



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Final Planning Commission

Friday, September 13, 2019

8:30 AM

Council Chambers

Special Hearing of the Planning Commission

1. Call to Order

- Present:** 7 - Commissioner Jim Raughton, Commissioner James McMurray, Commissioner Rhonda McDonald, Commissioner Alison Eubanks, Commissioner John Almy, Commissioner Marty Rickett and Commissioner Natalie Wilson
- Absent:** 2 - Vice Chair Scott Hente and Chair Reggie Graham

2. Closed Executive Session

[19-573](#)

In accord with City Charter Art. III, §3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. § 24-6-402(4)(b), the City Planning Commission, in Open Session, is to determine whether it will hold a Closed Executive Session. The issue to be discussed involves consultation with the City Attorney for the purpose of receiving legal advice on specific legal questions.

The Chair of the meeting shall poll the Commissioners, and, upon consent of two-thirds of the members present, may hold a Closed Executive Session. If consent to the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

Presenter:

Ben Bolinger, Senior Attorney, Office of the City Attorney

Motion by Commissioner Rickett, seconded by Commissioner Raughton, to approve a closed executive session in accord with City Charter Art. III, §3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. 24-6-402(4)(b), the City Planning Commission, in Open Session, is to determine whether it will hold a Closed Executive Session. The issue to be discussed involves consultation with the City Attorney for the purpose of receiving legal advice on specific legal questions.

The Chair of the meeting shall poll the Commissioners, and, upon consent of two-thirds of the members present, may hold a Closed Executive Session. If consent to the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner McDonald, Commissioner Eubanks, Commissioner Almy, Commissioner Rickett and Commissioner Wilson

Absent: 2 - Vice Chair Hente and Chair Graham

3. Communications

Peter Wysocki - Director of Planning and Community Development

4. CONSENT CALENDAR - None

5. UNFINISHED BUSINESS - None

6. NEW BUSINESS CALENDAR

6.A. [AR CM2 19-00124](#) An appeal of City Planning Commission’s denial of the Maizeland & Murray CMRS development plan to allow modification of an existing 99’-3” monopole tower located northeast of Constitution Avenue and Avondale Circle, and addressed as 2499 Avondale Drive.

(Quasi-Judicial)

Related Files: AR CM2 19-00124

Presenter:

Meggan Herington, Assistant Director, Planning and Community Development

Peter Wysocki, Director Planning and Community Development

Staff presentation:

Rachel Teixeira, City Planning, presented a PowerPoint with the scope and intent of this project.

Before the presentation, Ms. Teixeira provided the correct Figure 19 attachment since the one uploaded and online was incorrect.

City Attorney Ben Bolinger wanted it noted for the record that this commission does not regulate radio frequency (RF) emissions or the health or environmental effects of RF emissions.

Appellant Presentation:

Sally Maddocks presented a PowerPoint with the scope and intent of this project.

Applicant Presentation:

Jim Grice, with Bryan, Cave, Leighton, Paisner, Attorney for the applicant

Vertical Bridge, presented to the commission.

Questions:

Commissioner Raughton clarified that the existing tower was not being demolished and it is just being wrapped and will stand within the proposed tower. Ms. Teixeira said that was correct.

Commissioner Raughton asked if there was any discussion by staff with the applicant for architectural integration of the auxiliary structures. Ms. Teixeira said it was going to be a six-foot fence. Commissioner Raughton asked if there was a discussion about putting a roof on it. Ms. Teixeira said no, there would be no roof and would only be a closed structure the equipment is housed in. Commissioner Raughton asked if there was a discussion of landscape planning to buffer the site to make it more compatible with the neighbors. Ms. Teixeira said it was not discussed because the applicant did not want to touch any of the existing landscaping.

Commissioner Rickett asked if the 5-acre property was entirely owned by Mountain State. Ms. Teixeira said it is owned by the Mountain State, however, the appellant is only specifying the lease area, which is a little piece within the compound. Meggan Herington, Assistant Director of Planning and Community Development, added the El Paso County Assessor shows the entire acreage is owned by Mountain States Telephone and Telegraph Company.

Commissioner Rickett asked for clarification on some of the definitions and the different sections of code being used (i.e. pre-existing, legal nonconforming).

Commissioner Wilson asked if this was just wrapping around the existing structure, why does the site plan that was submitted use the word replacement on it. Ms. Teixeira said they are adding to the structure, as well as replacing some of the equipment within the compound to make it up to date to today's telecommunications equipment standards.

Commissioner Raughton asked Mr. Jim Grice to address the issue of whether the tower was abandoned as a use in 2013 as it was asserted. Commissioner Raughton used the example of an unused service station. If it is not in use, then it is abandoned and it would no longer be a legal non-conforming use.

Mr. Grice said this is where the federal law/local law interrelationship is really tough.

- Federal law says local laws are preempted with the 6409 modification
- Ultimate question is whether this is an existing tower or not
 - If it is an existing tower, the 6409 kicks in and the analysis is done and it's either yes or no

- Mr. Grice said Century Link has been invested in the site for almost 50 years
 - Century Link has maintained the property
 - Does not have Century Link intel but does know Century Link has had various customers there over time
 - There has never been a cease of usage for the utility side of the site in one form or fashion although it has moved over time
 - Because it is utility property, it should be looked at a little differently not only because of the federal law, but for other reasons
 - Mr. Grice deferred to staff on those fact patterns
 - Said there was no question that Century Link has had active use of the property for the whole time they've owned it

Commissioner Rickett asked about the use of the word hardening in the plans and how is this actually hardening the existing structure.

Mr. Grice said structural hardening has to do with the process by which you modify a tower, so as to increase its load factor and give it more rigidity and more ability to carry load.

Matt Grugan, Senior Project Manager with Vertical Bridge, further explained structural hardening:

- Reinforce the existing structure with modifications
 - In this case the reinforcement will be done by placing a sleeve around it
 - It will connect to the existing tower
 - There is an existing pole and existing foundation that will be expanded to fit the new wrap around it
 - The existing pole has a substantial foundation and strength to it

Commissioner Rickett asked if the structural hardening was shown in the submitted documents, and Mr. Grugan said it was an internal attachment but that the engineers could provide something if required.

Commissioner Rickett explained he has been in construction since 1984 and the concrete foundation that is being added around the existing one does not actually connect, but sits on top. Commissioner Rickett said he did not see anything in the information that was submitted.

John Hieberger, Kimley-Horn and Associates, Civil Engineer, addressed the structural hardening by pointing out a structural analysis report that was submitted as part of the public record that shows drawings depicting the sleeve

going over the existing tower to provide structural hardening and a concrete foundation that will be poured and connected around the existing foundation.

Mr. Hieberger also clarified that admittedly there are a couple of statements on the approved drawings that use the word "replace" and said the word was an error and it was never intended that the tower be torn down or completely replaced. It had always been intended and been communicated to staff and the public in the neighborhood meetings that the existing tower would remain as is and it would simply be modified with the sleeve going over the top of it and the improvements to the foundation.

Commissioner Rickett reiterated that he did not see that the new foundation is actually attached to the old foundation and that it is sitting independent of that foundation. Mr. Hieberger clarified that the drawings that were submitted and approved as part of the entitlement process are not the drawings from which the tower will be constructed. Mr. Hieberger said there was still a process underway with city staff and the Pikes Peak Regional Building Department to get construction drawings approved. Items such as the exact technical aspects of the concrete foundation tying into the existing foundation will be detailed on the construction drawings.

Mr. Hieberger went on to explain the structural hardening would be achieved by attaching both the steel sleeve to the steel tower and by attaching the proposed concrete encasement to the existing concrete.

Mr. Grice and Mr. Hieberger stated for the record that the project is following the standard process that requires the entitlement documents and the zoning documents, which have been approved by staff. The next step in the process, which is still ongoing, requires construction level drawings which are both on the civil side of things but also on the mechanical and structural side of things through the building department.

Commissioner Almy asked whether the tower was dormant or not, and wanted clarification on the difference between a utility tower versus a cell tower. Commissioner Almy clarified if there are applications out for licensing for the tower that would reset the bar. Mr. Grice explained that ongoing licensure for the tower is the natural business operations for a tower and agreed with Commissioner Almy. Mr. Grice said as it relates to the cell tower provisions versus the general legal nonconforming use, the utility infrastructure is exempt from cell tower regulation.

Commissioner Almy asked if there was a new lease developed and approved for the tower. Mr. Grice said it was more of a master services agreement. Mr. Grice said there was no a recorded lease as such but a contractual relationship

to collaborate on enhancement or redeployment of the infrastructure that is there.

Mr. Matt Grugan clarified for Commissioner Almy that there is a master services agreement with Century Link on this property, among others nationwide. Mr. Grugan said that the drawings that are done typically outline an existing fence area as a "leased area", but there is no lease that Vertical Bridge has on this property. It is a service agreement that is managed on their behalf. Part of that agreement includes trying to utilize existing infrastructure for colocation opportunities to get wireless carriers on there.

Commissioner McMurray clarified that a master services agreement does not define a geographical area. Mr. Grugan said it does not, that it defines the entire property.

Commissioner Raughton asked if Vertical Bridge has any responsibility in the master services agreement for creating transitions to the adjacent uses (i.e. architectural integration, buffers, and landscaping). Mr. Grugan said that yes they do if and when it is necessary. Mr. Grugan also said they make sure what they are doing is complying not only with code, but with federal law as well.

Commissioner Eubanks asked for clarification on if the tower had been used since 2013 and who had been using it. Mr. Grugan said the Vertical Bridge master services agreement was executed after 2013, so he could not answer if it had been in use or not. Mr. Grugan said from the wireless standpoint, there has been no active wireless activity on there. From a Century Link standpoint, Mr. Grugan said he could not answer that.

Supporters of the Appellant:

Doug Clark, neighborhood resident

- Concerned about cell tower radiation
- 3 facts to bear in mind
 - This is not a cell tower but a non-functioning abandoned pole
 - Vertical Bridge is premature in claiming they have a non-functioning variance on this project. This is a discontinued abandoned piece of property and according to code if it is abandoned more than six months the variance is no good
 - They are building a new tower on a residentially zoned property and as such must apply for new conditional use status

Keith Satterfield, neighborhood resident

- Believed this is a substantial change because the project involves excavation and deployment beyond the current site in the form of a concrete pad, equipment shelter and a new fence

- Respectfully requested to deny the project

Jasmina Moore, neighborhood resident

- Shared statistics regarding suicide
- New cell tower will damage quality of life
- People will sell their homes at a loss and move
- Will keep her indoors to avoid radiation

Eric Underhill, neighborhood resident, member of Bluffs HOA

- City code indicates this tower has lost its legal nonconforming use status
- If a nonconforming use located on any land or any structures is discontinued or its normal operation has stopped for a continuous period of time then that land or structure must conform to all use regulations in a zone district in which it is located
- Without legal nonconforming use, this project cannot be approved

Richard Guarriello, neighborhood resident

- This development violates the guidance as written
- Concerned about the RF exposure to the neighborhood residents
- Concerned about people who use the Homestead Trail which is approximately 140 feet from the current tower
- Will adversely affect our neighborhood quality of life

Commissioner Rhonda McDonald reiterated to the audience that RF frequencies are not something that the commission could take into consideration.

Teresa Warniment, neighborhood resident

- Strongly oppose the new tower project
- As a citizen of Colorado Springs has a reasonable expectation to be protected by city code

Scott Noeldner, neighborhood resident

- Clear that this tower does not have legal nonconforming use
- Table contained in Section 7.4.603 indicates a nonstealth freestanding facility must have conditional use for R-6000 zone property
- Three commissioners asked the question regarding the conditional use of the tower and three times the answer was evaded. Three times it was asked if the tower has been used in 12 months and there was no answer
- Vertical Bridge said as long as they have had the property, it has not

been used

- Citizen have a reasonable expectation to be protected by city code

Bruce Feldmeyer, neighborhood resident

- Did an analysis of the neighborhood and 61.1% opposed the tower
- The proposed sleeve won't make the tower more stable than it already is

Lynne Stefonik, neighborhood resident

- Strongly oppose the new tower project because it changes the way the neighborhood is
- This is a nonconforming use and this is zoned for residential
- This is a substantial change
- Request to deny this development

Jeremiah Johnson, neighborhood resident, Bluffs HOA

- Concerned about unethical behavior of Vertical Bridge with respect to the number of antennas that will be mounted on the tower
- Asked to deny the tower because of a reasonable expectation to be protected by city code

Shellie Underhill, neighborhood resident

- Concerned with the unethical behavior of Vertical Bridge with respect to the declaration that this is simply a modification to an existing monopole tower
- Was brought up several times that this modification is not a new tower and that they were trying to develop the tower as legal nonconforming use
- The standing monopole tower has lost its legal nonconforming use standards
- The wrap will not touch the existing structures at all, but Vertical Bridge is saying it will now
- Pages describing the current structure there are the words 99 feet and three inches monopole tower to be replaced

Andrew Gilbert, neighborhood resident

- Concerned for the neighborhood and the way the neighborhood interacts with one another
- Wants the tower to be taken down

William Mager, neighborhood resident, member of Bluffs HOA

- Feels like this will be a negative impact on the neighborhood
- Oppose the tower

- Expect the commission to protect the neighborhood by the city code

Andy Braunstein, neighborhood resident

- Represent the horseback riders who ride up the easement
- Intent of the law is to protect the people, protect our aesthetic, protect our neighborhood, protect our health

Barbara Reinhard, neighborhood resident

- Many of the neighbors feel frustrated going through this process
- Concerns have been minimized
- Lack of attention to detail and accuracy
- Postcard did not mention the increase of the base
- Several inaccuracies with the whole process

Allison Goodspeed, neighborhood resident

- Clear the tower does not have legal nonconforming use
- Against the express language of city code
- As a citizen of Colorado Springs, has a reasonable expectation to be protected by city code

Nate Hathaway, neighborhood resident

- Concerned about real estate prices
- Concerned about health issues
- Oppose the tower

Art Brumer, neighborhood resident

- Opposes the project for no other reason than it is not right
- Tower should not be there at all

John Stefonik, neighborhood resident

- Agreed with all others in opposing the project

Opponents:

Questions of Staff:

Rebuttal:

Appellant Rebuttal:

Sally Maddocks

- Ms. Maddocks pointed out on a printout that the new concrete and the

bolts that hold the new structure do not pierce the old concrete

- From the plans that have been submitted, there is nothing existing that will support weight
- Applicant has not satisfied the criteria established by the city to erect a tower on residential property
- They do not have a conditional use
- Applicants did not deny the lack of use
- Applicant has not given accurate documents
- The existing poles loss of legal nonconforming use - applicant does not deny this
- Lost conditional use; this is a new structure
- Project qualifies as a substantial change
- Does not accept the argument that they have access to the full five acre parcel, and they have exceeded the leased area
- A substantial change means the commission can deny this project
- This was not a cell tower in 1972, nor was it 99 feet 3 inches tall
- This is substantial change because it entails excavation and deployment outside the current site
- Too many inaccuracies
- City just learned the tower was dormant

Commissioner McMurray wanted clarification on the four criteria for substantial modification.

Applicant Rebuttal:

Jim Grice

- Vertical Bridge has access to all 5 acres, and that is the site for purposes of this analysis because there is access to it
- This is a 6409 modification. It is not a new tower
- Federal law preempts local laws and setbacks
- This is a utility infrastructure because it is owned by a regulated telephone utility
- CMRS code does not apply to utility infrastructure
- There has been no evidence to suggest that the site was abandoned
- There is no generator and there will be no noise issue

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Ms. Teixeira clarified that the site plan approved by the planning department is not a detailed, high-level document. The technical details are provided in the building permit stage.

Commissioner McMurray asked what the city's finding was on the issue of dormancy and abandonment in the terms of the nonconforming use. Ms. Teixeira said the structures there are preexisting nonconforming per the FCC, however per the zoning code, they may not meet the requirements of nonconformity.

Commissioner Raughton said it appeared to him that the use of the tower was abandoned in 2013. Commissioner Raughton said he will be supporting this appeal of the administrative decision.

Commissioner Rickett said based on the information provided and what has been submitted, he did not see that this was actually hardening the structure, but building a foundation over the existing foundation that is independent, and that the tower itself is independent over the existing tower. Commissioner Rickett said it does not meet that second criteria of the four, that being the appendage criteria, and will be voting in support of the appeal.

Commissioner Eubanks said based on evidence, the tower did not seem to be in use for several years. In addition, the site plan in Figure 17 approved by city planning in 2006 indicated the site is not the five acre site, but the smaller site and therefore would not meet the four prong test, and for that reason Commission Eubanks will be voting in favor of the appeal.

Commissioner McMurray asked City Attorney Ben Bolinger how the discontinuance or abandonment of legal nonconforming conditional use intersects with the FCC regulation. Mr. Bolinger pointed out Figure 19, CFR Section 1.6100 (B) (5) of the definition of existing because you can only modify existing tower. In FCC report 14-153 addresses provisions of how to handle a nonconforming structure. In paragraph 201 of that report says legal nonconforming structures should be available for modification. Mr. Bolinger said from the testimony given, it is up to the commission to decide if it is a legal nonconforming structure or just an illegal structure and whether that influences the decision of whether it is an existing tower.

Commissioner McMurray said based on the testimony he believed that the application meets the substantial criteria as outlined in the FCC regulations for height, width, and excavation. Commissioner McMurray believed the master services agreement applies to the entire site, however, he believed that the tower has been discontinued and abandoned as a legal nonconforming use and therefore this is not a valid application. Commissioner McMurray said he will be voting in support of the appellant.

Commissioner Almy said there is a conflict between federal regulation and local ordinance, and federal regulation should overpower or should take precedence

over local ordinance, but it is confusing, mainly because the arguments to some degree on both sides have been impaired by a lack of accuracy. Commissioner Almy said primarily from the lack of accuracy and solid story on the applicant's standpoint, he will be voting in favor of the appellant.

Commissioner McDonald agreed with Commissioner Almy that there have been a lot of inaccuracies given on both sides. Commissioner McDonald said there just was not enough information to definitively decide who had the correct information. Commissioner McDonald believed that the five acre site is not owned by Vertical Bridge, so the activity of the site is really unknown. Commissioner McDonald believed the site is a utility site, but does not know if there is a master agreement or a lease agreement. Is there a specific area? Has the tower been used? There is just a lack of information and Commissioner McDonald said she would be in support of the appeal.

Motion by Commissioner Raughton, seconded by Commissioner Eubanks, to deny the application due to the findings that the project does not meet the federal regulations found in 47 CFR 1.6100.

The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner McDonald, Commissioner Eubanks, Commissioner Almy, Commissioner Rickett and Commissioner Wilson

Absent: 2 - Vice Chair Hente and Chair Graham

Motion by Commissioner McMurray, seconded by Commissioner Raughton, to uphold the appeal and deny the staff administrative approval of the CMRS development plan for Maizeland & Murray, based upon the findings that the appellant met the appeal criteria in City Code Section 7.5.906.A.4, and that the CMRS project does comply with the development plan review criteria in City Code Section 7.5.502.E., and the CMRS location and design criteria as set forth in City Code Sections 7.4.607 and 7.4.608.

The motion passed by a vote of 7:0:2:0

Aye: 7 - Commissioner Raughton, Commissioner McMurray, Commissioner McDonald, Commissioner Eubanks, Commissioner Almy, Commissioner Rickett and Commissioner Wilson

Absent: 2 - Vice Chair Hente and Chair Graham

7. Presentations/Updates

7.A. [CPC MP 92-227-A1MJ](#) A resolution adopting HistoricCOS as the City of Colorado Springs Historic Preservation Plan.

[17](#)

(LEGISLATIVE)

Presenter:

Peter Wysocki, Director, Planning and Community Development

Daniel Sexton, Principal Planner, Planning & Community Development

8. Adjourn