



PLANNING COMMISSION MEETING TRANSCRIPT for Applicant Matthew Schutjer

* Note: Any discrepancies between the transcript and the appellant's meeting notes are highlighted in **GREEN**.

The September 26 2024, the Malheur County Planning Commission Hearing was held in person: Malheur County Justice Court Building, 1178 SW 4th Street, Ontario, OR.

Attendance was available remotely, via GoToMeeting: <https://www.GoToMeet.me/MCPZ/PC>

Call in: (312) 757-3129 Access code: 644 177 621

PLANNING COMMISSIONERS PRESENT

Chairwoman Kathy Clarich
Commissioner Clark Forsyth
Commissioner Teresa Ballard
Commissioner Allen Montgomery
Commissioner Cory Sappe
Commissioner Carol Skerjanec (absent)
Vice-Chair Chad Gerulf (absent)
Commissioner John Faw (absent)

Commissioners Attending via video conference:

Commissioner Bob Quick (partial attendance)

Planning Department Staff Members:

Carol Parker, Planning Director
Kelsie Haueter, Planning Manager
Stephanie Williams, County Counsel

APPLICANT D: Matthew T. Schutjer (Rage Development)

The consideration for a Conditional Use Permit for a Wireless Telecommunication Facility in an Exclusive Farm Use zone pursuant to MCC Title 6, Conditional Uses 6-6-7, 6-6-8-1, 6-6-8-8 and OAR 660, Division 130, Agricultural Lands, for tax lot 4500, Section 28/29, T.14S, R.39E, W.M.; Malheur Co. Ref. #14468. Planning Department File # 2024-07-009. The property is located about Hwy 26, Ironside, OR 97908

- a. Staff Report
- b. Applicant Presentation (20 minutes limit)
- c. Proponent Testimony (5 minutes each)
- d. Opponent Testimony (5 minutes each)
- e. Staff Recommendation
- f. Applicant Rebuttal (10 minutes limit)

Chairwoman Kathy Clarich – Okay, moving right along...in case we want to go home tonight. Next on our agenda is Rage Development. And again, I have to read this into the minutes.

Now is the time to hear the request for a Conditional Use Permit for a Wireless Telecommunication Facility in an Exclusive Farm Use zone, for applicant Rage Development.
Planning department file 2024-07-009.

Please sign in at the podium, fill out a testimony and question sheet, if you have not done so already. When called to speak, please state your name, address and title (if any) for the record. All testimony and questions shall be directed to or through the chair. Testimony and questions should not be directed to staff, or directly to witnesses. There is a general time limit for testimony of five minutes. The applicant's initial presentation may be twenty minutes; with a rebuttal of ten minutes, if necessary.

Do any members of the County Planning Commission need to abstain?

If so, state the reason.

No abstentions given.

Do any members of the County Planning Commission need any conflicts to disclose?

If so, state the conflict.

No conflicts given.

Do any members of the County Planning Commission need to disclose any biases?

If so, state the bias.

No bias disclosed.

Do any members of the County Planning Commission have any **ex parte communications**, including any site visits, to disclose?

If so, state the reason or reasons.

Nothing disclosed.

Does anyone object to any of the members of the Malheur County Planning Commission hearing this application?

No objections made.

Does anyone challenge the County Planning Commission's jurisdiction to hear these matters?

No challenges made.

Chairwoman Kathy Clarich – Land use statements for the record:

Oregon land use law requires several items be read into the record at the beginning of this hearing. I will now read these items:

The applicable substantive criteria upon which the application will be decided are found in Oregon State laws and rules as well as local code provisions, which are specifically set out in the Staff Report and include:

Malheur County Code

*MCC 6-6-7: Title 6 Zoning Chapter 6 Conditional Uses
Section 7 General Criteria to Evaluate Suitability*

*MCC 6-6-8-1: Title 6 Zoning Chapter 6 Conditional Uses
Section 8 Specific Criteria to Evaluate Suitability
Subsection 1 Nonresource Dwellings in an EFU, ERU or EFFU Zone*

*MCC 6-6-8-8: Title 6 Zoning Chapter 6 Conditional Uses
Section 8 Specific Criteria to Evaluate Suitability
Subsection 8 Wireless Telecommunication Facilities*

*Oregon Administrative Rules Compilation OAR 660-033
OAR 660, Division 033, Agricultural Land*

Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code, that the speaker believes to apply to the decision. The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond

to the issue will preclude appeal on that issue.

An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal or an action for damages to circuit court.

Chairwoman Kathy Clarich – Order of Proceeding:

The applicant will be allocated up to twenty minutes for initial applicant presentation. The applicant may also present up to ten minutes for final rebuttal. All others wishing to testify will be given five minutes each.

- Staff Report for County – Planning Manager Kelsie Haueter
- Applicant (20 minutes)
- Testimony in Favor / Proponent (5 minutes each)
- Testimony in Opposition / Opponent (5 minutes each)
- Staff Comments / Recommendations if any
- Applicant / Proponent Rebuttal (10 minutes)
- Close the Public Hearing – No public testimony can be heard after this point.
If a continuance is requested (or a request to leave record open), it will be granted.
County staff recommends a continuance rather than leaving the record open.
- Commission Deliberation.

Chairwoman Kathy Clarich – Staff report, Kelsey?

Planning Manager Kelsie Haueter presented the staff report.

Planning Department File No. 2024-07-009

Applicant: Matthew Schutjer

Owner of Record: Christopher and Ann Ray

Proposed Action: CUP for a 199' Wireless Telecommunication Facility in Exclusive Farm Use zone, enclosed in an 8-foot height, 50x50 fenced area.

Property Identification: Tax Lot 4500, T14S R39E Section 28;

Malheur County Reference number 014668.

Address: 6144 Molthan Ranch Rd, Ironside, OR 97908.

Zoning: Exclusive Range Use (C-A2).

Parcel Size: 969.3 acres.

Parcel Use: The property is used as farm ground and rangeland.

Surrounding Use: The property is surrounded by farm ground and range use.

Access: Private access drive originating off of John Day Highway.

Sanitation Requirements: No sanitation requirements.

Fire Protection: The proposed facility is not within any fire district.

Natural Hazards: None.

Water Rights: The property has 391.7 acres of water rights.

Zoning History: Prior to 2000, a LUCS approved, as well as 2021.

Planning Manager Kelsie Haueter – I did receive a letter of opposition from Maverick Towers, that was received yesterday. We only have one copy, if you want to look and pass this down. And I have one letter of opposition currently.

Chairwoman Kathy Clarich – Okay, Matthew. I’m not going to try your last name. You need to come up here by the speaker, so we can record you. We need you to give us your...state your name and address and then tell us what the plan is.

APPLICANT’S TESTIMONY

Applicant Matt Schutjer, Rage Development – Matt [Schutjer](#). 1125 East Browning Avenue, Salt Lake City, Utah, 84105. Um, I submitted a little...I'm not going to take up twenty minutes of your time, but I do have a little presentation just to go over this (*staff puts up presentation on screen*). So, first and foremost, all carriers are going to want to co-locate when available.

It's speed to market, it's less expensive, all of the [above](#). In this area, there are no existing towers. Again, co-locating on an existing structure, whether it be a building, a rooftop. or tower, or whatever: it's a win-win for both the carrier and the jurisdiction. Because, no one wants a ton of towers. Anyway, due to the lack of tall structures we're proposing a new tower.

So, Vertical Bridge is the name of the tower company that I'm representing. They are a build-to-suit vendor for T-Mobile. They also have contracts with Verizon and working on one for AT&T as well. But, T-Mobile has contracted them to find a site in this area...blah blah blah. I don't want to bother you with too much stuff.

With their issued search ring back in 2022 they have...so, the search ring was roughly like three and a half miles in length. So, basically, what they do is they look at the area that they need to cover. They look at the height of the tower. Then, in addition to that, they look at geography. Like what is going to get in the way. Because your coverage is basically line-of-sight. Once it hits a mountain, once it hits something, you are out of coverage. So, they are pretty specific about how they design the networks.

So, we contacted different property owners, worked out with Chris and Rebecca Ray on their parcel. Basically, everything in the vicinity is kind of the same zoning classification. Multiple parcels are owned by them. Then, we also worked with the Department of Wildlife Resources on the sage-grouse, any kind of mitigation plan that they might...anyway, we had to get approval from them to do anything; which we have received.

So, this map (*pointing*) shows T-Mobile’s existing sites in the area. The next one is a better picture. It shows the Ironside site. It shows that gap that it's filling. Brogan is one that is currently approved. We just got the building permit and that [will](#) start construction soon as well. But we are trying to fill in all these gaps in rural America, basically, and improve the coverage.

Next slide. This (*pointing*) just shows, you know...It's just the distance. This (*pointing*) shows the current T-Mobile coverage. There is just a gap. If you go to the next slide, you can show how it fills in that gap. If you recall the previous slides, where all these sites are out here (*pointing*) I mean, this is filling in that gap.

Go on to the next one...this just shows that there's really a lack of coverage in this particular area. And then we go to the drawings, which we don't really need to go through these, other than the last few pages show the bird mitigation stuff. I don't know that you guys are interested in seeing all this stuff.

We did go through Division Wildlife, got our approvals. In fact, I believe earlier this year, I believe that the maps have changed. So, this isn't as high of an impact area. But we did everything prior to that and did the mitigation plan that was required of us. So, that is the plan. It's pretty straightforward, but I am here for any questions you might have.

Chairwoman Kathy Clarich – So, you're already planning on having **bird** mitigation on the tower?

Applicant Matt Schutjer, Rage Development – Correct, yes.

Chairwoman Kathy Clarich – And again, it's just a single...you can put up four on it? Four carriers?

Commissioner Allen Montgomery – A single pole?

Applicant Matt Schutjer – Oh, so I represent Vertical Bridge. It is for T-Mobile, originally. But, it can accommodate up to at least three more carriers. So, it will be 'co-locatable' if there's any other carriers that want to come in, after the fact and co-locate on that tower.

Commissioner Allen Montgomery – But it is just a single pole, right?

Applicant Matt Schutjer, Rage Development – Correct. Yes, just one pole.

Chairwoman Kathy Clarich – Sorry, I'm trying to **read through** this letter.

Applicant Matt Schutjer, Rage Development – The one thing that you guys talked about was lighting and stuff: There is, my understanding on this one, there is no lighting required. But, the only reason we would ever do any kind of lighting would be if it's FAA required. Then, that would have to happen. Other than that...

(long pause)

Chairwoman Kathy Clarich – Okay, so, my next thing is...is there anybody here that is **in favor** of this action?

Is there anyone online who is in favor of this action? If you are on the phone call, it's *3 to unmute.

PROPONENT'S TESTIMONY

Chairwoman Kathy Clarich – I guess everybody is sleeping here. So then, we are going to **go onto opposition**. Is there anybody in opposition of this? Please come up and state your name and your address.

Property Owner Chris Ray – Hello. This is Chris Ray.

Chairwoman Kathy Clarich – Okay. Thank you. State your name and your address, please.

Property Owner Chris Ray – Chris Ray, 6144 Moulton Ranch Road, Ironside, Oregon. I'm the property owner here. Just to kind of clarify here: We have...this is the south side of the highway that we have done a contract with. Our goal, in talking to all of our neighbors, is to get cell service in Ironside. We have very spotty cell service with **Verizon** and none with T-Mobile right now.

I think you guys might get into this later but there's another **build-to-suit**, Maverick Towers, that opposed it. We have a lease with them on the other side of the highway; on another piece of our property. Our concern is: We don't really care who builds the tower, as long as **cell** service does get provided. We are worried that if someone was to build a tower without having an anchor tenant, that the tower could get built **and have** nobody go on it. Because, they would charge too much. You see what I mean? So, I think your County Code says that they're not supposed to issue building permits without an anchor tenant; **is the** way I understood it.

I talked to my lawyer, Dusty Martinson, about that. That is the way he understood it, also. So, we're in favor of anybody that gets a tower built with a cell provider on it. And we don't really care who builds it. So, that is just kind of where we are at. I don't know if I've made myself clear or not. Can everybody understand what I had said?

(multiple commissioners confirmed in the affirmative)

Property Owner Chris Ray – Okay, I thank that is all, then.

Chairwoman Kathy Clarich – Thank you. Alright, is there anybody else on the phone that would like to be in favor of this? It's *3 if you're on the phone and need to unmute. Okay, we are going to go to opposition.

OPPONENT'S TESTIMONY

Chairwoman Kathy Clarich – Is there anybody in opposition of this? Okay, please come state your name and your address.

Opponent Andy Cockell, Maverick Towers – My name is Andy Cockell, 1815 North 11th Street, Boise, Idaho. I am representing Maverick Towers. I also want to start off by thanking you for taking the time tonight to listen to us. Maverick Towers is a small regional tower development company based out of Boise. Primarily, we've built towers in Idaho, Utah, and mostly Eastern Oregon.

We have had a pretty good productive relationship with Malheur County, probably over the last seven eight years developing towers all the way back to when Alvin Scott was the Planning Director and with Eric Evans. In March of 2023 we received a zoning approval on the property for 199-foot cell support tower. We were working with various carriers at that time. In our industry, the carriers' budgets for construction are kind of a moving target. They tell you they want something and then next quarter, they say they don't. So, we have just been waiting for a carrier to give us the green light on funding to actually start construction.

We spent a lot of time and money on this project and went through all the state and federal regulatory hurdles, including state historical preservation, NEPA (*National Environmental Policy Act*), the Environmental Protection Agency (*EPA*), all of the tribal notifications, phase I hazmat soils testing. I worked with Oregon Fish and Wildlife Department (*ODFW*) for almost a year, put together the first sage-grouse mitigation plan that was ever successfully completed by a wireless carrier, or a wireless tower developer.

To the benefit of Vertical Bridge, they came along and piggybacked on my hard work. It cost me almost \$10,000 and it took a year to complete. So, that kind of delayed the project for a while. I wasn't able to submit my zoning application until that process was complete. So, technically, I really only had this zoning approval for a year. I'm co-developing the site with Tower Co. They are a national tower developer on a larger scale than a small company like myself.

They have the master lease agreements with T-Mobile, AT&T, Verizon, and Dish Network. And the same thing, the same relationship that Vertical Bridge has with the carriers. We are...in the proposed tower...I'll just back up a bit, is the exact same coverage objectives of what our tower will provide. And so, we're already there. It's already approved. We're just waiting on a carrier to give us the green light to go. So, I really feel this tower is redundant.

In all my experience working with Malheur County's Planning Department and with the planning directors, they have never approved a competing tower that has the same coverage footprint of an existing tower or an approved tower. They have always, per the code, forced co-location and encouraged people to go to...an existing location.

I talked to Vertical Bridge at length about working together when they first approached the area and let them know that I had the approval in place and I have a long working relationship with T-Mobile myself, on a regional level. I don't have the national agreements in place. But now, working with Tower Co., I do. And they just weren't really interested, you know? They just basically said, 'No. We are going to do our own thing. We are going to go get a tower right across the street.' And that's exactly what they did.

In our industry, I have been doing this for thirty years, there is a kind of...I'd call it 'business integrity.' Where, if you're a tower developer and you're looking at a specific location, and you run into another developer that is farther along in the process: You have, kind of a business courtesy. Just like, 'Okay, these guys are already here. We're going to move on down the road to the next location.' That has been going on for as long as I can remember. So, in this particular case, I'm not sure why Vertical Bridge is being so aggressive, to try to out-do me and take my tower away from me.

So again, I'm just a small regional guy. I've been doing business in Malheur County for a while. It's been great. I hope to continue to do business with you guys. We did talk to T-Mobile, who they say they're representing, just two days ago, at a very high-level regional director level. They said this site is on hold for funding. It's really not...they really can't determine when this site will be available for funding. So, this seems a little premature to try to come and get another tower approved. Especially when it's in direct competition along where Malheur County has already approved. And we're prepared to build this tower within the time frames that were granted to us upon our conditional use permit (**Maverick's was an admin decision*) special use permit zoning. If we...if they can't do that, then that's probably the appropriate time for them to come back and file their application. So, I'd be happy to answer any questions you guys might have.

Chairwoman Kathy Clarich – So, you don't have an existing tower there now?

Opponent Andy Cockell, Maverick Towers – No, I have the approval and in the same situation they will be in. They'll have an approval, but no one has a carrier right now. The funding isn't available from any of the four major carriers. But, we have the same master lease agreements in place on a nationwide basis. So, as soon as funding becomes available from anyone, we will break ground and start construction.

Chairwoman Kathy Clarich – So, you don't know if you can do it within the time of your permit?

Opponent Andy Cockell, Maverick Towers – Well, we are working on it. I'm pretty confident I can get it done.

Chairwoman Kathy Clarich – Okay, that's all I needed to know.

Commissioner Allen Montgomery – How long are those permits good for?

Opponent Andy Cockell, Maverick Towers – I believe they are good for a year. Well, we were delayed a year with the sage grouse issue.

Chairwoman Kathy Clarich – Okay. So, is there anybody else who is against this action?

Opponent Shelly Niece – I am.

Chairwoman Kathy Clarich – Okay, please state your name and address.

Opponent Shelly Neace, Rocky Mountain Towers – My name is Shelly Neace. I live at 5150 May Ann Avenue, Reno, Nevada. I am the owner of a small development tower company called Rocky Mountain Towers. I am a competitor to Maverick Towers. And you might ask why I would speak against this tower today and in favor of my competitor. I'll tell you why. There are three reasons.

Number one: I would like to say that I work in an industry where we're a small group of people. We all know each other. So, this is not directed at an individual. This is directed at an issue. And the issue is that Vertical Bridge has come in across the nation and tried to boot out the small tower developers. They're not honoring a code of ethics that we all live by.

If we go out and we spend money, and this is probably 50 to \$100,000 this man has invested in this. I know, because I live this on a daily basis. We go out and we do our homework before we invest that money. We talk to the carriers. We talk to our friends. We talk to our engineers that we hire and contract to, and then we come out. We don't just randomly decide to put a tower somewhere. And this didn't randomly just happen, okay? Once we do that, those carriers will often put the budget on hold and will hold that tower until we get the carrier to come back. And they will. They always do.

Number two: The integrity issue. I don't want to see big business push out small business. **With** small business, we hire local A&E firms and local surveyors and local construction crews. We hire local people. I don't want to see an East Coast company come in and push out local people who are doing business in the Pacific Northwest and in the Rocky Mountain region like Maverick and Rocky Mountain Towers. There aren't a lot of us and we don't need to go away. We serve a need **in** this industry. So, I'm against it for that reason.

The integrity issue and how they're treating this person and Andy is correct. If I knew Andy were here and I were looking for a site here, I would have walked away. It's a nod...a 'we understand you're there.' You put out the money. Okay? Walk away. Why is Vertical Bridge being so aggressive? They're being aggressive across the country. I've heard that they're doing this to other small tower companies.

And lastly: I want to say that whatever decision you make here today...we will resolve the issue in the industry ourselves. We will, and Andy will work out an issue with Vertical Bridge. This will sort itself out.

It will sort itself out with T-Mobile. It will certainly sort itself out with Tower Co. And by the way, I can only say on behalf of Tower Co.: I have dealt with them. I have worked with them and they're an excellent company. So, this will sort itself out within T-Mobile.

But, if you approve this today, there'll be conflict. If you don't approve it today and you wait, as Andy asked you to do, it will resolve itself. You made the right decision a year ago, or a year and a half ago, whatever that may be. You made that right decision. Uphold that decision, let this issue resolve itself.

And I would lastly add that, going through a year of grouse with fish and game (ODFW) in Oregon and being the only person who has done it, in and of itself, merits the respect to let this man have a chance with Tower Co. And he does have an anchor tenant, they are coming. Because I did my homework. I own a tower down the road that I built with you. It just went up. Verizon is my anchor tenant. It's about six miles away. And I can tell you right now, they're coming down the road. So, thank you. I respect your time. That's all I have to say.

Chairwoman Kathy Clarich – Thank you. Anybody else online or on your phone that would like to be in opposition to this, please state your name and your address. *3 to unmute.

Opponent Jerod Curley, Tower Co. – Yes, this is Jared Curley. My address is 5727 61st Avenue NE, Seattle, Washington. I'm the Senior Vice-President with Tower Co. Thank you very much for your time. I am respectfully asking that this be denied. I'd like to echo what Andy has articulated to you today and I would further add that he is a very well respected and successful in his own right, developer. He's very good at what he does.

And to Mr. Ray's point, there's no doubt that there will be coverage here in the near future. As a co-developer with Andy, and as a national tower builder for all the carriers, AT&T, Verizon, T-Mobile, and Dish, now called Boost, we have master MLAs, as Andy mentioned, with all these folks. And we have no doubt that most of these carriers, if not all of them, will be coming here soon to be installed on a tower.

What's happening with T-Mobile at the moment is they had a 're-engineering of efforts,' if you will, on what would be priority and budgeted. This is common. This particular site was put on hold from a budget perspective, but this exercise with them internally is nearing its end. And I'm confident that Andy will be able to have someone like T-Mobile installing, and as a tenant, well within the timeframe that he has already approved paperwork on.

So, I just would like to, again, reiterate Andy's position. Certainly, **we** can appreciate what Shelly had to say. I'd like to let Mr. Ray know that we are fully confident that there will be connectivity there in the near future. I'm highly confident of that. We do have a lot of interest, **you** know, in that area. We do have work down route 26 (*John Day Highway*). Then I would also say that, in addition to the national carriers, Tower Co. actually has...and I sit right here next to T-Mobile corporate, by the way. Tower Co. also has regional exclusivity with carriers in this area.

So Inland Cellular, Union Wireless: these are all people that require connectivity within the Wyoming and Utah and Idaho and Oregon and Washington area. In addition to Strata Networks out of Utah. So, there's ample opportunity for Andy to be successful here. He's very well respected. And again, we just respectfully ask that this be denied. Thank you.

Chairwoman Kathy Clarich – Thank you. Anybody else who'd like to speak to this motion? *3 to unmute, if you're on a phone. Otherwise, you can unmute on your computer.

Property Owner Chris Ray – This is Chris Ray again.

Chairwoman Kathy Clarich – Yes, Chris.

Property Owner Chris Ray – So, I do have a couple of questions here. Maybe everybody can just answer them for me. First question is, how tall **are** each of those towers? That was...I'm just curious. That would be a question for **both**.

Chairwoman Kathy Clarich – One hundred and ninety-nine feet. Both were listed as 199 feet.

Property Owner Chris Ray – Okay, got it. Okay and then the second question is...and this might have to be answered by the county attorney. Is Stephanie present?

Chairwoman Kathy Clarich – Yes.

Property Owner Chris Ray – Okay, so when they issue these building permits, my understanding was they had to have an anchor tenant. And what I understand an anchor tenant is was a cell company. I'm kind of

naive you know here. I'm just a farmer. I don't know a lot about this stuff. But, I would like my cell phones to work. Because, we do use them for our feedlot operation. We use all this new technology to do all this stuff we did. You know, what everybody does anymore with farming and everything.

So, when they issue a building permit you need an **anchor** tenant as what I understand. So, who was Maverick Tower's anchor tenant when they got issued the permit? And then also, does our other tower company have an anchor tenant? So, if we can just clarify that. That would be good. Okay and I'll shut my microphone off **now**.

Opponent Andy Cockell, Maverick Towers – **I can respond to him, correct?** No, I haven't been issued a building permit. Upon filing the land use application, we were talking to T-Mobile, and then Vertical Bridge struck a nationwide deal with them for cheaper rent basically. The local people at T-Mobile were directed that they can only work with Vertical Bridge. Since entering into a co-development agreement with Tower Co., I have that same ability now to work with them and using their master license agreements. When we do file the **building permit**, we will have an **anchor tenant**. It could be one of the four major carriers. We're just waiting and talking to them all on a regular basis and waiting for their construction budgets to open up. So, and Vertical Bridge is in the same boat.

APPLICANT'S REBUTTAL

Applicant Matt Schutjer, Rage Development – In response to that, Vertical Bridge has a contract with T-Mobile on this site. Maverick simply does not. I've provided an email from T-Mobile directly to both the county attorney and the county planner to that effect. I'm happy to provide any other further information you'd like. However, upon filing this application, Vertical Bridge had an anchor **tenant**. And that's the bottom line. **We have that agreement**.

Opponent Shelly Neace, Rocky Mountain Towers – I'd like to speak. This is Shelly Neace again, that small tower owner, Rocky Mountain Towers, the competitor to Maverick. I'd like to see that agreement. That needs to be a matter of public record. And before a decision is made here, I would suggest that you table it and get proof of that.

Applicant Matt **Schutjer**, Rage Development – I guess, in response to that, I provided an email from T-Mobile directly to the county. I'm happy to resend that. I don't...this is...I work with all of these companies all the time. You **know**, **Maverick** is a great company. Tower Co.: I do co-location applications on their towers all the time. The bottom line is T-Mobile hired Vertical Bridge, who hired me, to build them a tower. And that is the job I'm trying to do, period. I'm happy to provide any other information you guys would like. But, I have provided the county an email from T-Mobile directly. Whereas, there is an anchor tenant in place. **That is part of the code...**

Opponent Shelly Neace, Rocky Mountain Towers – I would like to see proof of that. Because, I believe that this is a site that is not budgeted at this time. There's not no money behind it. And I think that could be proven. So again, I would ask to table it.

Chairwoman Kathy Clarich – Kelsey, do we have an email?

County Counsel – Well, that needs to be part of the record. It's not in the application. **So, the letter from Vertical Bridge, or from T-Mobile.**

Chairwoman Kathy Clarich – Yeah, I don't see one in here at all.

Applicant Matt Schutjer, Rage Development – Again, I'm happy to provide that, if you want to table it, or make that a condition of approval. Or, whatever you guys would like. I want to show you guys the proof that you're looking for. I'm not afraid to do that. It's the bottom line. I guess I don't understand. Well, I'll just leave it there.

Opponent Andy Cockell, Maverick Towers – Well, even if you had an agreement, the site is on hold. We have proof from an email from top people at T-Mobile, but there's no funding...

Chairwoman Kathy Clarich – This arguing is not getting us anywhere, anyway. Can we do a continuance on it then?

County Counsel – Yeah, I just want to be... Yeah. I think that they need to submit this as part of the record. I don't think that just submitting it in an email chain back in April for the application to be filed. That needs to be part of the record.

Applicant Matt Schutjer, Rage Development – And that's understandable. But I guess... does the application today as it stands, in the ordinance... this is all kind of a sidestep from 'does this meet your standards?' Can this application be approved based on the submission?

Chairwoman Kathy Clarich – Well I'm... so this whole thing is kind of confusing. Because, if we already have somebody up there with... I mean... and then you want to put another one directly across the road. They would be competing against each other, all the time. But, can we even do that?

Commissioner Allen Montgomery – In my opinion, this is... this is a business conflict thing, that they need to work out. But, as far as approving a permit. I don't see any reason why we shouldn't approve a permit. And I know that, like she said, it will work itself out. I really feel for the guy that did all the work and spent all the money. Because, if the other guy comes in and sets up the tower and everything works? That's awesome for him. But, as far as a permit goes, I don't think we can get involved in the process that they're going through; because of business ethics.

Commissioner Cory Sappe – We don't regulate competition. We just simply don't.

Chairwoman Kathy Clarich – Woah, woah. Hold on...

Property Owner Chris Ray – Okay. Hey, this is Chris Ray again. I asked a question earlier. It was directed at Stephanie and she didn't answer that question. So, I want to get to the bottom of this tonight. I'm really tired because I got up early and worked all day. (laughter) So, let's go, let's go back. Let's back up a little bit here. Maverick Towers got a building permit. Okay, we all can agree on that, right?

(multiple responses in the negative)

Property Owner Chris Ray – Did they have a building permit or not?

(multiple responses in the negative)

County Staff – No, they have no building permit.

Commissioner Clark Forsyth – They got a zoning approval.

Chairwoman Kathy Clarich – They got the conditional use permit.

Property Owner Chris Ray – Okay, did they have an anchor tenant at that time?

Commissioner Clark Forsyth – They don't need one at that time.

Chairwoman Kathy Clarich – They don't have to have that until they get their building permit.

Property Owner Chris Ray – Okay, so nobody's got building permits yet?

(multiple responses in the negative)

Chairwoman Kathy Clarich – So, no building permits yet.

Property Owner Chris Ray - Okay. So, thank you for getting that clarified with me. So, Vertical Bridge does not have a zoning...so that's where we're at. We're at the zoning approval.

(multiple responses in the affirmative)

Commissioner Cory Sappe – Correct. That is what we're doing.

Property Owner Chris Ray – Don't we need...okay, so I already have long range wi-fi up here. We don't need any more wi-fi up here. What anchor tenant did Maverick Towers utilize to get zoning approval?

Commissioner Allen Montgomery – They didn't need one, right?

Commissioner Cory Sappe – You don't need one.

Chairwoman Kathy Clarich – Yeah, you don't have to have an anchor to **get one**...

Commissioner Cory Sappe – No, we're not, we're not discussing anchor tenants. That's not anything **we have control over**.

Property Owner Chris Ray – Well, my concern, and I think you're hearing this, people talk about this, is that this feud goes on between two competing tower companies. T-Mobile's budget will go away and we won't get any tower. Can you see how that could be happening right now?

Commissioner Allen Montgomery – No, I think the issue is which tower is going to get the money first.

(multiple responses in agreement)

Property Owner Chris Ray – Well, my concern is that, you know, this will carry on and then we won't get a tower here. We will be without cell for another 10 years before this comes around again. You see my concern?

Commissioner Allen Montgomery – I see the concern. But, I think that that is the business end that we are not getting involved with. What **we are here** is to either approve or disapprove an application. **That's what**...(interrupted)

Property Owner Chris Ray – And that's quite a bit back behind here that I wish Stephanie would elaborate on maybe a little bit. Could you help us? Maybe you could explain how the rules apply so you can't build two towers close to each other. Because we don't want multiple towers? Because it's unsightly and not efficient.

Chairwoman Kathy Clarich – That's not really a rule as far as I understand it. It's, we usually don't approve two of them in the same area because you can co-locate on towers. **But it is not a rule.**

Property Owner Chris Ray – Right, I understand that. That makes sense. Totally. And, you **won't** let two people build them at the same time. So, basically whatever cell provider comes up first and has an anchor tenant to build with, you know, then we need to give them approval to build.

So, my proposal is whoever actually has a builder, whoever it is, a cell company...because I'll switch carriers whatever one you know that is. I don't care. Then let's give them approval that's what we need to do here. And they can **go feud** elsewhere you know? I don't care about that. You see what I mean?

Applicant Matt Schutjer, Rage Development – I guess that's my point: We've submitted an application. **Does** that meet your code? And, can we get approval for that? The business stuff...it's not **for county discussion**, so much.

Commissioner Cory Sappe – No, it's not. **We have nothing to do with that.**

Opponent Carrie Fazzolari, Tower Co. – Excuse me, can you hear me?

Chairwoman Kathy Clarich – Yes.

Opponent Carrie Fazzolari, Tower Co. – This is Carrie from **Tower Co.** And your code actually does require for a conditional use application that the...in section 6-6-8-8D2 that an application be accompanied by an FCC licensed carrier. And in this case, and I ask that though you have the email about it from T-Mobile, I think that maybe this should be tabled until we can find out if Vertical Bridge does have an anchor tenant; to be in compliance with your ordinance.

Applicant Matt Schutjer, Rage Development – So the question is, you just referenced that part of the code, where is Maverick's anchor tenant?

Opponent Carrie Fazzolari, Tower Co. – Maverick had an anchor tenant at the time that they filed for their application. We're asking you...

Applicant Matt Schutjer, Rage Development – I can show proof of that, and I have. What proof can you show? But again, this is all nonsense. The fact of the matter is, I have an application in front of you guys, the only opposition to this application is a competitor. It's not a citizen. It's not the neighbor. It's someone that's looking for a financial gain. And I hate this position that I'm in. But I am just trying to do my job. I guess that's the **bottom line.**

County Counsel – **When** Maverick asked for a continuance of his application, we asked who his tenant was. At that time, it was Elevated Internet. And she is right, we do require that you...that we have an FCC-licensed carrier. One of the things historically is, is that we've never made them prove who it is until they actually pull a building permit. We take their application on their face and don't question their truth and veracity.

We've never questioned Maverick when they applied the first time and said, 'Hey, T-Mobile might come.' We're not questioning the truth and veracity of Vertical **Bridge** when they say, 'Hey, T-Mobile will come.' So, you know, they have...this has been going on all summer. They really have put county staff in the same position that you are. And we **try** to navigate it, and we can't. So that's why it's here.

And there were a few inconsistent things that we did within the Planning Department, as well. Like, our code requires that these come before the Planning Commission as a Conditional Use Permit. Apparently,

some were approved administratively. So, I will say that I did receive an email through Matt (Schutjer) on an email chain, where there was a representative from T-Mobile; in April.

Her name is Peggy Owen, from T-Mobile, who wrote to Vertical. Not to me. And I was just provided this email. Vertical Bridge was awarded four sites, shortly after they were designed. And is the only tower company that has ever worked on these four sites.

So, I don't know if that...I don't know what that proves. It is not part of the record. I'm just trying to be forthright. Because Mr. Ray has asked for a little clarification and that's what I'm providing.

Commissioner Clark Forsyth – One question I have. There's already an approved site ready to go.

Chairwoman Kathy Clarich – Right. But nothing's been built yet.

Commissioner Clark Forsyth – Nor will **anything** be built on this one, right? We're just approving another site. Okay.

Chairwoman Kathy Clarich – And then they can decide, they both put up a tower and they can decide who's going to do that move?

Commissioner Clark Forsyth – I guess that's where I'm confused. Because there is an approved site there, and nobody's building on it. So, if we approve your site, you're saying you can start next week? I guess that's the clarification I'm after.

Applicant Matt Schutjer, Rage Development – So, this is the zoning approval. We still have to go through the building permit. But yes, we have an anchor tenant that's ready to build.

Opponent Andy Cockell, Maverick Towers – It's not, according to the people I talked to at T-Mobile.

Opponent Shelly Neace, Rocky Mountain Towers – I don't believe that's true. I think that site is on hold. I know Peggy Owen personally and I would suggest you table it and get proof of the fact. It doesn't hurt anyone to wait 30 or 60 days. Okay, we don't have to have them have an anchor. Is that what you are saying?

County Counsel – I mean **we don't**...we **have** never required proof. We have never questioned anyone's truth and veracity when they make an application and say, 'I'm working with T-Mobile, I'm working with Verizon.' We've never questioned the truth and veracity. In fact, we never questioned Maverick's truth and veracity. They've been very successful in Malheur County. There's no reason to question **his** truth and veracity.

So, when he did do...when he did ask for it to be continued for a year, our Planning Department did say, 'Who is going **up** on there?' We're not just going to give you approval. And at that point in time, they provided us with a confidential lease agreement with Elevated Internet, I believe, yes.

Chairwoman Kathy Clarich – And towers can be for either phone or internet?

County Counsel – Yeah. It's only when they have a building permit, that **they** then have to have, have to show us who their...who the carrier is. Which is how we've done it historically. I mean, I am not in the Planning Department. I'm the County Attorney. I didn't even know this was an issue until it came up.

So, we are not questioning Vertical Bridge's truth and veracity either, by bringing this application forward to you; when they say they have something for T-Mobile. But the truth and veracity are being questioned. So, you know, it's your discretion.

Applicant Matt Schutjer, Rage Development – I would just like to mention, I've got a total of four sites that I'm working on in Malheur County that are Vertical Bridge build-to-suit for T-Mobile. I recently got a building permit for a project in Brogan, that is also on the Ray's property; that will be starting construction soon. There's one right in the backyard of Adrian High School, that is under construction. There is a tower in the air. And so, to question...I don't know. I have provided an email. None of this really matters so much, other than the application I have in front of you guys, is just that.

Does it meet the code? Can it be approved? Vertical Bridge is building in the area. I showed you coverage plans and the fact that we are currently under construction on projects, in your county. So, for these people from Tower Company or whomever...to say that T-Mobile is holding the funding...I guess that's just where the proof is in the pudding and there are towers under construction; as we speak.

Opponent Andy Cockell, Maverick Towers – Well, I feel like I should be given my time that was given to me, through my approval, to perform. Before another carrier is awarded another site across the street.

Commissioner Allen Montgomery – So I guess my question...and believe me, I am just trying to figure this all out. So, if he's got a tower, people are wanting to go. Why aren't they contacting you and saying, "Well, let's go with your tower' on this one?"

Opponent Andy Cockell, Maverick Towers – Because they offered him a much cheaper rent, through a nationwide, build-to-suit agreement. But, I have other carriers all the time. I give fair market rents to everyone.

Chairwoman Kathy Clarich – Okay, but that's not for us to decide. You guys are going to have to fight whatever out.

Opponent Jerod Curley, Tower Co. – If I could maybe just add...this is Jared Curley again. So, it is absolutely correct. That's an application in front of you and whatnot. Both Vertical Bridge and Tower Co. are national tower developers with T-Mobile.

T-Mobile, just like most of the carriers, you know, they cast a wide net. They issue a lot of 'rings,' in the hopes of people like us and that are talking to you today; to find candidates and areas where we can build and get zoning approval. And it is not uncommon for that to overlap sometimes, to some degree. It's not uncommon for these sites to get on hold because they only have so much capital to go around. Based on who is able to win these sites or get candidates, here or there or anywhere. Sometimes, the priority shifts. Things get put on hold, until budgets can be reissued or...reissued if you will.

So, I think in this particular case, it does seem to be that this site is on hold. And I will say that there's a lot of times where, even if we are issued a ring and somebody like Vertical Bridge does have some type of zoning already in place, we will just back down. Because, it doesn't make sense unless someone like, you know, you all would like a tower farm.

So, it is typical where, if somebody does have zoning already, even though you might be issued a ring or have a contract, we both, and we all prefer a vendor equally. So, you know, if we don't have the...if we find a candidate, but somebody comes in or, you know, had zoning already approved, we just wouldn't pursue it. Just because we don't think it's necessary. I believe, Kelsey, to your point, maybe 10 minutes ago in this conversation. So, I don't know if that helps, but that's just our perspective on how the carriers work. They don't necessarily, at times, care so much who builds it, especially if they have an approved

national builder, or vendor there. And it's typically, if you've got the zoning, that really is the catalyst that really tips the scale...

Chairwoman Kathy Clarich – Um, we've got the idea. We got the idea. Everything is now closed to the public. So, no more talking. It has to be up to us. If we have a question we will ask. So, no more just jumping in. It's getting to be late. We would all like to go home.

DELIBERATION

Chairwoman closed this portion to public testimony.

Chairwoman Kathy Clarich – So, planning commission, what are your thoughts?

Commissioner Cory Sappe – The application is fine for zoning. I mean, this has nothing to do with us. Besides the zoning part of it.

Commissioner Allen Montgomery – I agree.

Chairwoman Kathy Clarich – Okay. So, I need some motions then. So first one would be to adopt the staff report.

Commissioner Clark Forsyth – I make a motion to adopt the staff report, as stated.

Chairwoman Kathy Clarich – Do you want me to read what was on the conditions of approval?

Commissioner Clark Forsyth – Yeah, for the record, please.

Chairwoman Kathy Clarich – Section VII - Conditions of Approval:

1. All required road access permits must be obtained from the Oregon Department of Transportation. If necessary, all easements must be obtained along with a Road Maintenance Agreement between all parties.
2. A 10-foot buffer must be maintained within the lease area and beyond the fence, to decrease the chances of a wildfire.
3. After the county makes determination of discontinued or non-use, the property owner shall, within six months, complete removal operations.
4. This approval is valid for two years, from the date of this order. Substantial action must be taken within this time period or the approval will lapse.

Chairwoman Kathy Clarich – Is it two years? Or is it supposed to be one year?

County Staff – It should be two. The Conditions of Approval is two years. The building permit is one.

County Counsel – You know...why was Maverick on the issue of one-year commitment?

County Staff – Because they were administratively granted access and their building permit expired, not their conditions of approval.

Chairwoman Kathy Clarich – I thought they didn't have a building permit?

County Staff – Sorry, not the building, but the zoning approval. The zoning approval had expired. And so, they came and filed an extension for the zoning and septic that had been approved to go to the building.

County Counsel – So, they put one year on Maverick, because it was an administrative decision? And conditional use permits for two years?

County Staff – Yes. From what I understand.

County Counsel – Hmm, that could be wrong. It's happened a time or two.

Chairwoman Kathy Clarich – I just want to make sure before we go ahead.

Commissioner Clark Forsyth – But wouldn't the extension be for a year?

Chairwoman Kathy Clarich – Well, they only had a year in the first place. And that's why I **wanted to know** for sure.

County Staff – There was no **timeframe** listed on the conditions and approval; for the admin decision. The Structural permit that he started with zoning had expired. But, that is all it says on the conditions...

County Counsel – In the Malheur County Code, for conditional uses, it says 'Authorization of the conditional use shall be void after two years, or such lesser time as the planning commission may specify, unless substantial construction pursuant thereto has taken place...

MCC 6-6-12: Time Limit on Authorization:

A. Authorization of a conditional use shall be void after two (2) years or such lesser time as the planning commission may specify, unless substantial construction pursuant thereto has taken place. However, the planning commission may extend authorization for additional periods, on request or on its own motion, without the necessity of following any formal procedures such as those set out in this chapter and in chapter 10 of this title.

County Counsel – So, it can be two years, or **such** lesser time, as the planning commission may specify for conditional **use**.

Commissioner Allen Montgomery – **So, we are okay with the two years there?**

Chairwoman Kathy Clarich – For two, if you want. Or, we can go for one, just like the other one.

Commissioner Allen Montgomery – **If that is what was already printed, let's leave it like it is.**

Chairwoman Kathy Clarich – Okay. Is everybody in agreement? Okay. So, I need to adopt the Staff Report and Findings of Fact. Did we have a motion already?

Commissioner Clark Forsyth – Yeah, I did.

Chairwoman Kathy Clarich – Did we have a second?

Commissioner Cory Sappe – I will.

Commissioner Allen Montgomery made a motion accept the Staff Report and the Findings of Fact.

Commissioner Cory Sappe seconded the motion.

Motion was unanimously approved by the Commissioners present.

Chairwoman Kathy Clarich – Motion carried. Okay. Approve or deny the conditional use permit

application? I need a motion.

*Commissioner Allen Montgomery made a motion to approve the Conditional Use Permit for one non-farm dwelling in an Exclusive Farm Use zone.
Commissioner Cory Sappe seconded the motion.
Motion was unanimously approved by the Commissioners present.*

Chairwoman Kathy Clarich – Motion carried. Alright, we are done. Oh, no we're not. We have minutes to do.

Commissioner Cory Sappe – Yeah, you guys can go. You're done.

Applicant Matt Schutjer – Thank you, everybody. Have a great weekend.

Chairwoman Kathy Clarich – Now they're going to go out the door and that's it. No fisticuffs allowed.