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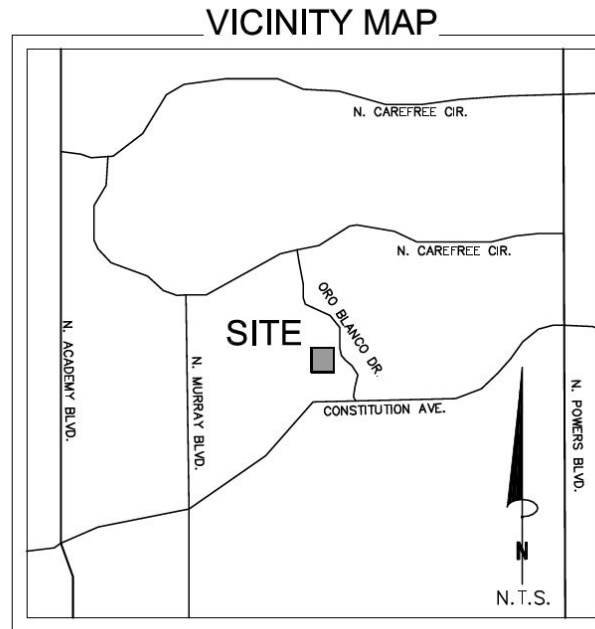


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Colorado Springs Planning Commission

Friday, September 13, 2019

Public Hearing on Appeal of Administrative Approval For Modification of Tower

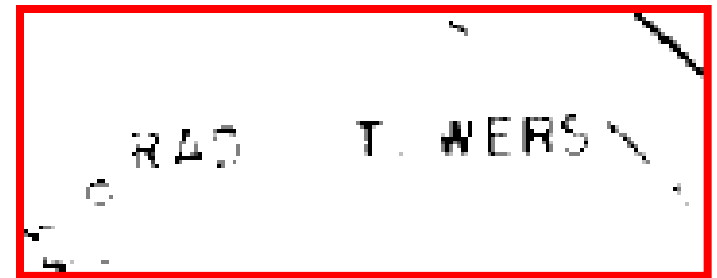
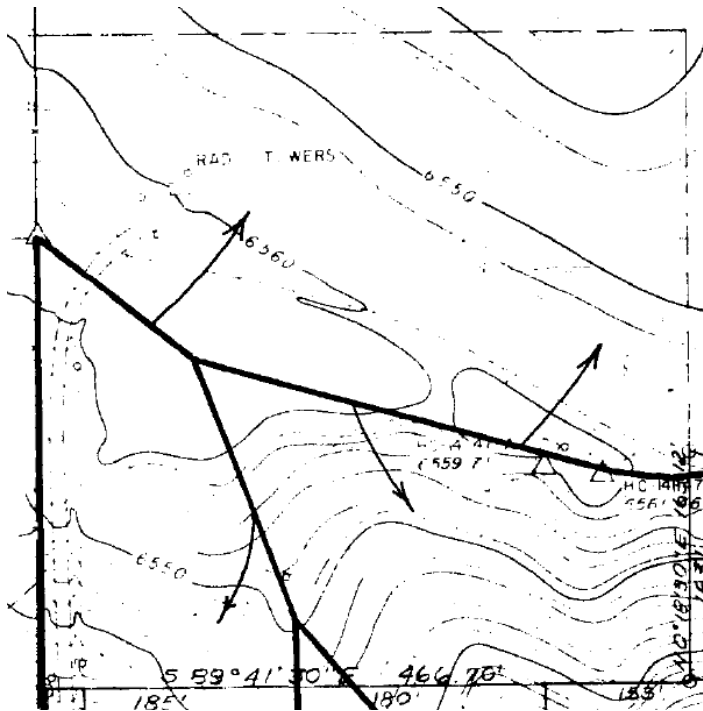


History of Site

- Tower built at least as early as 1972
- Site continuously owned and used since 1956 by publicly regulated utility (C.R.S. 40-1-103):
 - Mountain States Telephone → Qwest
→ now CenturyLink.
 - 1960s plats show telephone company site

History of Site

- Site continuously owned and used since 1956 by publicly regulated utility:
 - 1960s drainage plans: “RADIO TOWERS”



History of Site



History of Site

- The tower, as utility infrastructure, is not subject to Colorado Springs zoning regulations involving cellular technology:
- “CMRS facilities and wireless broadband antennas and facilities attached to existing utility infrastructure (i.e., ... **existing towers** ...) located within ... utility owned property ... are exempt from these regulations” . (§ 7.4.602.B.).

History of Site

- The tower has housed numerous FCC-regulated RF-emitting and receiving equipment over five decades.
 - Television transmission.
 - Radio transmission.
 - Cellular transmission.

History of Site

- As concluded by the planning staff, the tower is a legal, nonconforming use.
- As a legal, nonconforming use, setback requirements that were passed later do not apply.

Federal Law

- Section 6409(a) of the Middle Class Tax Relief and Job Creation Act (47 U.S.C. 1455(a)):
- State and local governments “*may not deny, and shall approve*, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimension of such tower or base station.”

Federal Law

- The federal law expressly pre-empts local law:

“[n]otwithstanding ... any other provision of law, a State or local government may not deny, and shall approve ...”

Federal Law

- Federal law defines existing towers broadly:
- “[W]e interpret ‘tower’ to include all structures built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, and their associated facilities, regardless of whether they currently support base station equipment at the time the application is filed.”

(In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, 29 F.C.C. Rcd. 12865 (2014))

Federal Law—No Substantial Change

<u>Component</u>	<u>Federal Section 6409 Limits</u>	<u>Proposed Modification</u>
Increase height of original structure	10 feet or less	No height increase is being proposed
Antennas extending horizontally from edge of structure	20 feet or less	No horizontal extensions from the edge of the structure will surpass 20 feet
Additional ground-mounted equipment cabinets	4 or fewer, with no cabinets larger than the existing cabinets	No ground-mounted equipment cabinets are proposed
Excavation/Deployment Beyond Site	Modifications are restricted to within the current site	No excavation beyond the site is being proposed
Concealment Elements	Modifications will not defeat concealment elements of the support structure	This is not a concealed design, so no existing concealment would be “defeated”

Federal Law—No Substantial Change

- The “site” here is the 5-acre parcel, as defined in federal regulations.
- Definition: “Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site”

(47 C.F.R. §1.6100(b)(6).)

Federal Law—No Substantial Change

- Structural Hardening—what Vertical Bridge is doing here—is not a substantial change under federal law.

(In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, 29 F.C.C. Rcd. 12865, ¶180 (2014))



Federal Law—No Substantial Change

- The FCC has issued federal rules that interpret and apply Section 6409(a).
- In writing those rules, which have the force of federal law, the FCC rejected an argument any and all modifications should be considered a “substantial change.”:
- “We accordingly reject municipal arguments that any modification of an existing wireless tower or base station that has ‘legal, non-conforming’ status should be considered a ‘ “substantial change” ’ to its ‘physical dimensions.’ ...”

(In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, 29 F.C.C. Rcd. 12865, ¶201 (2014))

Federal Law—No Substantial Change

- This is a modification of the tower, not a removal.
- This is borne out by the plans as approved by the City.

Safety

- Radio frequency safety rules set by the FCC
- Submitted RF Study:
 - Establishes that tower will be within FCC regulations, including if multiple carriers operate
 - Sprint is mentioned because Vertical Bridge had been in talks for Sprint to collocate on the facility along with AT&T

Safety

- Tower registered with the FCC, subject to regular inspection by federal authorities
- Reliable call service crucial to public safety
- Importance of cellular for 911

Property Values

- Today's homebuyers demand cellular service
- Studies show nominal impact
- Federal law favors existing towers and modifications such as this
- This tower has existed since at least 1972

Need for Towers

- Growing percentage of people rely solely on mobile phones and are terminating “land line” service:
- 71% of people 25-34 have no land line
- 62% of Colorado homes are wireless only

Need for Towers—Public Safety

- The site will operate FirstNet equipment, the first nationwide communications network dedicated to public safety.
- FirstNet's mission: first-ever high-speed nationwide wireless broadband network dedicated to first responders.

Need for Towers—Public Safety

- FirstNet helps first responders respond effectively and efficiently and stay safe while helping others during day-to-day operations and disaster response and recovery and when managing large events. The proposed modifications to this facility will include FirstNet antennas and service.

Colorado Springs Code

- Colorado Springs favors the use of existing towers for cellular facilities. Under Section 7.4.607.A.1. of the City's Code, cellular carriers are urged to select locations on "existing structures such as buildings, water tanks, existing towers, signs, etc."

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Thank you for your consideration.

