

CITY PLANNING COMMISSION AGENDA
April 18, 2019

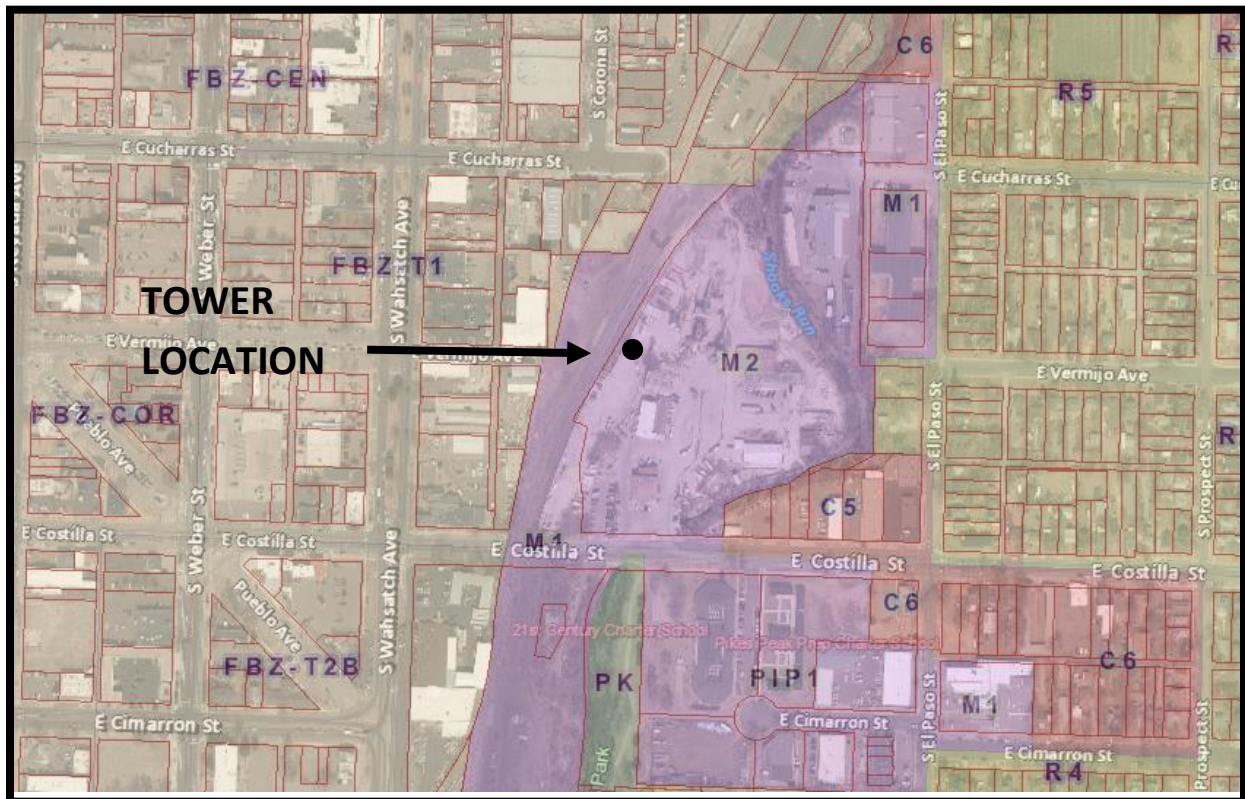
STAFF: RACHEL TEIXEIRA

FILE NO:
AR CM2 18-00636 – QUASI-JUDICIAL

PROJECT: APPEAL OF THE DENIAL OF PLACEMENT FOR US-CO-5068 CMRS CELLULAR TOWER

APPLICANT/OWNER: ATFAB WIRELESS PROPERTIES/TRANSIT MIX CONCRETE COMPANY

CONSULTANT REPRESENTATIVE: SPARKS WILLSON BORGES BRANDT & JOHNSON, P.C.



PROJECT SUMMARY

1. Project Description: This project is an appeal of an administratively denied CMRS development plan (**FIGURE 1**) for the installation of an 80-foot monopine tower with equipment shelter located at 444 East Costilla Street.

The project was appealed by the applicant on March 18, 2019. The applicant disagreed with Staff's decision that the administrative decision is against the express language of the City's ordinances, against the express intent of the City's ordinances, unreasonable, erroneous, and clearly contrary to law. These are based on the following reasons: Applicable federal law, shot-clock violation, building mounted versus stealth structures, concealment and camouflage CMRS facility, architecturally compatible, master plan, and benefits and adverse impacts created by the administrative decision. (**FIGURE 2**)

2. Applicant's Project Statement: (Refer to **FIGURE 3**)

3. Planning and Development Team's Recommendation: Staff recommends denial of the appeal, thus upholding the administrative denial action.

BACKGROUND

1. Site Address: 444 East Costilla Street
2. Existing Zoning/Land Use: M2/CR/SS (Heavy Industrial with conditions of record and Streamside Overlay)/Transit Mix Concrete Company site
3. Surrounding Zoning/Land Use:
North: M1, FBZ-T1 & C6/Warehouse/Storage, Offices & Commercial
West: FBZ-T1 & M1/Commercial, Service Garage, Offices, and Railroad Tracks
East: C5, M1 & R2/Warehouse, Offices, & Single-Family Residential
South (of East Costilla Street): PK, M1 & PIP-1/Educational Institution, Vacant Commercial & Warehouse/Storage
4. Annexation: Town of Colorado Springs, September 1872
5. Master Plan: Envision Shooks Run Facilities Master Plan and Downtown Experience Master Plan
6. Subdivision: Transmix Subdivision Filing No. 2 and Town of Colorado Springs Addition #1
7. Zoning Enforcement Action: None
8. Physical Characteristics: The 12.8 acre property is the location of the Transit Mix Building Supply Company. The site is relatively flat. There is an extreme grade change along the western side of the lot and a large retaining wall.

STAKEHOLDER PROCESS AND INVOLVEMENT

City Planning Staff noticed 234 property owners within a 1,000 foot buffer distance. Five e-mails were received in response to the postcard mailing and the property posting. Four of those e-mails stated their opposition to the proposal. **(FIGURE 4)** Those comments in opposition to the cellular tower include proposing a better location and improved design for the 80-foot monopine facility.

Revised site plans and project statements were provided to those neighbors who e-mailed comments. No written comments were provided based on the plan. **(FIGURE 5)** An additional letter was received in opposition to the CMRS project after the comment review deadline and is attached as **(FIGURE 6)**.

Staff sent the plans to the standard internal reviewing agencies for comments. Those commenting agencies included Colorado Springs Utilities, Traffic Engineering, City Engineering Development Review, Water Resources Engineering, and Urban Planning. All agency comments have been addressed for this project, except for Urban Planning's comments. **(FIGURE 7)** The outstanding comments from Urban Planning are the monopine's location, height, and the lack of compatibility within the existing, adjacent surroundings of the property.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE

1. Review Criteria/Design & Development Issues

Background

The CMRS development plan request illustrates the installation of an 80-foot monopine tower structure with ground equipment located at 444 East Costilla Street. The total lease area is 30' x 67' or a total of 2,010 square feet, and only 1,040 square feet of this area (26' x 40') is for the enclosed equipment shelter. The equipment shelter is to be a 7-foot high chain-link fence and inside the shelter will be the tower, and its associated equipment.

The cellular tower structure with the ground equipment is situated approximately 475 feet away from the East Costilla street frontage. The freestanding CMRS facility meets the front and rear yard setbacks. There is no side yard setback in the M2 zone district. The M2 zoned property has a

maximum building height of 80 feet. The CMRS facility is designed as a monopine that meets that 80-foot height maximum for the zone district.

This CMRS project went through three rounds of staff review; and the second review took longer than the standard two-weeks in order to accommodate the needs of a concerned stakeholder. City Planning Staff provided additional time to allow the concerned property owner to provide a letter of opposition. **(FIGURE 6)** The concerned property owner requested the applicant to consider exploring alternative sites and options that would be better for the future of Downtown. This letter was provided to City Planning Staff on January 28, 2019. City Planning Staff forwarded the review letter along with the attached letter in opposition to the applicant. **(FIGURE 7)** The applicant did not provide a written response to the letter of opposition, nor to the outstanding comments from Urban Planning.

The FCC adopted “shot clocks” that establish time-frames to provide certainty and encourage efficient review by State and Local governments. The rules preserve local governments’ authority to adopt and apply, the zoning, safety, and concealment requirements that are appropriate for their communities. City Planning Staff forwarded the last review letter, dated January 28, 2019, to the applicant, and no written response to was submitted to the City. It wasn’t until the applicant’s representative notified the City that the shot clock would soon expire on March 4, 2019, that the City made a decision to deny the CMRS application on March 7, 2019. The applicant provided the City additional time to make a decision on the CMRS application.

The project was administratively denied by City Planning Staff **(FIGURE 8)** based on the specific following findings per Sections 7.4.607.A.1 and 7.4.607.A.3, Site Selection for CMRS Facilities, Sections 7.4.608.B, and 7.4.608.B.3, Stealth Freestanding Facilities – Design Criteria and Construction Standards, and Section 7.5.502.E.2, Development Plan Review Criteria, of the City’s Zoning Code. **(FIGURES 9 & 10)**.

The applicant failed to provide adequate documentation or evidence to City Planning Staff that addresses the required Sections of the Zoning Code. As such, staff found the following sections of Code not met and thus denied the request:

Section 7.4.607, site selection – carriers shall consider the following types of sites as they select specific locations for CMRS facilities on existing structures such as buildings, water tanks, existing towers, signs, etc. The applicant did not discuss any other options except for the installation of an 80-foot monopine cellular facility. **(FIGURE 3)**

Section 7.4.607.A.3 - This Section requires applicants to consider locations where the existing topography, vegetation, buildings or other structures provide the greatest screening potential. The proposed location of the cellular facility is located at the highest point of the property in close proximity to an existing 5-story office tower (with the pyramid shaped tower top). The photo simulations illustrate that the tower is significantly shorter than the office building. **(PAGE 11 OF FIGURE 2)** This is an inaccurate representation with the tree’s height and scale relative to the surrounding vegetation and structures.

Sections 7.4.608.B.1 and 7.4.608.B.3 - The first Section pertains to CMRS facilities that are designed to substantially conceal and camouflage the antennas and equipment. The other Section requires facilities to be architecturally compatible with the adjacent buildings and land uses and integrated through design, material, color, and location to blend in with the existing characteristics of the site to the maximum extent possible. Staff found that the applicant does not consider that the monopine design and the location of the facility should be architecturally and visually compatible with the surrounding area. The proposed location and design of the CMRS facility are disconnected from the context of the area. The height and scale of the CMRS tower structure along with the location is at the highest part of the site. The tower structure will be very conspicuous and intrude into the public view from both the east and west.

Section 7.5.502.E, development plan review criteria - States that no development plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of the zoning code, and is compatible with the land uses surrounding the site. This CMRS proposal doesn't meet part two of the development plan review criteria. This section of the development plan criterion states that the development plan substantially comply with any City-adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, urban renewal plans, or design manuals. The site is subject to the Envision Shooks Run Facilities Master Plan. **(FIGURE 13)** The project location obstructs the proposed extension of the Vermijo Avenue, which illustrates as the future extension of Vermijo Avenue eastward towards the creek terminating in an "urban space entry" feature.

Again, the project statement **(FIGURES 2 & 5)** submitted by the applicant does not provide adequate justification, and does not address whether the use of existing structures is not technically or legally feasible. In addition, the proposed location has no provision with the greatest screening potential for the 80-ft. monopine cellular tower as proposed.

Review of the Appeal

The appeal filed by the Applicant, Vertical Bridge Holdings LLC/Vertical Bridge Development, LLC. **(FIGURE 2)** states that the appeal criteria are met because the decision by the City Planning Staff was against the express language and intent of the City's ordinances, unreasonable, erroneous, and clearly contrary to law. The following reasons stated in the appeal letter are due to: the Federal Telecommunications Act of 1996, shot-clock violation, building mounted versus stealth structures, concealment and camouflage, architectural compatible, master plan, PlanCOS, and benefits and adverse impacts.

The applicant states that the 'Telecommunications Act of 1996' limits the decision-making authority of local government bodies regarding the placement of wireless communications facilities. Restrictions are in place regulating the placement, construction, and modification of telecommunications facilities. The applicant states that the one restriction that has the most bearing on this appeal is the requirement that the decision by a local government shall be in writing and supported by substantial evidence. In addition, the applicant argues that none of the bases for the denial in the decision of the CMRS project are supported by substantial evidence contained in the decision of the tower project.

City Planning Staff provided color photo simulations as part of the denial letter that provides justification to deny the application. These photos were submitted by the applicant to provide the City a clear view of what the tower would look like in the neighborhood. These color photos are located in **Figure 8 on pages 9 and 10**. This area is not at the best location for the cellular tower, and it would be an adverse impact to the area. The site is at the top of the Transit Mix site adjacent to the retaining wall. The color photos with the 80-foot monopine cellular tower are misleading and not to scale. The monopine design and location are not compatible to the existing surroundings.

The applicant discusses the shot-clock violation in the appeal statement. There are 150 days for jurisdictions to act on new site wireless facility applications per the Federal Communications Act (FCC). The applicant voluntarily notified the City that the shot clock would soon expire on March 4, 2019, and also offered to enter into a tolling agreement to give City additional time to make a decision on the CMRS application. The application was denied by the City on March 7, 2019. Note that the violation of the shot-clock is not part of the City of Colorado Springs' Zoning Code criteria.

The applicant states in their appeal letter that there is no relevant City Code provision, that the CMRS application form does not require the applicant to provide any evidence for building mounted versus stealth mounted, and also the failure to provide such evidence cannot be a basis for denying the CMRS application. The Planning Staff notes that there's no justification provided by the applicant to justify approving the 80-foot monopine cell tower project without a clear, written explanation of other options being pursued including, the use of CMRS facilities on existing structures, such as buildings, water tanks, existing towers, signs, etc. per Code Section 7.4.607.A.1.

In addition, the applicant didn't provide justification in the project statement for required coverage service and any vicinity map exhibits to illustrate areas considered for the cellular tower. **(FIGURE 3)** Staff can't support the CMRS in a location where it does not meet the Code Section 7.4.607.A.3: "In locations where existing topography, vegetation, buildings or other structures provide the greatest screening potential." Other options need to be considered as noted under Code Section 7.4.607.A.1. Carriers shall consider the following types of sites as they select specific locations for CMRS facilities. "On existing structures such as buildings, water tanks, existing towers, etc."

The applicant believes that the CMRS tower is concealed and camouflaged enough based on submitted figures. **(FIGURE 2)** City Planning Staff states that the tower is too tall for the proposed location and that it will be very visible in all directions. There are better site alternatives and other design options that were not considered by the applicant.

Staff stated that proposed facility is not architecturally compatible with the surrounding neighborhood. The photos submitted by the applicant are misleading and the height of the tower is not compatible with the surrounding area. The existing trees may not remain due to old age and due to the removal by the property owner or future development plans with trees and vegetation removed and new landscaping installed. Once cellular towers are installed, they are rarely discontinued with the removal of the tower and associated equipment from the site.

The last reason the CMRS application request was denied pertains to the Master Plan for the site; Envision Shooks Run Facilities (ESFMP). City Code Section 7.5.502.E states that the application must comply with any City adopted plans that are applicable to the site, such as master plans. The plan illustrates the future extension of Vermijo Avenue eastward towards the creek terminating in an 'urban space entry' feature. The proposed site of the CMRS facility obstructs the proposed extension of Vermijo Avenue. The proposed CMRS facility does not substantially comply with the Envision Shooks Run Facilities Master Plan.

The applicant states in the appeal statement that this is a taking of a property. Staff finds that this CMRS project is not a taking of a property, but a need to find another location on the site or revisit the proposal. The 80-foot monopine cellular tower's design and location are incompatible to the existing surroundings. Furthermore, the property can continue to be operated by Transit Mix, and in fact, the future redevelopment of the property is encouraged. Staff also suggested to the applicant that moving the proposed CMRS as little as 50 feet to the south or north would satisfy this criterion. Therefore, staff does understand how a takings claim can be implied.

The applicant refers to PlanCOS, the City's comprehensive plan adopted in January 2019. Staff agrees with the applicant's reference to the Thriving Economy theme with all the goals and policies to attract businesses for the community. PlanCOS does support cell towers and infrastructure. However, the PlanCOS has two additional themes that the CMRS project does not align with the City's vision, Unique Places, and Vibrant Neighborhoods. City Planning Staff has provided a further explanation of these visions under 'Conformance with PlanCOS' as noted below.

The Envision Shooks Run Facilities Master Plan should not be ignored. The denied and appealed CMRS application and plans for the 80-foot monopine tower should be acted on carefully, in that the project does not meet the three sections of the Zoning Code based on the specific following findings per Sections 7.4.607.A.1 and 7.4.607.A.3, Site Selection for CMRS Facilities, Sections 7.4.608.B, and 7.4.608.B.3, Stealth Freestanding Facilities – Design Criteria and Construction Standards, and Section 7.5.502.E.2, Development Plan Review Criteria, of the City's Zoning Code. **(FIGURES 9 & 10)**

The project request with the application and other written documents do not satisfy the applicable review criteria. Again, cellular towers once installed are rarely, discontinued with the removal of the tower and associated equipment from the site. This appeal request must be denied and uphold Staff's denial.

2. Conformance with PlanCOS

PlanCOS, the City's adopted Comprehensive Plan, is a high level and visionary document as a theme based approach to alignment of development intentions for the City. The CMRS development plan application does not appear to be consistent with the envisioned land use patterns for the subject parcel as it relates to several themes in PlanCOS. Two of six themes are especially pertinent to this project, Unique Places, and Vibrant Neighborhoods, **(FIGURE 11)** and the proposal does not align with the City's vision of, "We will build a great city that matches our scenery."

Vibrant Neighborhoods

The Vibrant Neighborhoods Chapter of PlanCOS identifies the associated area for development as Downtown within the Vision Map. The Plan's first goal of Vibrant Neighborhoods (VN-1), "Increase neighborhood identity, inclusion, and participation throughout the city for residents, employees, and visitors". This proposal does not increase the impacted neighborhood's identity. In addition, the cell tower proposal did not engage and strategize with the neighborhood or with those affected property owners during the development review process. This site is located in Downtown within a diverse neighborhood comprising of single-family residential, warehouse, retail, institutional, and offices. However, the project does not support the unique and innovative community design elements that encourage the existing neighborhood plans and initiatives that reflect the downtown neighborhood identity. PlanCOS also indicates reinvestment in order to create community, vibrancy, and address the community's specific vision and needs (Goal VN-3), which this proposal does not satisfy.

Unique Places

PlanCOS lists ten common desired elements for Unique Places, such as "a uniquely identifiable character and design that reinforces a sense of identity, focus and place". This Transit Mix site proposal is recommended to meet these common desired elements. The site is identified with Typology 6: Downtown, which is truly unique in terms of role, proximity, mix of uses, and high density. Listed under Typology 6: Downtown, there are several recommendations listed, including "High Quality Walkable Destinations" and "Lead in Innovative Urban Design". This proposal does not meet these recommendations as it fails to compliment other supported plans that are in alignment with PlanCOS, the Experience Downtown and Envision Shooks Run Facilities Master Plan (ESFMP).

Thriving Economy

The appeal references PlanCOS's Thriving Economy chapter to justify and support the approval of this application. While these references to PlanCOS are applauded, they should not be taken out of context. PlanCOS lays out the importance of developing the local economy with infrastructure improvements that attract and retain businesses. However, under no circumstances does PlanCOS dictate *how* development plans for cell site towers are reviewed nor should it be assumed that they be automatically approved. Rather, PlanCOS should serve as a discussion point from which further plans, process, and deliberation occur to help further inform decision-making.

Plan Alignment

The appeal expresses that PlanCOS be considered in the event of a discrepancy when one occurs with other planning documents. However, this should not lead to an assumption that a hierarchical position of priority exist where PlanCOS overrides other plans. PlanCOS is intentionally the guiding vision for the City of Colorado Springs, and is also intentionally meant to *align* with existing and future plans. In this proposal, other planning documents such as the Experience Downtown and ESFMP still act as agents to fill in the gaps of details and consistency.

Therefore, a proposal's consistency with one chapter, Thriving Economy, or with PlanCOS should not be seen as an over-riding consideration of site specifics or prior planning document precedence and direction.

Experience Downtown

The cell tower project does not achieve the City's vision for Experience Downtown. **(FIGURE 12)** The vision for this site to focus on planning efforts to assess the site's integration into the Downtown fabric, its impact on access to the Legacy Loop, close in neighborhoods such as Hillside, and

connections to Catalyst Campus and other catalytic sites on the east side of Downtown. Again, the proposal does not address the potential, future development opportunities as stated in the Experience Downtown Master Plan.

City Planning Staff finds that the Wahsatch Ave Transit Mix CMRS Cellular Tower is not in substantial compliance with PlanCOS Plan based on the Vibrant Neighborhoods and Unique Places themes. The project does not support the need to integrate with the future development of the site as identified within the Experience Downtown Master Plan.

3. Conformance with the Area's Master Plan

The master plan for this site is Envision Shooks Run Facilities Master Plan (ESFMP). **(FIGURE 13)** The property falls within the Urban Waterway Segment as shown in **Figure 13**. The plan illustrates the future extension of Vermijo Avenue eastward towards the creek terminating in an 'urban space entry' feature. The proposed site of the CMRS facility obstructs the proposed extension of Vermijo Avenue. The proposed CMRS facility does not substantially comply with the Envision Shooks Run Facilities Master Plan.

STAFF RECOMMENDATION:

CPC CM1 18-00105 – CMRS CONDITIONAL USE

Deny the appeal and uphold the staff denial of the CMRS development plan for the Wahsatch Ave Transit Mix US-CO-5068, based upon the findings that the appellant did not meet the review criteria in City Code Section 7.5.906.A.4, that the appellant did not 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.