



Legislation Details (With Text)

File #: AR CM2 19-00124 **Version:** 5 **Name:** Vertical Bridge CMRS - Maizeland & Murray
Type: Planning Case **Status:** Passed
File created: 7/25/2019 **In control:** City Council
On agenda: 11/9/2021 **Final action:** 11/9/2021
Title: 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.

Presenter:
Morgan Hester, Planning Supervisor, Planning and Community Development
Ben Bolinger, Assistant City Attorney

Sponsors:

Indexes: Appeals, CMRS

Code sections:

Attachments: 1. 2499 Avondale Dr. CMRS Dev Plan, 2. Federal Court Order - Maizeland CMRS

Date	Ver.	Action By	Action	Result
11/9/2021	4	City Council	approved	Pass
11/12/2019	3	City Council	approved	Pass
10/22/2019	2	City Council	postpone to a date certain	Pass
9/13/2019	1	City Planning Commission	approved	Pass
9/13/2019	1	City Planning Commission	approved	Pass

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.

Presenter:

Morgan Hester, Planning Supervisor, Planning and Community Development
Ben Bolinger, Assistant City Attorney

Summary:

Applicant/Owner: Mountain States Telephone & Telegraph Co.
Consultant Applicant/Appellant: Vertical Bridge
Location: 2499 Avondale Drive (northeast of Constitution Avenue and Avondale Circle)

The application is a development plan proposing modification of an existing 99'-3" monopole tower to bring the tower structure up-to-code and to make it structurally safe. The stated intention is 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 with the proposal; 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 is proposed to 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. The CMRS facility is located on a portion of a 5.01 acre lot northeast of Constitution Avenue and Avondale Circle.

The application was submitted reviewed under Federal law, 47 USC § 1455, as an Eligible Facilities Request. The City is required to approve a modification to a communications tower when the modification does not substantially change the dimensions of the tower. The United States District Court for the District of Colorado has determined that the application is an Eligible Facilities Request.

Background:

A CMRS development plan application was submitted to the Planning Department for the modification of the existing 99'-3" monopole tower to bring the tower up-to-code, and to make it structurally safe for the installation of cellular equipment. The proposal provides for new antennas to be added to the monopole tower for co-location, and equipment shelter within the existing compound for the telecommunication facilities. The parcel is designated as R 1-6000 (Single-Family) zone district and is comprised of 5.01 acres of unplatted land. 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 application was administratively approved by staff on July 22, 2019. An appeal of the administrative approval was filed by a neighbor, Sally Maddocks. The Planning Commission hearing was held on September 13. At the hearing, the Planning Commission voted to uphold the appeal, thus overturning the administrative decision. The applicant, Vertical Bridge, filed an appeal to City Council on September 20 and requested the automatic one-time postponement to the November 12 Council meeting. City Council voted to deny the appeal, thus upholding the Planning Commission decision and overturning the administrative decision.

Vertical Bridge filed a lawsuit against the City in the United States District Court for the District of Colorado, alleging that the City's denial of the application violated Federal law. The City and Vertical bridge filed cross motions for summary judgement. The court upheld Vertical Bridge's motion, denied the City's motion, and declared that the City was in violation of 47 USC § 1455.

In order to come into compliance with 47 USC § 1455, City Council should vote to approve the underlying application.

Previous Council Action:

On November 12, 2019, following a public hearing, City Council voted 8-1 to deny the appeal and deny the underlying application (Councilmember Strand opposed).

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

N/A

Stakeholder Process:

The public process involved with the review of the initial application included posting the site and sending postcards to 269 property owners within 1,000 feet for internal review and a neighborhood meeting held on April 22, 2019. Comments were received during internal review. Prior to the appeal heard at the Special Hearing of the City Planning Commission meeting held on September 13, 2019, the site was posted and postcards sent to 269 property owners within a 1,000 foot buffer of the site, and an e-mail was sent to those that were at the neighborhood meeting and did not receive a postcard during the first mailing. The Planning Commission and City Council appeals hearings included substantial public comment.

Discussion at the Planning Commission meeting focused on FCC regulations and the extent to which the site was proposed to be changed. The appellant provided information regarding the site, specifically the modifications being made and operations of the tower, posing the argument that it had not been in continual use and thus considered to be abandoned. Those arguments were supported by 19 residents who also spoke. Discrepancies regarding the nomenclature used on the plans regarding changes made and if the use had been continuous steered the Commissioners to approve the appeal with a 7-2 vote.

At the City Council meeting held on November 12, 2019, to discuss the appeal, the City Council largely focused on the construction date of the existing tower, licenses that were in place with the FCC, and if the tower had been in continuous use up to the 2019 application to the Planning Department. The Council heard arguments from residents in opposition of the request as well as the appellant who provided the arguments regarding continuous use information regarding the operations of the tower, posing the argument that it had not been in continual use and thus considered to be abandoned. In an 8-1 vote, the Council voted to deny the appeal and affirm the City Planning Commission's decision to deny the administrative approval of the Development Plan as it was found to not meet the requirements for an Eligible Facilities Request.

Prior to the current meeting (November 9, 2021), postcards were sent to 269 property owners within 1,000' of the subject site as a courtesy to inform them about the item returning to City Council following the court order.

Alternatives:

Proposed Motion:

Motion to approve the CMRS development plan for Maizeland & Murray (2499 Avondale Drive), based upon the findings and declaration made by the United States District Court for the District of Colorado, pursuant to an Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment in the matter of Vertical Bridge Development, LLC v. City of Colorado Springs.