

CITY PLANNING COMMISSION AGENDA
September 13, 2019

STAFF: RACHEL TEIXEIRA

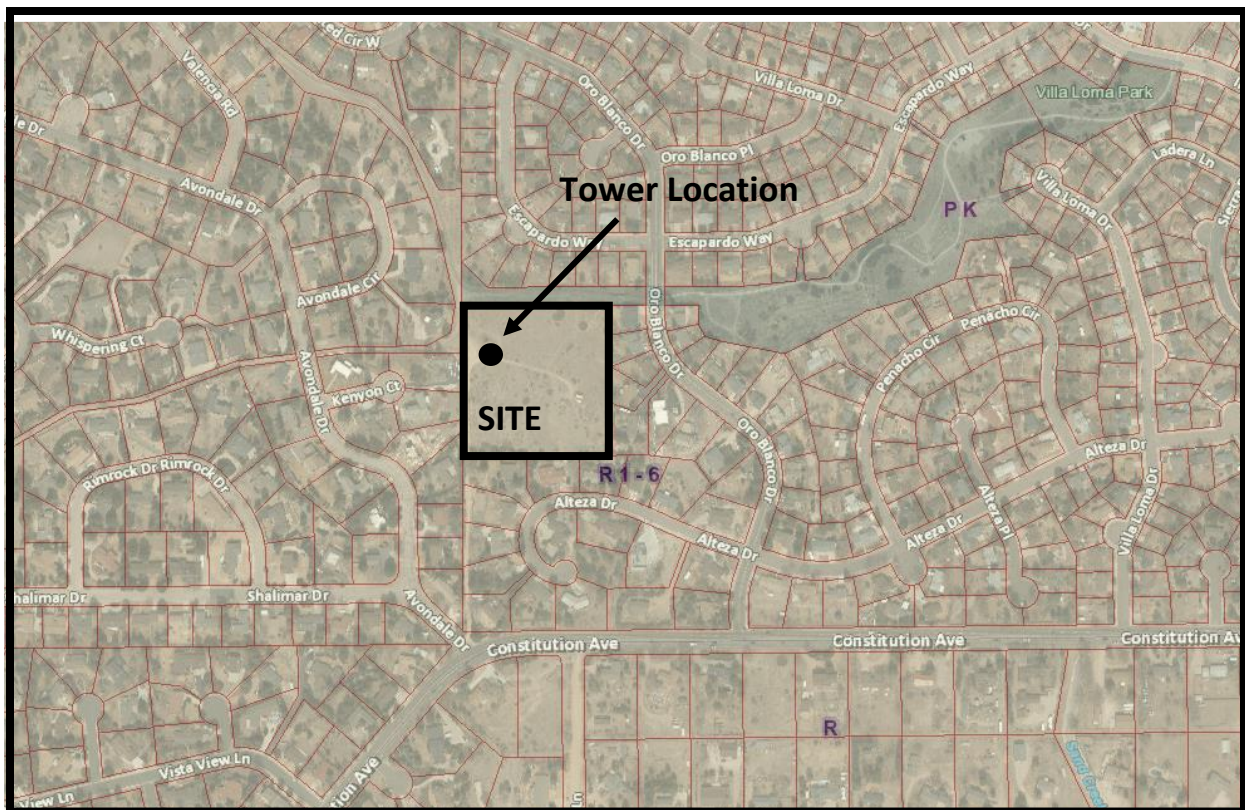
FILE NO:
AR CM2 19-00124 – QUASI-JUDICIAL

PROJECT: APPEAL OF THE APPROVAL FOR COL02266 MAIZELAND & MURRAY CMRS CELLULAR TOWER

APPLICANT/OWNER: MOUNTAIN STATES TELEPHONE & TELEGRAPH CO.

CONSULTANT REPRESENTATIVE: VERTICAL BRIDGE

APPEALANT: SALLY MADDOCKS



PROJECT SUMMARY

1. Project Description: The project is an appeal of an administratively approved CMRS development plan (**FIGURE 1**) for the modification of the existing 99'-3" monopole tower to bring the tower structure up-to-code and to be structurally safe. The applicant intends to wrap the existing tower with new steel and pour additional concrete on top of the existing base to create a sturdy foundation for the addition tower steel.

The height of the tower will not increase; however, the dimension will change from the existing width dimension of 5'-9" to a new width dimension of 10'-0". The color of the tower will remain the same gray steel color as the existing monopole tower. The elevation plans illustrate two

additional antennas to be added to the monopole tower for co-location along with the existing antennas located approximately 93 feet off of the ground. The CMRS facility is located on a portion of a 5.01 acre lot northeast of Constitution Avenue and Avondale Circle.

The project was appealed by Sally Maddocks, property owner of 4807 Avondale Circle, on July 29, 2019. The appellant disagrees with staff's decision to approve the CMRS development plan, and that the administrative decision is against the intent of the Federal Law, Federal Regulation and the Colorado Springs City Code. **(FIGURE 2)**

2. Applicant's Project Statement: **(Refer to FIGURES 3 AND 6)**
3. Planning and Development Team's Recommendation: Staff recommends denial of the appeal, thus upholding the administrative approval action.

BACKGROUND

1. Site Address: 0 36-13-66 (Northeast of Constitution Avenue and Avondale Circle)
2. Existing Zoning/Land Use: R-1 6000/AO (Single-Family Residential with Airport Overlay)/Cellular site
3. Surrounding Zoning/Land Use: North, South, East & West: R-1 6000/AO/Single-Family Residential/Single-Family **(FIGURE 4)**
4. Annexation: Powers Addition, August 1968
5. Master Plan: No Master Plan
6. Subdivision: Unplatted Parcel
7. Zoning Enforcement Action: Case # 10-07419: The appellant contacted the City's Code Enforcement Division to open a case on this property pertaining to the non-functional use of the existing monopole tower. She provided a 'Notice of License Cancellation' document that the tower cancelled the license on December 31, 2012. Code Enforcement has put a hold on the matter until the City Planning Commission rules on this appeal.
8. Physical Characteristics: The 5.01-acre site is improved with two existing cellular towers.

STAKEHOLDER PROCESS AND INVOLVEMENT

Staff notified 269 property owners within a 1,000 foot buffer distance at the initial application submittal and for the notification of the neighborhood meeting held on April 22, 2019. Over 32 property owners and neighbors attended that meeting. The property will be posted and mailing notification sent prior to the September 13th special City Planning Commission Hearing. Since the original posting, additional e-mails opposing the project were received. **(FIGURE 5)**

The main concerns voiced by the neighbors include maintenance and mitigation of the 30-foot access easement, erosion, Radio Frequency (RF) analysis, health implications, additional heavy traffic, design of the tower, additional access options for the site, want for replacement of the existing split rail fence, wildlife preservation, landscaping of disturbed areas, maintenance of the cell tower structure itself, impacts on the adjacent streets, negative impacts on property values, tallest structure in the neighborhood, and overall opposition to a cell tower in the neighborhood. Staff further discusses these concerns in the following sections of the report.

The applicant provided documentation in response to the concerns. These documents include the FCC Radio Emission Safety Guide, Radio Frequency and Human Exposure, response letter, NEIR Letter, Photo Simulations, and modifications to the CMRS development plan. **(FIGURES 6, 7, 8, 9, 10 AND 11)**. The applicant also submitted the Structural Modification Analysis Report **(FIGURE 12)** to Planning Staff when the project was initially submitted in February 28, 2019.

All of these documents were made public to the Villa Loma neighborhood for review and comment. The neighborhood provided additional comments in opposition to the CMRS project to Planning and Community Development. **(FIGURE 13)**

Staff sent the plans to the standard internal reviewing agencies for comments. Those commenting agencies included Colorado Springs Utilities, Enumerations, Traffic Engineering, City Engineering Development Review, Water Resources Engineering, and Airport. The Airport Advisory Commission met

on Wednesday, March 27, 2019, and provided the following comment: The Airport Advisory Commission approved staff recommendation/comments for this land use item. All city agency comments have been addressed for this CMRS development plan project.

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

1. Review Criteria / Design & Development Issues:

a. Background

The parcel is accessed by a 30-foot wide access easement at the rear of the properties that front along Alteza Drive starting at Avondale Drive near the intersection of Avondale Drive and Constitution Avenue. The easement resembles an alley between the residential properties; however, the easement is a 558-foot long, dirt road with no street access for the residential neighborhood. At the end of the access easement is an existing gate that will be replaced with a lock for access to the site.

The site contains two tower structures with heights of 99'-3" and 30". The parcel is designated as R 1-6000 (Single-Family) zone district and is comprised of 5.01 acres of unplatted land. The 99'-3" existing cellular tower in question was built in 1972 based on a document from the El Paso County Tax Assessor. **(FIGURE 14)**

City Planning conducted extensive research in order to substantiate the pre-existing, legal nonconforming use status of the monopole cellular towers located on this parcel. The Villa Loma Filing No. 1 subdivision plat document states the ownership and intended use of the site as Mountain States Telephone & Telegraph (MST&T) and radio towers land use. The subdivision plat illustrates the 30-foot access easement, and states the printed name of the owner of the parcel. This final plat document was recorded at the El Paso County Clerk and Recorder with the date of November 6, 1968 under Book K2, Page 68. **(FIGURE 15)** In addition, the drainage plan for Villa Loma Subdivision Filing No. 1, dated October 14, 1968, has a document on **Page 4 of FIGURE 16** that illustrates MST&T as the property owner on the vicinity map, and **Page 19 of FIGURE 16** has the written text of 'Radio Towers' within the square-shaped parcel.

A permit was obtained sometime in 1972 to construct a 99'-3" cellular tower per the El Paso County Tax Assessor's database. Staff later found documentation that the property owner, MST&T, was either in the process of developing the site for a tower structure or the parcel already was already developed with the structure between 1968 and 1972.

City Planning Staff was unable to find any building permits in the Pikes Peak Regional Building Department's database that provide the building permit date of this tower structure.

A previously approved and amended development plan (2006) for the parcel is attached as **FIGURE 17**. The project was to add new equipment and new antennas to the cellular tower, and this site plan amendment was approved by City Planning, on September 20, 2006. City Planning Staff is unaware of any building permits applied for, to verify whether the new antennas installed and the new equipment added to the equipment shelters. **(FIGURE 17)**

The approved COL02266 Maizeland and Murray CMRS Development Plan illustrates the plans to modify the existing 99'-3" monopole tower structure with ground equipment located at the northeast corner of the parcel. The tower modification will bring the structure up-to-code, and provide for the installation of the equipment shelter for carrier equipment with a generator for back-up. The site includes two structures, the 99'-3" cellular tower and the 30-foot tower owned and unused by the United States Air Force.

The tower is considered to have the required conditional use per *Nonconforming Uses and Conditional Uses* - Section 7.5.1203.H of the City's Zoning Code. **(FIGURE 18)** This section of the code states: "A preexisting, legal nonconforming use which would require the approval of a conditional use in its zone district shall be presumed to have the required conditional use approval. Modifications to the structure or site shall be processed as either a minor or major amendment or

modification to a conditional use development plan in accord with part 7 of this article.” The project meets the City requirements for a conditional use major development plan amendment.

The intent is not to remove the existing cellular tower structure, but to modify the monopole tower to bring the tower up-to-code, to handle more loading, and to make the tower structurally safe. The applicant intends to wrap the existing tower with new steel and pour more concrete on top of the existing foundation to create a sturdy foundation for the addition tower steel. The height of the tower will not increase, and the color will remain the same gray steel color as the existing monopole tower. The existing fencing will be temporarily relocated to accommodate construction, the tower modification, and the additional concrete foundation. The fence compound enclosure will be replaced with a 6-ft. chain link fence with green privacy slats. The monopole cellular tower is a pre-existing, nonconforming structure, and this modification to the monopole structure is not a deviation from Section 7.5.1203.H of the City’s Zoning Code.

Zoning Code Section 7.5.502.E Development Plan Review Criteria states the following: “A *development plan shall be reviewed using the criteria listed below. 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 this Zoning Code and is compatible with the land uses surrounding the site. Alternate and/or additional development plan criteria may be included as a part of an FBZ regulating plan.*” Planning Staff finds that the following development plan review criteria are met:

1. The details of the use, site design, building location, orientation and exterior building materials are compatible and harmonious with the surrounding neighborhood, buildings and uses, including not-yet-developed uses identified in approved development plans.

The monopole cellular tower has been located in the residential neighborhood since approximately 1972.

2. The development plan substantially complies with any City- adopted plans that are applicable to the site, such as master plans, neighborhood plans, corridor plans, facilities plans, urban renewal plans, or design manuals.

The cell tower structure was developed earlier or at the same time as existing, single-family residential dwellings. There is no master plan for this area, and the recorded subdivision plat – Villa Loma Subdivision Filing No. 1 illustrates the 5.01-acre parcel with the access easement and the area for the tower.

3. The project meets dimensional standards, such as but not limited to, building setbacks, building height and building area set forth in this chapter, or any applicable FBZ or PUD requirement.

The monopole cellular is pre-existing nonconforming since permits were obtained sometime in the early 1970’s. These approvals had different development standards at that time, since the monopole tower structure is pre-existing, legal nonconforming. The Code recognizes the placement of the structure and the existing dimensional standards.

4. The project grading, drainage, flood protection, stormwater quality and stormwater mitigation comply with the City’s Drainage Criteria Manual and the drainage report prepared for the project on file with the City Engineering Department.

The applicant has indicated that they will work with City Engineering to address the grading, erosion, and control plan for the site. These requirements are limited in scope due to the fact that the structure already exists at the location.

5. The project provides off-street parking as required by this chapter, or a combination of off-street or on-street parking as permitted by this chapter.

There is adequate space on the 5.01-acre site for parking; however, there is not a need to create a parking lot area. The only time vehicles will be on-site is when the telecommunications employees are there to upgrade or provide maintenance to the tower structure. This land use type will not create a lot of high-impact usage within the residential neighborhood.

6. All parking stalls, drive aisles, loading/unloading areas, and waste removal areas meet the location and dimension standards set forth by this chapter.

The existing, telecommunications site will be visited by telecommunications employees only to upgrade or provide maintenance to the tower structure. The applicant does not propose to increase the impact.

7. The project provides landscaped areas, landscape buffers, and landscape materials as set forth in this chapter and the Landscape Design Manual.

There are no plans by the applicant to provide additional landscaping to the site. The proposal is not to alter the location of the tower only to modify the monopole tower to bring the tower up-to-code, to handle more loading, and to make sure it's structurally safe.

8. The project preserves, protects, integrates or mitigates impacts to any identified sensitive or hazardous natural features associated with the site.

The project will preserve, protect, and mitigate impacts with the natural features associated with the 5.01-acre site. The project will not relocate the existing cellular tower structure, it will modify the monopole tower to bring the tower up-to-code in order to handle more loading, and to make sure it's structurally safe.

9. The building location and site design provide for safe, convenient and ADA-accessible pedestrian, vehicular, bicycle, and applicable transit facilities and circulation.

The tower location and access design provides safe and convenient access for only telecommunications employees to upgrade or provide maintenance to the tower structure.

10. The number, location, dimension and design of driveways to the site substantially comply with the City's Traffic Criteria Manual. To the extent practicable, the project shares driveways and connects to drive aisles of adjoining developments.

There is existing 30-foot access easement off Constitution Avenue, between the rear of two properties; 4810 Altza Drive and 2505 Avondale Drive. No additional access is required or provided.

11. The project connects to or extends adequate public utilities to the site. As required by Colorado Springs Utilities, the project will extend the utilities to connect to surrounding properties.

The site already connects to adequate public utilities to the site.

12. If necessary to address increased impacts on existing roadways and intersections, the project includes roadway and intersection improvements to provide for safe and efficient movement of multi-modal traffic, pedestrians and emergency vehicles in accordance with the City's Traffic Criteria Manual, public safety needs for ingress and egress and a City accepted traffic impact study, if required, prepared for the project.

No traffic study is required for the existing tower structure site. The 30-foot access easement provides access into the 5.01-acre parcel off Constitution Avenue. The cell tower site is a low traffic generator.

13. Significant off-site impacts reasonably anticipated as a result of the project are mitigated or offset to the extent proportional and practicable. Impacts may include, but are not limited to light, odor and noise.

The monopole tower already exists. The planned modifications will have no increased impact on the surrounding neighborhood. The applicant will provide noise mitigation during the construction so not to impact the adjacent, residential neighborhood.

The site plan also illustrates the tower providing accommodation for other cellular carriers to co-locate. The existing, 7-foot high chain link fence with green slats equipment compound includes the 8' x 8' area for the equipment and the 99'-3" tower structure. The existing tower is setback a distance of 76-feet from the west, 118-feet from the north, 392-feet from the east, and 349-feet from the south property lines.

The modification of this existing, cellular tower and ground based facilities will improve the existing service coverage in this residential area of Colorado Springs and to add capacity and service quality to existing service coverage for the residential neighborhood. The City Code does encourage the co-location of CMRS equipment of various carriers on the same structure where feasible and where the visual impact of having one taller facility is determined to be more desirable than having addition tower facilities constructed in the same vicinity.

In general, City of Colorado Springs' Zoning Code can only regulate the visual impact, the location, and the height and type of the cellular telecommunications facilities per Sections 7.4.607 and 7.4.608. The Federal Communications Commission (FCC) has the exclusive power to set the standards for radio frequency emission. The City is prohibited from denying CMRS telecommunications facilities on the bases of health concerns.

The wireless providers operate within the strict frequencies and guidelines established by the FCC under the Telecommunications Act of 1996 through the federal regulatory process. Code of Federal Regulations Title 47 C.F.R. § 1.6100 governs the Wireless Facility Modifications pursuant to the Middle Class Tax Relief and Job Creation Act of 2012. **(FIGURES 19, 20, 21, AND 22)** State general rule: a state or local government may not deny and shall approve any eligible facilities request for modification of an eligible support that does not substantially change the physical dimensions of such structure. This regulation states under Substantial Change that a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

"For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, for other eligible support structures, it increases the height of the structure by more than 10% of more than ten feet, whichever is greater; it continues with changes in height should be measured from the original support structure in cases where deployment are or will be measured horizontally, such as buildings' rooftops; in other circumstances, changes in height should be measured from the dimension\ls of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act."

The modification to the monopole cellular tower does not increase in height as illustrated on the approved COL02266 Maizeland & Murray Development Plan. The project is to wrap the existing tower with new steel, and to pour more concrete on top of the existing foundation to create a sturdy foundation for the addition tower steel. These modifications to the proposal meet those requirements per Code of Federal Regulations Title 47 C.F.R. § 1.6100.

In addition, Code of Federal Regulations Title 47 C.F.R. § 1.6100 states under Review of Applications the following language: "Review of Applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure." The city is prohibited in denying the

proposal for the modifications to the existing monopole cellular tower structure. There are no substantial changes from the existing cellular tower to the proposed cellular tower modification as approve. The project meets the requirements of the Code of Federal Regulations Title 47 C.F.R. § 1.6100 per Substantial Change and Review of Applications.

City Planning Staff approved the COL02266 Maizeland & Murray CMRS Development Plan administratively on July 22, 2019. The paperwork for the appeal was submitted on July 29, 2019 by Sally Maddocks, property owner of 4807 Avondale Circle. **(FIGURE 2)** City Code Section 7.4.609 for Discontinuance of CMRS facility is attached as **FIGURE 23**.

2. Appeal of an Administrative Decision:

The appeal application was filed to City Planning pertaining to staff's administrative approvals **(FIGURE 2)**. According to City Code Section 7.5.906.A.4.b, a successful appeal must be found to meet the following criteria:

- (1) It was against the express language of this zoning ordinance, or
- (2) It was against the express intent of this zoning ordinance, or
- (3) It is unreasonable, or
- (4) It is erroneous, or
- (5) It is clearly contrary to law.

While the appellant argues that the appeal criteria are not met, Staff has documented above that the preexisting, legal nonconforming use of the monopole cellular tower has been verified. The documents from the El Paso County Tax Assessor states the year the tower was built, records from the Villa Loma Filing No. 1 subdivision plat, recorded by the El Paso County Clerk and Recorder's on November 6, 1968 under Book K2, Page 68 illustrates the 30-foot access easement, and the printed name of Mountain States Telephone & Telegraph on a portion of the parcel. In addition, the drainage plan for the subdivision, dated October 14, 1968, states the property owner on the vicinity map, and the land use of towers for the site.

The CMRS development plan criteria are indeed met, and all appropriate standards, guidelines, policies and procedures were adhered to. In addition, the applicant will work with City Engineering to address the grading, erosion, and control plan for the site.

The COL02266 Maizeland & Murray CMRS development plan meets the review criteria. The project meets the City requirements for a conditional use major development plan amendment development plan as set forth in City Code Section 7.5.1203.H – Nonconforming Use and Conditional Uses, City Code Section 7.5.502.E, Development Plan Review Criteria, City Code Sections 7.4.607 and 7.4.608, CMRS location and design criteria, and the FCC review of wireless telecommunication application regulations per the Telecommunications Act of 1996 and the Middle Class Tax Relief and Job Creation Act of 2012. Those requirements listed under the Code of Federal Regulations Title 47 C.F.R. § 1.6100 - Substantial Change and Review of Applications.

After careful consideration, Planning Staff finds that the required appeal criteria are not met.

2. Conformance with City's PlanCOS

Not applicable.

3. Conformance with the Area's Master Plan

There is no master plan.

STAFF RECOMMENDATION:

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Deny the appeal and uphold the administrative approval of the CMRS development plan for the COL02266 Maizeland & Murray CMRS, based upon the findings that the appellant did not meet 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.