that Finding B could not be entered. By the end of the review by the board
21 of commissioners, whether Findings B, E, and H could be fulfilled was at issue until the
22 appeal of that design review was continued for a year. Within that same meeting, applying
23 the same standard, by a majority the board of commissioners affirmed the planning
24
25

26 ³ As an example of the board’s alternative method regarding the findings, when considering whether to
27 adopt a development agreement, “[f]ollowing the closing of a public hearing, the board shall determine if
28 the development agreement is consistent with the findings contained within chapter 20.400.040. If
determined to be consistent, the board shall introduce an ordinance adopting the development
agreement.” DCC 20.400.030(B).

1 commission's determination that all required findings could be met with regard to Agenda
2 Item No. 7, satisfying the requirement of DCC 20.28.020(E) that "[t]he appellate body may
3 affirm, reverse or modify only those items raised in the appeal."
4

5 Regarding additional findings referenced within DCC 20.14.010(B) when issuing a
6 conditional application approval, "the body imposing the conditions shall make findings
7 which embody the basic purpose of the conditions placed on the application. The
8 conditions imposed by recommendation of the director or planning commission may be
9 modified subsequently by the final decision-maker by the appellate body upon appeal of
10 those conditions."
11

12 The conditions imposed by the planning commission speak for themselves
13 regarding their purpose. Implicit within the conditions to comply with all construction
14 codes are their purpose. As referenced by the county respondent, conditional approval of a
15 design review is one of the options allowed within county code.
16

17 Petitioners also allege errors of law. The commissioners

18 expressed a willingness to approve the application primarily because the previous tower
19 already existed on the Property. This reasoning is fatally flawed. The prior tower was
20 abandoned for a period long enough to trigger mandatory removal. Thus, its continued
21 presence is not legally valid under the Douglas County Code. Using this non-compliant
22 condition as a basis for granting a new permit amounts to legal error.

23 This decision violates core principles of Nevada's administrative law, where courts
24 have held that a governing body acts arbitrarily or capriciously when it:

- 25 1. Bases its decision on a legally impermissible factor;
- 26 2. Fails to apply the controlling ordinance; or
- 27 3. Applies its code inconsistently.

28 See City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 270 (2010) (reversing
approval of a land use action where the city's justification failed to meet ordinance
standards).

Opening Brief in Support of Petition for Judicial Review, p. 18, line 27 - p. 19, line 12.

Under the Nevada Administrative Procedure Act, a court may reverse an agency's

1 decision if it:

2 Violated statutory provisions;

3 Exceeded its authority;

4 Was made upon unlawful procedure;

5 Was affected by other error of law;

6 Was clearly erroneous in light of the evidence; or

7 Was arbitrary or capricious or characterized by abuse of discretion.

8 NRS §233B.135(3). The County's decision in this case meets several of these criteria. It
9 was based on a legally impermissible premise (continued presence of an abandoned tower
10 against Douglas County Code), failed to enforce the Douglas County Code, and rewarded a
11 party for benefitting from unlawful non-enforcement. The decision is therefore unsupported
12 by substantial evidence and must be reversed.

13 Opening Brief, p. 19, lines 15 - 27.

14 Reviewing the record, the existing tower still served first responder equipment.

15 ROA 0282. Upgrading the existing tower was supported by the local first responder
16 community. ROA 0280. Upon review, the court perceives reasoned decision-making by
17 the board of commissioners rather than the arbitrariness alleged by petitioners.

18 Petitioners also allege improper application splitting, anticipating future use of the
19 cell tower at issue beyond the existing height limitation. However, on judicial review the
20 court considers the actual application and record before it rather than speculating about
21 future use. The court also considers the record as a whole rather than cherry-picking certain
22 information which may seem to contradict certain aspects of the county's master plan, as
23 petitioners argue, when taken out of context. Likewise, it is clear the record reflects an
24 existing pattern of dropped mobile calls in the Johnson Lane area by the over-burdened
25 local Verizon cell tower system otherwise known as wireless capacity exhaustion, belying
26 petitioners' allegation of the applicant's faulty needs analysis. These are only a few
27 examples of petitioners' arguments; the court determines all arguments proffered by
28

1 petitioners to be without merit. The petition is denied. The decision of the Douglas County
2 Board of Commissioners, sitting as the Board of Appeal, is upheld.

3 IT IS SO ORDERED.

4 Dated this 21st day of January, 2026.

5
6
7 
8 NATHAN TOD YOUNG
9 District Judge

10 Copies served by mail this 21st day of January, 2026, to:

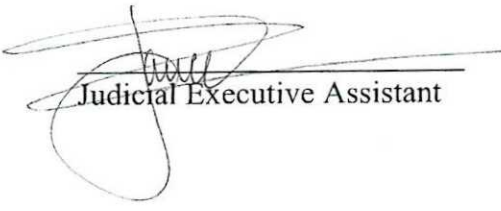
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