CITY OF COLORADO SPRINGS

INTEROFFICE MEMORANDUM

DATE: September 24, 2019

TO: Peter Wysocki, Director of Planning

FROM: Sarah Johnson, City Clerk

SUBJECT: Notice of Appeal

ITEM NO. AR CM2 19-001240-QUASI-JUDICIAL

An appeal has been filed by Vertical Bridge Holdings, LLC/Vertical Bridge Development, LLC regarding the Special Hearing of the Planning Commission action of September 13, 2019.

I am scheduling the public hearing on this appeal for the City Council meeting of October 22, 2019. Please provide me a vicinity map.

CC: Rachel Teixeira
Elena Lobato

Vertical Bridge Holdings, LLC/Vertical Bridge Development, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487

Sally Maddocks
4807 Avondale Circle
Colorado Springs, CO 80917

COLORADO SPRINGS
OLYMPIC CITY USA

THE PLANNING & DEVELOPMENT DEPARTMENT
APPEAL TO CITY COUNCIL

Complete this form if you are appealing ***City Planning Commission's, Downtown Review Board's or the Historic Preservation Board's*** *decision to City Council.*

APPELLANT CONTACT INFORMATION:

Appellants Name: Vertical Bridge Holdings, LLC / Vertical Bridge Development, LLC Telephone: 561-945-6367

Address: 750 Park of Commerce Dr., Suite 200 City Boca Raton

State: FL Zip Code: 33487 E-mail: mgrugan@verticalbridge.com

PROJECT INFORMATION:

Project Name: COL 02266 MAIZELAND AND MURRAY - VERTICAL BRIDGE

Site Address: 0 36-13-66

Type of Application being appealed: CM2 modification

Include all file numbers associated with application: AR CM2 19-00124 (TSN 6336300003)

Project Planner's Name: Rachel Teixeira

Hearing Date: 9-13-2019 Item Number on Agenda: NO. 1

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. $176 check payable to the City of Colorado Springs
3. Appeal Statement
   - See page 2 for appeal statement requirements. Your appeal statement should include the criteria listed under "Option 1" **or** "Option 2".

Submit **all** 3 items above to the **City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903)**. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted.

If you would like additional assistance with this application or would like to speak with the neighborhood development outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 385-5773.

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

DocuSigned by:
Matthew Grugan
DD733AA836F4401

Signature of Appellant

9/20/2019
Date

THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING

☒ **OPTION 1:** If you are appealing a decision made by City Planning Commission, Downtown Review Board, or the Historic Preservation Board that was **originally** an administrative decision the following should be included in your appeal statement:

1. Verbiage that includes justification of City Code 7.5.906.A.4
   - i. Identify the explicit ordinance provisions which are in dispute.
   - ii. Show that the administrative decision is incorrect because of one or more of the following:
     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.
   - iii. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

☐ **OPTION 2:** If the appeal is an appeal of a City Planning Commission, Form Based Zoning Downtown Review Board, or Historic Preservation Board decision that was **not made administratively initially**, the appeal statement must identify the explicit ordinance provision(s) which are in dispute and provide justification to indicate how these sections were not met, see City Code 7.5.906.B. For example if this is an appeal of a development plan, the development plan review criteria must be reviewed.

CITY AUTHORIZATION:

Payment: $_____ Date Application Accepted:_____

Receipt No: _____ Appeal Statement:_____

Intake Staff:_____ Completed Form:_____

Assigned to:_____

Appeal Statement of Applicant Vertical Bridge

COL 02266 Maizeland and Murray CM2 Application
File Number AR CM2 19-000124

Introduction

On September 13, the Planning Commission voted to overturn the administrative approval of Vertical Bridge's application to modify and structurally harden an existing 99-foot tower built half a century ago by Mountain States Telephone and Telegraph in order to install cellular equipment. The Commission did so despite the following:

- The tower has stood since at least 1971 and is a legal, nonconforming use.
- The residential neighborhood surrounding the tower was built at the same time or after construction of the tower. In fact, subdivision plats show the utility-owned parcel on which the tower stands, and drainage plans from 1968 include a marking on the parcel that reads: "RADIO TOWERS."
- Federal law requires cities to approve modification of precisely this type of existing tower and expressly preempts any local ordinances or local action that would prevent approval of this application.
- The Colorado Springs zoning code's cellular tower provisions do not apply to installations on existing utility infrastructure.
- The Colorado Springs Zoning Code explicitly states a preference for co-location of cellular equipment and the use of existing towers.
- Federal law, like the Colorado Springs code, also prefers the use of existing towers.

The Planning Commission's decision was unreasonable, erroneous, against the express language and intent of the City's zoning code, and clearly contrary to law.

The central legal question in this case is whether the federal law that requires local governments to approve the modification of existing towers applies. Vertical Bridge (the "Applicant") asserts that there can be no serious question that the federal law applies in this case. Under federal law, and contrary to the Planning Commission decision, the question does not depend on whether the tower has been active in recent years. For that reason and the other reasons explained below, the City will violate federal law if it denies the application.

Factual and Procedural Background

Vertical Bridge has contracted to modify, manage, and lease a communications tower located on a 5.1-acre parcel that has been owned continuously by a public utility,

Mountain States Telephone and Telegraph Co. and its successors, since 1956.[1] The tower was constructed at least as early as 1971 according to the FCC registration record.[2] Original subdivision plats dating to 1968 show the parcel was owned by the telephone company, and the drainage plan dated October 14, 1968, shows the parcel with the words "RADIO TOWERS" written within it.[3] The record below demonstrated that the tower has been used for radio, television, and wireless telephone service.

Vertical Bridge applied to the City for a modification of the facility on June 14, 2019. As explained below, the proposed modifications will not substantially change the tower. That is why, on July 22, the City of Colorado Springs approved the modification as required under Section 6409 of the federal Middle Class Tax Relief and Job Creation Act. On September 13, the Planning Commission held a hearing and voted against the prior administrative approval and in favor of an appeal brought by a neighbor who purchased a house next to the longstanding tower.[4]

Applicable Federal Law

Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act (referred to throughout this Appeal Statement as "Section 6409")[5] provides that 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."[6]

An "eligible facilities request" means any request to modify a tower or base station that involves:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.[7]

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[1] See deed conveying the property from Cora Powers to Mountain States Telephone and Telegraph Co. on April 12, 1956, attached as Exhibit A to Appellant's Response Letter of September 10, 2019. The current successor to Mountain States Telephone and Telegraph is CenturyLink.

[2] See FCC registration record, attached as Exhibit B to Appellant's Response Letter of September 10, 2019. The El Paso County Assessor's page states that the tower's outbuilding, which continues to be titled to Mountain States Telephone and Telegraph, has been on the tax rolls since 1972. It is clear that the tower has existed at this location for more than 46 years, and quite possibly for longer. See Assessor's record, attached as Exhibit C to Appellant's Response Letter of September 10, 2019. See also the Colorado Springs planning staff report.

[3] See Figures 15 and 16 accompanying the Colorado Springs planning staff report.

[4] The neighbor who appealed to the Planning Commission is referred to herein as "appellee" as Vertical Bridge is now the appellant.

[5] The law is sometimes referred to as the "Spectrum Act." It is codified at 47 U.S.C. §1455.

[6] 47 U.S.C. §1455 (emphasis added).

[7] 47 C.F.R. §1.6100(b)(3). Definition of Eligible Facilities Request.

In this instance, the applicant is proposing to collocate new transmission equipment on an existing facility, and the modifications do not constitute a substantial change.

The Application Meets the Federal Law's Substantial Change Test

Section 6409 Applies to Legal, Non-Conforming Structures

The FCC has stated that "legal, non-conforming structures should be available for modification under 6409(a), as long as the modification does not 'substantially change' the physical dimensions of the structure."[8] Federal law defines "legal, non-conforming status" as referring "to a structure that was approved at the time of construction but is not presently in conformance due to subsequent changes to the governing zoning ordinance."[9] In reaching the conclusion that Section 6409 should apply to legal, nonconforming towers, the FCC considered Congress's intent to promote wireless facilities and the language of 6409, which states that "covered requests shall be approved 'notwithstanding . . . any other provision of law.'"[10]

Federal law defines "existing" towers broadly to give effect to Congress's intent. The FCC has explicitly stated that towers that were built for any FCC regulated purpose come under the FCC's purview under Section 6409 regardless of whether the existing tower had working base station equipment at the time the application is filed.[11] This tower has stood for over 46 years and has housed numerous FCC-regulated transmission and reception equipment through the years, and therefore is an "existing" tower under Section 6409.[12] Because this site is a legal, non-conforming structure as defined by federal law, it is also an existing and eligible facility[13] under Section 6409.

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[8] In re *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order*, 29 FCC Rcd. 12865, ¶201 (2014).
[9] *Id.*, Footnote 494.
[10] *Id.* at ¶219 (emphasis added).
[11] *Id.* at ¶169 (2014).
[12] The appellee claimed before the Planning Commission that the existing site is not a legal, non-conforming use. This is factually incorrect. The tower has existed since at least 1971 and has been owned by a public utility as part of the public utility's infrastructure, which is exempt from local zoning regulations regarding cellular facilities. Colorado Springs Code § 7.4.602.B ("CMRS facilities and wireless broadband antennas and facilities attached to existing utility infrastructure (i.e., streetlight standards, water tanks, existing towers, and utility poles) located within Municipal or utility owned property, the public right of way or within utility easements are exempt from these regulations [Chapter 7, Article 4, Part 6 of the Colorado Springs Code] ... .") The appellee produced no evidence to suggest that the tower was installed illegally. There is a presumption in the Colorado Springs Code that a preexisting nonconforming use has "the required conditional use approval." Colo. Springs Code § 7.5.1203.H.
[13] In addition to the City Planning Department's administrative approval, which specifically referenced Section 6409 grounds for approving the application, the Applicant asserted in writing that this was an eligible facilities request under Section 6409 on two occasions, via email to City Planner Rachel Teixeira on August 23, 2019, and via a September 10, 2019, letter responding to Appellee's appeal to the Planning Commission.

Objective Test

The appellee claimed that the proposed modifications constitute a "substantial change" based upon appellee's subjective opinions and upon local zoning standards. However, substantial change is defined by federal law and is an objective determination. If the modifications do not exceed the physical dimensional standards below, the site must be approved. The proposed modifications, as shown below, do not rise to the level of a "substantial change" under Section 6409:

Component	**Federal Section 6409 Limits**[14]	**Proposed Modification**
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[15]
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"

The FCC also explicitly states that "structural hardening," which is what Vertical Bridge's application aims to accomplish, does not constitute a substantial change.[16]

In adopting the above standards, the FCC rejected arguments that it should adopt subjective standards that would be applied by local zoning boards or municipalities who attempted to reclassify non-conforming uses:

> 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." As PCIA

[14] As defined in federal regulations codified at 47 C.F.R. §1.6100(b)(7).
[15] The "site" here is the 5.1-acre parcel, as defined in federal regulations codified at 47 C.F.R. §1.6100(b)(6): "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 ... ."
[16] In re *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 29 F.C.C. Rcd. 12865, ¶180 (2014).

> [the Wireless Infrastructure Association] argues, the approach urged by municipalities could thwart the purpose of Section 6409(a) altogether, as simple changes to local zoning codes could immediately turn existing structures into legal, non-conforming uses unavailable for collocation under the statute. Considering Congress's intent to promote wireless facilities deployment by encouraging collocation on existing structures, and considering the requirement in Section 6409(a) that States and municipalities approve covered requests '[n]otwithstanding ... any other provision of law,' we find the municipal commenters' proposal to be unsupportably restrictive.[17]

The FCC has spoken. Congress meant to preempt local law and local zoning codes, and the FCC has written regulations with the force of federal law to prevent local governments from using back-door rules or ordinances to thwart Congress's intent.

Section 6409 Applies When There Is a Discontinuance of Use

Congress's goal in passing Section 6409 was to support the expansion of regulated and safe cellular infrastructure in order to provide the public with reliable cellular service nationwide. It did so by explicitly choosing to rely on the adaptive reuse of existing towers. Congress explicitly intended to preempt local ordinances and local determinations in such matters:

> Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government 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 dimensions of such tower or base station.[18]

The Planning Commission based its decision in part by reasoning that the federal law would not apply where an existing tower had not supported cellular equipment for longer than a year. If a land use that does not conform to the current zoning is not used for longer than a year under Colorado Springs Code, an owner cannot return to that formerly grandfathered use, and the land use must conform with the new zoning classification.[19]

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[17] *Id* at ¶201.
[18] 47 U.S.C.A. § 1455.
[19] Colo. Springs Code § 7.4.609.

But the Planning Commission's reasoning misunderstands what preemption is and misunderstands the clear statement in Section 6409 that all other provisions of law are preempted. The discontinuance of use provision in Colorado Springs's zoning code is an "other provision of law." It is preempted by the federal law. It cannot be a grounds for denying the application.

Planning Commission's Stated Reasons

The Planning Commission gave three stated reasons for why it concluded Section 6409 did not apply[20]:

1. "The proposed modifications to the tower 'substantially change' the tower due to excavation and deployment outside of the current site."
2. "The proposed modifications to the tower 'substantially change' the tower because the modifications constitute a replacement of the tower, and not merely a hardening."
3. "The tower is not 'existing' under the federal regulations because the tower is not merely legal non-conforming, but is an illegal tower under City Code by virtue of its long abandonment."

The stated reasons demonstrate that the Planning Commission misunderstood and misapplied federal law.

The Proposed Modification Does Not Extend Outside the "Current Site"

As discussed above, one of the tests for whether a proposed modification of an existing tower is a "substantial change," and therefore covered by Section 6409, is whether the modifications extend beyond the current site.

The tower and the 5.1-acre site on which it stands are owned by CenturyLink, the successor to Mountain States Telephone and Telegraph. Vertical Bridge is contracted to CenturyLink to manage the tower and lease space on the tower to cellular carriers. Vertical Bridge is not limited to a specific "leased area" within that 5.1-acre site.

But before the Planning Commission, the appellee alleged that the plan drawings, which incorrectly referred to the current fenced-in area near the current tower as "the leased area," demonstrate that the Applicant intends to excavate beyond "the leased area," and the application therefore does not fall under Section 6409.

[20] The Planning Commission also overturned the administrative approval on the ground that it was not permitted under the local zoning code. Besides the fact that the Planning Commission's stated grounds for these findings are conclusory (and not really grounds) and the fact that Appellant believes the stated grounds are in error, for clarity's sake and out of respect for the City Council's time, the Appellant frames this appeal entirely as a question of federal law, which controls the question without regard to the zoning code.

The Applicant provided testimony at the Planning Commission hearing stating that the reference in the plan drawings was incorrect, and that there is no smaller or restricted "leased area" on the 5.1-acre parcel outside of which the Applicant cannot place equipment.

Further, federal law defines what "site" is when it comes to Section 6409. The "site" here is the 5.1-acre parcel, as defined in federal regulations: "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 ... ."[21]

The tower and the parcel are owned by CenturyLink. The purpose of the federal regulation is to prevent the scope of a modification from spilling over onto the property of other parties who are not in privity with the tower owner or operator. That is not the case here.

The Applicant expects to supplement the record before the Planning Commission with further documentation to remove any doubt that the Applicant is not violating "the current boundaries of the leased or owned property surrounding the tower."

The Proposed Modification Is Not a Replacement

One Planning Commissioner questioned the Applicant's engineer regarding the site plans, focusing on the additional concrete foundation that will support the steel wrap that will surround and connect with the existing tower. Because the site plans do not show how the new foundation, which will be on top of the existing foundation, will be structurally connected (either with bolts or other reinforcement) with the current foundation, the Planning Commissioner said he concluded that this was not a true modification but is really a replacement.

The Applicant's engineer provided testimony that site plans at this initial stage of a project would not ordinarily include the level of detail of showing every bolt, connection, and structural detail of construction, such that a contractor could build the project. The purpose of such site plans is to allow the planning staff and City to determine that the proposed land use complies with the law such that the City can issue an administrative approval as a matter of zoning and other land use law. After such an approval, more elaborate and detailed building plans are created and certified by a civil engineer. Those plans in turn are then reviewed by City staff before a building permit is issued.

[21] 47 C.F.R. §1.6100(b)(6).

To the extent the Planning Commission relied upon this as a grounds for denying the application, it was pretextual and in error.

Further, the Applicant expects to supplement the record before the Planning Commission with further documentation to remove any doubt that the Applicant is modifying the tower, and not "replacing" the tower.

Section 6409 Applies Regardless of Any Gap in Cellular Service

There was testimony at the Planning Commission hearing that the tower has not housed live cellular equipment for longer than a year. The Planning Commission apparently concluded that this meant the tower can no longer return to housing cellular equipment, because doing so would violate a Colorado Springs Code provision that states that legal, non-conforming uses can lose their grandfathered status after a year of disuse.[22]

But, as stated above, the Planning Commission's reasoning misunderstands what preemption is and misunderstands the clear statement in Section 6409 that all other provisions of law are preempted. The discontinuance of use provision in Colorado Springs's zoning code is an "other provision of law."[23] It is preempted by the federal law. It cannot be grounds for denying the application.

Claimed Health Effects

A significant amount of public testimony and feedback contained in the record of this case focuses on purported health and safety concerns. While the appellee acknowledged that a zoning decision cannot be based upon claimed effects of radio frequency emissions to the extent the site complies with FCC regulations regarding emissions,[24] the appellee cited unsupported claims regarding health effects in support of the appellee's opinion that the site should be denied.

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[22] Colo. Springs Code § 7.4.609. The Applicant disputes and does not concede the conclusion that a gap in cellular service alone means that the tower's use has been discontinued such that Section 7.4.609 of the Colorado Springs Code would apply. But the federal law is so clear in its explicit preemption of local law that it does not matter whether the discontinuance described in Section 7.4.609 occurred or not.

[23] Again the federal law states: "Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government 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 dimensions of such tower or base station." 47 U.S.C.A. § 1455.

[24] The federal Telecommunications Act of 1996 prohibits regulating the placement of or construction involving a wireless communications tower on the basis of claimed environmental effects of radio frequency emissions. 47 U.S.C. § 332 (c)(7)(B)(iv).

This testimony and that of the residents who attended the Planning Commission, all of which is included in the record, has tainted the Planning Commission's decision and threatens to taint the City's ultimate decision on this application.

Benefits and Adverse Impacts

The adverse impacts created by the Administrative Decision outweigh any possible benefits. The Planning Commission's decision does not comply with federal law (Section 6409 and the Fifth Amendment's protections of rights to property). It does not comply with the City's preference for colocation and for using existing towers and structures for deploying cellular technology.[25] The decision interferes with private property rights and the rights of individuals to enter into contracts. It discourages innovation and investment in the City, and it discourages collaboration with the City and with other providers to serve this region.

The Applicant has invested significant sums in selecting an existing tower site and designing a modification that is technologically capable of providing the cellular service needed in East Colorado Springs while also providing for colocation for multiple providers.

Importantly, the vast majority, if not all, of the tower's neighboring residents purchased their houses long after the tower had been built.

In the end, if the existing tower cannot be used for cellular equipment, then cellular service in the neighborhood will suffer, which is likely to have a more profound and negative effect on property values. Today, as a number of neighbors have commented upon in the record, the 5.1-acre largely undeveloped site provides greenspace and a habitat for numerous animals—a use that is appreciated by the neighborhood. If the land cannot be used for the purpose for which it has been used since the original subdivision plats were filed with the City in the 1960s, then the land may end up being used for another development that diminishes surrounding property values.

The Planning Commission decision discourages continued technological investment in this region. There are many areas in the United States that need enhanced cellular service and if the City makes it impossible to develop new facilities in this region—even on existing towers that are favored by local and federal law—providers will invest in other markets that are more open to such investment.

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[25] 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." In this case, the applicant, Vertical Bridge, did everything it was supposed to do. If carriers cannot place equipment on towers that have existed since 1971, the stated public policy of Colorado Springs favoring existing towers will be thwarted.

Conclusion

For all of the reasons above, the original administrative approval should be upheld, because this is exactly the type of application contemplated by Section 6409. That provision was created to facilitate the use of existing infrastructure to more rapidly deploy and improve reliable cellular communication services.[26] Affirming the administrative approval furthers the goal of Section 6409:

> These rules will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision [Section 6409(a)], reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure, thereby promoting advanced wireless broadband services.[27]

[26] In re *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order*, 29 FCC Rcd. 12865, ¶15 (2014).
[27] *Id.* at ¶15.

COLORADO SPRINGS

RECEIPT

Date: Sep-24-2019 10:39:21 AM
Type: Miscellaneous

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COLORADO SPRINGS, CO 80901
(719) 385-5901

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Receipt #: 116475
Cash: No
Check No: 941570
Post Date: Sep-24-2019
Transaction: # 700000 R

For: Appeal for COL 02266 MaizelandMurray Vertical Brid

Receipt Total: $176.00

RsRc Fund.XOrg	Account	Description	Quantity	Amount	Line Amount
45671-001-4840	Administrative Filing Fees	Appeal Fee	1	176.00	176.00

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BEFORE THE COLORADO SPRINGS, CO, CITY COUNCIL

In re: Application of Vertical Bridge	)	File No: AR CM2 19-000124

AFFIDAVIT OF TIMOTHY TUCK

STATE OF FLORIDA)
) SS
CITY OF BOCA RATON)

Timothy Tuck, being duly sworn, hereby deposes and states:

1. I make the statements herein under oath and penalty of perjury based upon my own personal knowledge and state that the information I am providing is complete, true, and correct to best of my knowledge.

2. I am the Director of Leasing for the applicant Vertical Bridge. In that capacity, I review and oversee the many leases that Vertical Bridge enters into around the United States.

3. I have reviewed and am familiar with Vertical Bridge's Master Lease Agreement and its Marketing and Right to Lease Agreement (the "Agreements") with affiliates of CenturyLink, the successor to Mountain States Telephone and Telegraph and the owner of the 5.1-acre site at issue in this application. The Agreements were executed on December 5, 2016.

4. Under the Agreements, Vertical Bridge has the right to develop and market hundreds of sites owned or controlled by CenturyLink and its affiliates for the deployment of cellular technology.

5. The 5.1-acre site that is the subject of this application is among the sites covered by the Agreements.

6. Under the Agreements, Vertical Bridge has the right to use and employ all of the land at the 5.1-acre site that is necessary for the successful deployment of cellular equipment and the leasing of space on the existing tower for the operation of cellular equipment.

7. The site is listed on the agreements in this way:

CTL Unique ID#	VB Site ID #	Street Address	City	State	Geoline 1A Latitude	Geoline 1A Longitude	Geoline 1A Tower Height
3026	US-CO-8093	2501 Avondale	Colorado Springs	CO	38.870475	-104.73845	98.8

8. Nowhere in the Agreements is Vertical Bridge's right to develop, access, or otherwise employ the sites limited to small bounded areas that are smaller than the ownership and possession rights of CenturyLink or its affiliates. Nowhere in the Agreements is Vertical Bridge's right to develop, access, or otherwise employ the sites limited to current fenced-in areas surrounding existing towers.

9. Any reference to a "lease area" or "leased area" in the plans submitted by Vertical Bridge's project manager Kimley-Horn does not reflect or depict Vertical Bridge's rights to the site, nor does such a reference depict an area that Vertical Bridge is leasing under the Agreements. Vertical Bridge has rights to the entire 5.1-acre site.

10. Vertical Bridge considers the Agreements confidential and proprietary. Release of the Agreements in their entirety would potentially damage Vertical Bridge's business and its competitive standing within the industry.

By: _____
Timothy Tuck

Subscribed and sworn before me
on this 24th day of October, 2019.

_____
Notary Public

KATHRYNN CAMPBELL
MY COMMISSION # FF967709
EXPIRES April 14, 2020
FloridaNotaryService.com

My Commission Expires: April 14, 2020