



OFFICIAL PUBLIC NOTICE / STATEMENT OF CLARIFICATION

FROM: The Village of Tularosa Planning and Zoning Commission

TO: The Village Council, Board of Trustees, and Residents of the Village of Tularosa

DATE: July 16, 2026

REGARDING: Jurisdictional Notification Responsibilities and Application Status for the Proposed Wireless Communications Facility (Cell Phone Tower)

The Planning and Zoning Commission issues this formal notice to clarify critical procedural inaccuracies and legal misinterpretations regarding the public hearing notification process for the proposed cell phone tower installation.

At the village meeting held on Wednesday July 15, 2026 the Village Council reversed preliminary approval of a cell phone tower installation finding that “there was inadequate notice of the Public Hearing at the Planning and Zoning level”.

Recent assertions suggesting that the Planning and Zoning Commission failed in its duty to notify residents are factually and legally incorrect.

The Commission establishes the following matters of record:

1. Statutory Responsibility for Public Notification

Per the codified laws of the Village of Tularosa, **the Planning and Zoning Commission has zero statutory responsibility or authority to issue public notices for this matter.** Under **Ordinance § 154.26** and **Ordinance § 154.39**, as outlined in Exhibit 1 below, the explicit legal jurisdiction to schedule, manage, and provide public notification for these specific public hearings rests solely and exclusively with the **Village Clerk and Council**.

Any assertion by the Village Council to reconsider or delay action based on a "lack of notice" by the Planning and Zoning Commission fundamentally misinterprets the village's own legislative framework. The responsibility to notify the public belongs to the Village alone.

2. Voluntary Community Outreach by Commission Membership

Despite the clear boundaries of municipal responsibility, Planning and Zoning Commissioner Virgil Johnson took it entirely upon himself to ensure community awareness. Acting as a dedicated public

servant, Commissioner Johnson personally conducted door-to-door outreach and distributed informational flyers to notify area residents of the upcoming public hearing. Commissioner Yates Unser also took it upon herself to post notices of the meeting on social media. It is highly contradictory for the Council to review this application under the guise of insufficient notice when members of this Commission went above and beyond their required duties to personally inform the neighborhood.

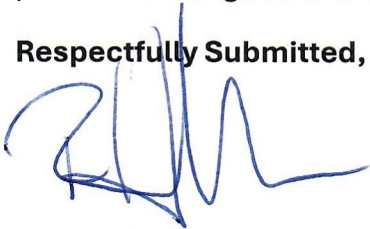
3. Clarification of Application Scope and Zoning Designation

Furthermore, the Commission wishes to correct ongoing misinformation regarding the nature of the application itself:

- **No Rezoning Requested:** The applicants have **not** applied for a Zoning Map Amendment or a rezoning of the property.
- **Special Use Permit:** The applicant submitted a formal request for a **Special Use Permit**, which is the lawful mechanism required to evaluate specific infrastructure uses.
- **Target Location:** The site of the proposed cell tower sits within a designated "**unknown zone**" on the current municipal maps. A Special Use Permit is precisely the correct administrative vehicle to address land use requests in areas lacking a definitive standard classification, without undergoing a permanent map rezoning.

The Planning and Zoning Commission has executed its duties transparently, lawfully, and in strict accordance with village ordinances. We expect the Village Council to uphold its own designated administrative responsibilities under Ordinances 154.26 and 154.39, rather than misattributing procedural obligations to this Commission.

Respectfully Submitted,



Rusty Helton

Vice Chair

The Village of Tularosa Planning and Zoning Commission

EXHIBIT 1

154.26 SPECIAL USES.

(A) The Board of Trustees, by special permit and subject to protective restrictions that are deemed necessary may authorize the location, extension or structural alteration of any of the following buildings or uses, or an increase in their height, in any district from which they are prohibited or limited by this chapter:

(1) A public hearing in relation thereto shall be held before the Board of Trustees, notice and publication of which hearing shall conform to the procedure for hearings on changes and amendments.

(2) The Board of Trustees shall study the effect of the proposed building or use upon the character of the neighborhood and upon traffic conditions, public utility facilities and other matters pertaining to the public health, public safety or general welfare. No final actions shall be taken by the Board upon any application for a proposed building or use until the regular meeting of the Board of Trustees, next succeeding the date of the public hearing, unless a majority of the Board present, excluding the Mayor, shall vote in favor or against the application. (Ord. 204, passed 5-20-2003)

'154.39 CHANGES AND AMENDMENTS.

(A) Initiation of change and procedures.

(1) The Board of Trustees may, from time to time, on its own motion or on petition, after public notice and hearing, amend the regulations and zoning districts herein established. If the owners of 20% or more of the area of the lots and land included in the area proposed to be changed by a zoning regulation or within 100 feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing a proposed change in a zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a three-fourths vote of all the members of the Board of Trustees.

(2) Notice of the time and place of the public hearing to be conducted in accordance with the Battershell Guidelines shall be published, at least 15 days prior to the date of hearing, in an official paper or a paper of general circulation, and whenever a change in zoning is proposed for an area of one block or less, notice to the public shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the County Assessor, or lots or land within the area proposed to be changed by a zoning regulation, and within 100 feet, excluding public rights-of-way, of the area proposed to be changed by a zoning regulation.

(3) Public participation will be in accordance with the Battershell procedures. These procedures are intended to protect the due process rights of all parties involved. Persons wishing to give testimony on

any item shall wait to be recognized, then go to the lectern, give their name and address, be sworn in and limit their comments to three minutes. A person may speak more than once provided they avoid being repetitive. Proponents shall speak first, followed by opponents.

(B) Fee. A fee of \$65 shall be charged for filing application for rezoning to defray publication and administrative costs.

(C) Application for rezoning. Where deemed necessary by the Board of Trustees, any future application for rezoning may be approved by the Board of Trustees subject to reasonable conditions regarding the future use of the property being rezoned. Thereafter, should the conditions not be complied with, the Board of Trustees shall have the right to revoke the rezoning permit and restore the zoning to its original classification; provided, however, that no revocation shall become effective until the owner of the property shall receive a written notice to appear before the Board of Trustees within 15 days from the time of the notice and be heard as to why such revocation should not forthwith be approved.

(D) Two-year limitations.

(1) Whenever a petition is filed requesting or proposing a change in an amendment of this chapter and the petition has been finally acted upon by the Board of Trustees in accordance with the above procedure or when the petition has received no action on the part of the Board of Trustees, or from the date of withdrawal of the petition; provided, however, that the petition has been officially advertised.

(2) The provisions of this section do not apply in cases when the Board of Trustees wishes to consider a comprehensive zoning revision of an area larger than 20 acres. (Am. Ord. 204, passed 5-14-2003; Am. Ord. 217, passed 12-20-2005)