

500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Mayor Fletcher
Members of the Forks City Council

19 September 2025

FROM: Rod Fleck, Attorney/Planner

RE: Administrative Staff Report – Formal Appeal – Request to Overturn Planning Commission’s
Final Decision on Vertical Bridge Special Use Permit

Mayor Fletcher and Members of the City Council,

The following is a summary of the administrative activities associated with receipt of the appeal and the various notice efforts undertaken.

On 18 July 2025, Chairman Milton Beck signed the decision document that reaffirmed the issuance of a Special Use Permit I issued on 4 April 2025. Chairman Beck’s actions were per the authorization provided by the Planning Commission at its 1 July 2025 special meeting. Later on the afternoon of 18 July 2025, a digital copy of the decision was provided via email to both the original appellant, Ferguson, and to the applicant, Vertical Bridge.¹ On 22 July 2025, a copy of the decision was mailed to property owners of record located within five hundred feet of the parcel. Via email on 18 July 2025, Ferguson inquired as to the decision. I followed up via email with Ferguson noting that the decision had been emailed to him on 18 July 2025. However, on 22 July 2025, he noted he had not received the email of the previous Friday afternoon. The decision document was provided again in an email on 23 July 2025 with a link to the document in an accessible Dropbox.com file.

On 7 August 2025, the City received on behalf of Dave Ferguson (Ferguson) a “Formal Appeal – Request to Overturn Planning Commission’s Final Decision on Vertical Bridge Special Use Permit.” A copy was provided to the City Building Inspector and to the members of the Forks Planning Commission with the latter via email per their preference. Notice for the appeal was provided to the Forks Forum, and it was published in the 28 August 2025 edition of the newspaper

On Friday, 22 August 2025, the transmittal of the appeal and a cover memo I wrote was included in the City Council’s notebooks. A copy of this was emailed to both parties that same day. The following day, 23 August 2025, Ferguson acknowledged receipt of the transmittal memo and requested that the Council hold the closed record appeal hearing on 22 September 2025 instead of 8 September 2025.

¹ Vertical Bridge REIT, LLC changed its operation name associated with this project to VB BTS III, LLC with the City’s permission. The City has used Vertical Bridge interchangeable, and the SUP was issued for the project with VB BTS III, LLC being the correct and ultimate entity responsible for the project.

On 25 August 2025, the City Council was presented with Ferguson's email request and agreed to rescheduling the closed record appeal for 22 September 2025. That same evening, Charlotte Archer, Inslee Best, pro tem City Attorney to Council, emailed the parties of the Council's decision to reschedule the appeal to 22 September 2025.

On 27 August 2025, notice of the rescheduled appeal was emailed to the Forks Planning Commission. That same day, the same notice for the rescheduled appeal was mailed to individuals on both the list provided by Ferguson in his appeal and to the list of property owners of record within five hundred feet. The same notice of the rescheduled appeal was provided to the Forks Forum and it was published in the 4 September 2025 edition of the newspaper. Notice of the appeal was also posted on 29 August 2025 on the City's website:

<https://forkswashington.org/notices/notice-of-consideration-of-appeal-to-the-forks-city-council/>

On 2 September 2025, I forwarded by email a digital link to the parties to the appeal that contained the "papers constituting the record, findings, and decision relating thereto" as required by FMC 17.135.030. Later that day, Clerk/Treasurer Caryn DePew used my email to forward the link for the record to each of the City Council members. A physical copy of each of the documents listed within the two folders of the shared Dropbox.com link have been printed out and attached to this memo.

On 12 September 2025, the notice was posted on the metal I-beam near the border of the property and on the bulletin board at City Hall.



William R. Fleck
Attorney/Planner

ITEM 1

vertical

Vertical Bridge, Inc.
10000 1st Avenue, Suite 100
Seattle, WA 98148
206.461.1111
www.verticalbridge.com

2/20/2025

City of Forks

Rod Fleck

City Attorney/Planner

500 East Division St

Forks, WA 98331

RE: Special Use Permit Request Letter

Dear Mr. Fleck,

Please accept this letter as the official request for a Special Use Permit for the installation of a telecommunications tower in the City of Forks. Vertical Bridge is proposing to construct a 152-foot monopole tower designed to improve coverage and service reliability for Forks residents. The proposed site for this tower is located on public land owned by the City of Forks, identified as PID: 132809220000, Lot 4.

Vertical Bridge has secured T-Mobile as an anchor tenant for the tower and has reserved space for three additional tenants. Initially, the design of the monopole tower anticipated a height of 195 feet. However, following the FAA's determination, the tower height has been reduced to 152 feet. This height reduction ensures that the height exemption granted by Bill Paul, Fire Chief, in August 2022, remains valid.

In compliance with the City of Forks code, a SEPA checklist has been completed and is attached to this submission. The checklist indicates no environmental or health safety concerns associated with the installation of the telecommunications tower at this location. It was noted that the property is relatively flat, with a slope of approximately 6% in some areas. Additionally, due to the unmanned nature of the tower and its associated compound, emissions are expected to have minimal impact on the surrounding environment. The checklist also confirms that there are no threatened or endangered plant species on or near the site. As the tower will be less than 200 feet in height, unlit, and free from guy wires, the potential for migratory bird strikes is considered minimal.

The site will require electricity, telecommunications, and fiber installations. It is anticipated that 1-2 technician visits per month will be needed, with minimal disruption to the surrounding area. Attached are propagation maps that demonstrate the expected improvement in coverage for T-Mobile customers

vertical

Vertical Bridge is committed to collaborating with the City of Forks and its leadership to provide this essential public service and to maintaining a long-lasting, positive relationship with the community.

in the City of Forks. As additional tenants are added, coverage for additional residences will be enhanced, improving overall service reliability.

Vertical Bridge is committed to collaborating with the City of Forks and its leadership to provide this essential public service and to maintaining a long-lasting, positive relationship with the community.

Thank you for your consideration. We look forward to your support in facilitating this project.

Sincerely,

Signed by:

Patrick Bardone

83C8E2D4E394-92

Patrick Bardone

Vice President of Development

Vertical Bridge

**Notice of Approval of
SPECIAL USE PERMIT**

**Vertical Bridge Telecommunications Tower
285 West Division Street
Forks, WA 98331**

Project

Proponent: Sheena Rae Polk of SMW Engineering on behalf of
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

Description of

proposal: Construction and installation of a 152-foot monopole telecommunications tower located on property leased from the City of Forks within the former Campbell's Gravel Pit (Lot 4 of the Campbell Pit Short Plat). Pole would serve T-Mobile and have the capacity to serve three additional communication carriers. The tower location was selected to address needs for better cell phone signal transmission in this region. For operational needs, electricity, telecommunications, and fiber optics would be extended to the site and into the associated small service buildings and tower. Most of the lot, except for an existing easement, will be fenced and the tower will sit in the middle of the fenced area. Lot 4 is approximately 0.21 acres or ~9,000 sq. ft.

**Location of
proposal:**

Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Lead Agency Rod Fleck, City Attorney/Planner
City Planning Department, City of Forks
500 East Division
Forks, Washington 98331

**Proposed
Project:**

Permitting the installation of a 152-foot telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. This use requires a special use permit which triggered the need for the State Environmental Policy Act (SEPA) review.

DETERMINATION

Property was the site of a former gravel pit, rock washing, and concrete operation. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement. The proponents will be installing a monopole telecommunications tower in a location that will provide increased cellular phone coverage for personal, business, and emergency users. The project required review by the FAA and as a result of that review the height of the monopole was reduced to what was proposed as part of the special use permit. The proposed use will have minimal demands upon utilities, and in fact could significantly improve the telecommunications offering within this portion of western Clallam County. There will be a change to the visual skyline of the community as a result of this pole. However, based on materials the proponent originally provided to the City, the impact will be similar to the former radio tower that is located approximately a thousand feet to the north of the proposed location for this tower. Access to the property will be through the existing lot that was created in the above referenced short plat to provide ingress, egress, and utility access from the end of West Division to the project site.


APPROVAL OF PROJECT

Notice is hereby given that the above referenced applicant was granted a special use permit for the use described in the project description. A special use permit was required for any tower built in a "public land" zoning designation. A determination was made that the proposed use would not conflict with uses in that immediate area and neighborhood, nor result in hazards or adverse environmental impacts arising from the proposed special use.

A SEPA determination regarding this use in relationship to potential environmental factors has been made. Additional information can be found in the SEPA review and permit issued by the City Planner. A copy of this is attached to those mailed this notice, and those reading the printed version of this may obtain a copy from Mr. Fleck at 360/374-5412, ext. 111.

Any party affected may appeal the decision to the Forks Planning Commission within 14 days of the date of the decision by the Planning Director. The appeal shall be filed in writing with the City Planning Director. The appeal must state the name and address of the appealing party, in addition, the appeal must state the specific problems that the proposed use would have with regard to the public interest; the creation of nuisances, hazards, and other adverse impacts; and/or, the lack of conformance between the proposed development and the comprehensive plan. The appealing party must sign the appeal. In addition, the \$100 fee plus the \$100 notice publication/notice deposit (the actual amount would be billed to the appellant) needs to be paid at the time of the appeal. Appeal must be filed prior to 1 p.m., 18 April 2025.

4 April 2024


William R. Fleck
Attorney/Planner

**SEPA Rules - WAC 197-11-970
Mitigated Determination of Non-Significance (MDNS)**

**Vertical Bridge Telecommunications Tower
285 West Division Street
Forks, WA 98331**

Project

Proponent: Sheena Rae Polk of SMW Engineering on behalf of
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

**Description of
proposal:**

Proponent sought a special use permit for the construction and installation of a 152-foot monopole telecommunications tower located on property leased from the City of Forks within the former Campbell's Gravel Pit (Lot 4 of the Campbell Pit Short Plat). Pole would serve T-Mobile and have the capacity to serve three additional communication carriers. The tower location was selected to address needs for better cell phone signal transmission in this region. For operational needs, electricity, telecommunications, and fiber optics would be extended to the site and into the associated small service buildings and tower. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. Most of the lot, except for an existing easement, will be fenced and the tower will sit in the middle of the fenced area. Lot 4 is approximately 0.21 acres or ~9,000 sq. ft.

A special use permit is required for these types of activities and as a result compliance with SEPA is also required.

**Location of
Property:**

285 West Division Street, Forks, Washington

Legal

Description:

Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Lead Agency

Rod Fleck, City Attorney/Planner
City of Forks
500 East Division
Forks, Washington 98331

**Proposed
Project:**

Permitting, constructing, and installation of a 152-foot telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. This use requires a special use permit which triggered the need for the State Environmental Policy Act (SEPA) review.

Prior SEPA

Documents: None associated with this proposal.

Mitigation required:

1. Compliance with FAA height determination for the pinnacle of the installed monopole and any safety lighting requirements to ensure flight safety needs are met
2. All stormwater drainage must be constructed to ensure that:
 - a. it is kept on site; and,
 - b. if applicable, the drainage system's dry wells or similar such devices are registered in accordance with the Department of Ecology's injection well registration requirements
3. In the course of the construction related excavating, if any historical and/or cultural object or remains are unearthed, work will immediately stop and the Department of Archaeology and Historic Preservation will be contacted to determine how to proceed with the discovery/find.
4. Exterior lighting associated with the fenced compound area will be installed in such a way to ensure that lighting is directed downward and remains primarily on-site.

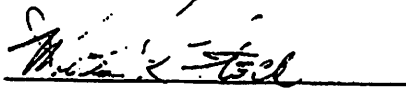
The Lead Agency has determined that the above items do not have a probable significant adverse impact based upon the proposed mitigation required above. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2). This decision was made after reviewing a complete environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This MDNS is issued under 197-11-340 (2); the lead agency will not act on this proposal for a period of 14 days from the date of issuance to allow for agency review and comment, as well as comments from the general public. Comments must be submitted to the City Planner at:

Rod Fleck, City Attorney/Planner
Forks City Hall
500 East Division
Forks, Washington 98331

Comments will be accepted up to 1 p.m., 18 April 2025. The City will review said comments together to determine the impact upon the stated MDNS. Submittal of comments is not the same as a written appeal of this determination or asserting lead agency status. The City may not issue any other determination if the review of the comments does not alter the stated MDNS.

You may appeal this determination no later than 1 p.m., 18 April 2025, by filing a written appeal with the City Clerk of Forks at 500 East Division, Forks, Washington 98331. You should be prepared to make specific factual objections. The appeal must be received prior to 1 P.M. Contact Rod Fleck at 360/374-5412, ext. 245 to read or ask about the procedures for appeals.



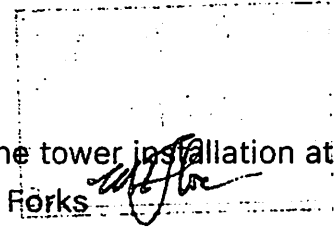
William R. Fleck
Attorney/Planner

Date: 4 April 2025

6

David Ferguson
84 W Division st
Forks wa 98331

Cory G. 75 Approver
3:02 pm 17 Apr 2025



I am writing to formally appeal the recent approval of a 5G cell phone tower installation at 285 W Division st, which is located approximately 300 feet from my home in Forks.

As a concerned resident and homeowner, I strongly oppose this tower for several reasons:

- Proximity to Residential Homes:** The proposed tower is extremely close to my home and others in the area. A 300-foot distance places it well within a range that many residents, including myself, feel is intrusive and inappropriate for such an industrial structure. The visual and physical presence of a large cell tower will significantly alter the character and livability of our neighborhood.
- Health Concerns:** While ongoing debate continues regarding the long-term health effects of 5G technology and electromagnetic radiation, the close proximity of the tower to my home and family raises serious concerns for our well-being. Given the uncertainty surrounding long-term exposure, I urge a more cautious approach, especially in residential zones.
- Environmental and Wildlife Impact:** Forks is known for its natural beauty and abundant wildlife. Installing a 5G tower in such close proximity to a residential and ecologically sensitive area could have adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure.
- Property Values and Aesthetics:** The presence of a 5G tower will likely diminish property values for nearby homeowners, not only due to health concerns but also due to its visual impact. The tower could become a blight on the otherwise natural and scenic environment that characterizes Forks.
- Lack of Sufficient Public Input:** Many community members, including myself, were not adequately notified or given the opportunity to provide input before the tower was approved. I believe more community engagement and transparency are necessary before moving forward with such a significant infrastructure project.

I respectfully request that the approval for this tower be reconsidered, and that alternative locations be explored—preferably those further away from homes and sensitive natural areas. Furthermore, I urge the city or approving body to conduct a more thorough impact assessment and engage with the community before proceeding.

Thank you for your time and attention to this important matter. I am prepared to attend any public hearings or meetings necessary to voice my concerns and to work constructively with city officials to find a more suitable solution.

mail -
RealDealguides@gmail.com

[Signature] 4/17/2025

NOTICE OF APPEAL

AND SETTING OF A PUBLIC HEARING ON SAID APPEAL BEFORE THE FORKS PLANNING COMMISSION

The City received an appeal, replete with the Forks Zoning Code required fee, of the granting of a special use permit to Vertical Bridge for the construction and installation of their 150' monopole telecommunications tower to be installed/constructed at 285 West Division Street.

Appellant(s): Dave Ferguson
284 West Division Street
Forks, WA 98331

Project

Proponent: Sheena Rae Polk of SMW Engineering on behalf of
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

General Legal

Description: 285 West Division Street, Forks, WA 98331
Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Basis for

Appeal: A special use permit for a vacation rental was issued by the City on 4 April 2025 with notice provided to those owners of record within 500' of the outer edge of the property subject to a lease to the project proponents by the City. The City requires a special use permit (SPU) for any tower built in a "public land" zoning designation. See FMC 17.15.060. The respondent proponents Permitting the installation of a 152-foot telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. Property was the site of a former gravel pit, rock washing, and concrete operation. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement.

In the letter appealing the decision to grant the SPU, the appellant's stated the following for their basis for appealing this decision:

Five issues raised in appeal are as follows:

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4.20.2025

1. *Proximity to residential houses with the proposed tower at that location being "intrusive and inappropriate" and it would "significantly alter the character and livability of the our neighborhood."*
2. *Health concerns raised in association with "the long-term health effects of 5G technology and electromagnetic radiation" requiring "a more cautious approach, especially in residential zones."*
3. *Environmental concerns associated with the tower being "in such close proximity to a residential and ecologically sensitive area" the tower would "adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure."*
4. *Property values and aesthetics would be impacted by the tower which would "likely diminish property values for nearby homeowners" creating a "blight on the otherwise natural and scenic environment that characterizes Forks."*
5. *Lack of sufficient public input as the appellant and others "were not adequately notified or given the opportunity to provide input before the tower was approved" and additional "community engagement transparency" should occur before such a project is approved.*

The Notice of Special Use Permit stated that an appeal must state the specific problems that the proposed use would have regarding the public interest; the creation of nuisances, hazards, and other adverse impacts; and/or, the lack of conformance between the proposed development and the comprehensive plan. See also FMC 17.90.010 and

AGENDA

FOR PUBLIC HEARING A notice of public hearing is being set for this appeal before the Forks Planning Commission is called to hear the appeal of only the Special Use Permit.

21 May 2025, 5:15 PM
Forks City Council Chambers
500 East Division Street
Forks, WA 98331

This hearing will be the one and only open record hearing on this land use matter and will occur before the Forks Planning Commission. The proposed agenda for this hearing is as follows:

1. Welcome and Introductions of Members & Staff
2. Appeal by Ferguson of SUP Granted for a Tower at 285 West Division Str.
 - a. Opening of the Public Hearing
 - b. Staff Report of Record & Legal Authorities
 - c. Appellant Ferguson's Position on Basis for Appeal
 - i. Statement and Case Presentation from Mr. Ferguson
 - ii. Statements by other signatories on Appeal Letter
 - iii. Questions, if any, by Planning Commission Members
 - d. Proponent's Position
 - i. Statement by the Vertical Bridge or their Representatives'
 - ii. Questions, if any, by Planning Commission Members

- e. Appellant's Rebuttal, if any
- f. Closing of Public Hearing
- g. Deliberations of Planning Commission Members – In Chambers (See RCW 42.30.140(2) due to quasi-judicial nature of this proceeding
- h. Decision of Planning Commission
 - i. Action on Appeal
 - ii. Authorize the Chair to Sign Findings and Decision Document
 - iii. Authorize the signed document to act as meeting minutes/record of the appeal.
- 3. Growth Management Comprehensive Plan
 - a. Set hearing for June 18
 - b. Update on 60-day notice to State Commerce
 - c. Update on development regulations review
- 4. Adjournment

Individuals requiring special assistance in order to participate in the hearing should contact Mr. Fleck prior to the meeting. Please call at 360/374-5412, ext. 111.

TOWN OF FORKS
500 E DIVISION ST
FORKS, WA 98331

CLAIRE L BURNETT
PO BOX 2657
FORKS, WA 98331

JASON A GOAKEY
187155 HIGHWAY 101
FORKS, WA 98331

CITY OF FORKS
500 EAST DIVISION STREET
FORKS, WA 98331-8618

HOWARD F AND JELENE SARNOWSKI
PO BOX 327
FORKS, WA 98331-0827

PATRICK E MONAGHAN
30 RHODEY AVE
FORKS, WA 98331

MARIANO MARTIN PEREZ AND SAKIA WINDSTRA CHALE
PO BOX 1374
FORKS, WA 98331

TERRY KNIGHT AND BRYAN LANGLANDS-KNIGHT
62 WILLOW LANE
MOUNT VERNON, WA 98273

JEFFREY MARK AND KELLEY VANESSA JOHNSON
10814 181ST AVE NE
REDMOND, WA 98052

CLALLAM COUNTY PUBLIC HOSPITAL DIST 1
530 BOGACHEL WAY
FORKS, WA 98331

MT OLYMPUS LODGE 298
C/O DARRELL MAXFIELD PO BOX 644
FORKS, WA 98331

RYAN CELUSTA AND STUART A BERNETT
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JF/ME WALLACE FAMILY LTD PTSHR
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LANGLEY, WA 98260

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FORKS, WA 98331-1775

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240 W DIVISION ST
FORKS, WA 98331-9117

JOEL AND SONJA NICOLE GENTLEMAN
21 E DIVISION ST
FORKS, WA 98331-9549

SEAN AND HILARY NORBISRATH
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FORKS, WA 98331

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LANGLEY, WA 98260

JACK E LOUTHAN JODY KELLER ET AL STWRODS
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FORKS, WA 98331

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

DAVID FERGUSON ET AL
284 W DIVISION ST
FORKS, WA 98331

BRIAN W AND LAURIE A TURNER
910 RIPPLEBROOK LANE
PORT ANGELES, WA 98362

CHARLES AND NADINE CALDERON DIXON
154 AND 156 WOOD ST
FORKS, WA 98331

JULIAN PABLO ORTIZ AND MARIA CALMO LARRILLO
PO BOX 993
FORKS, WA 98331

MICHAEL D AND AMY LYNN DILLEY
PO BOX 626
FORKS, WA 98331

RICHARD R PRESTON III AND REBECCA PFAFF
P O BOX 2406
FORKS, WA 98331

JERRY R AND MARGARET J KING
1750 CALAWAH WAY
FORKS, WA 98331

CHRISTIAN AND ANNA MATSCHE
5405 UPPER HOH ROAD
FORKS, WA 98331

JAY D MURPHY
181 W DIVISION ST
FORKS, WA 98331

ELBERT AND ELSIE HAMPTON
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FORKS, WA 98331 2002

JAMES M AND LESLIE KLAHN TTES
19034 40TH PL NE
LAKE FOREST PARK, WA 98155 2812

HILKKA H HAMALAINEN
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FORKS, WA 98331

JANIS E SCHROEDER
514 AMERICAS WY #18466
BOX ELDER, SD 57719

SEAN MALEY
410 KLAHNDIKE BLVD
FORKS, WA 98331

ROICE O MILES
470 TERRA EDEN ST
FORKS, WA 98331

TERRA EDEN APARTMENTS LLC
21016 7TH AVE S
DES MOINES, WA 98198

GARY E KILMER
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FORKS, WA 98331-0788

ALLEN A AND RUBY P NELSON
879 KILMER RD
FORKS, WA 98331

MINH AND THAO TRUONG
PO BOX 2402
FORKS, WA 98331

BRIAN AND BRITTANY DIOR LORIA
21016 7TH AVE S
DES MOINES, WA 98198

CHAR-EL MONTANA
PO BOX 1784
FORKS, WA 98331

ROBERT R CHRISTENSON
510 KLAHNDIKE BLVD
FORKS, WA 98331-9104

CELSO AGUILAR AND NIEVES GUEVARA
PO BOX 1184
FORKS, WA 98331

**NOTICE OF APPEAL
(Corrected)**

**AND SETTING OF A PUBLIC HEARING ON SAID APPEAL
BEFORE THE FORKS PLANNING COMMISSION**

The City received an appeal, replete with the Forks Zoning Code required fee, of the granting of a special use permit to Vertical Bridge for the construction and installation of their 150' monopole telecommunications tower to be installed/constructed at 285 West Division Street.

Appellant(s): Dave Ferguson
284 West Division Street
Forks, WA 98331

Project

Proponent: Sheena Rae Polk of SMW Engineering on behalf of
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

General Legal

Description: 285 West Division Street, Forks, WA 98331
Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Basis for

Appeal: A special use permit for a vacation rental telecommunications tower was issued by the City on 4 April 2025 with notice provided to those owners of record within 500' of the outer edge of the property subject to a lease to the project proponents by the City. The City requires a special use permit (SPU) for any tower built in a "public land" zoning designation. See FMC 17.15.060. The respondent proponents Permitting the installation of a 152-foot telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. Property was the site of a former gravel pit, rock washing, and concrete operation. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement.

In the letter appealing the decision to grant the SPU, the appellant's stated the following for their basis for appealing this decision:

No CHARGE
mailed
5.12.25 14
WJ

Five issues raised in appeal are as follows:

- 1. Proximity to residential houses with the proposed tower at that location being "intrusive and inappropriate" and it would "significantly alter the character and livability of the our neighborhood."*
- 2. Health concerns raised in association with "the long-term health effects of 5G technology and electromagnetic radiation" requiring "a more cautious approach, especially in residential zones."*
- 3. Environmental concerns associated with the tower being "in such close proximity to a residential and ecologically sensitive area" the tower would "adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure."*
- 4. Property values and aesthetics would be impacted by the tower which would "likely diminish property values for nearby homeowners" creating a "blight on the otherwise natural and scenic environment that characterizes Forks."*
- 5. Lack of sufficient public input as the appellant and others "were not adequately notified or given the opportunity to provide input before the tower was approved" and additional "community engagement transparency" should occur before such a project is approved.*

The Notice of Special Use Permit stated that an appeal must state the specific problems that the proposed use would have regarding the public interest; the creation of nuisances, hazards, and other adverse impacts; and/or, the lack of conformance between the proposed development and the comprehensive plan. See also FMC 17.90.010 and

AGENDA

FOR PUBLIC HEARING

A notice of public hearing is being set for this appeal before the Forks Planning Commission is called to hear the appeal of only the Special Use Permit.

21 May 2025, 5:15 PM
Forks City Council Chambers
500 East Division Street
Forks, WA 98331

This hearing will be the one and only open record hearing on this land use matter and will occur before the Forks Planning Commission. The proposed agenda for this hearing is as follows:

1. Welcome and Introductions of Members & Staff
2. Appeal by Ferguson of SUP Granted for a Tower at 285 West Division Str.
 - a. Opening of the Public Hearing
 - b. Staff Report of Record & Legal Authorities
 - c. Appellant Ferguson's Position on Basis for Appeal
 - i. Statement and Case Presentation from Mr. Ferguson
 - ii. Statements by other signatories on Appeal Letter
 - iii. Questions, if any, by Planning Commission Members
 - d. Proponent's Position
 - i. Statement by the Vertical Bridge or their Representatives'

- ii. Questions, if any, by Planning Commission Members
- e. Appellant's Rebuttal, if any
- f. Closing of Public Hearing
- g. Deliberations of Planning Commission Members – In Chambers (See RCW 42.30.140(2) due to quasi-judicial nature of this proceeding
- h. Decision of Planning Commission
 - i. Action on Appeal
 - ii. Authorize the Chair to Sign Findings and Decision Document
 - iii. Authorize the signed document to act as meeting minutes/record of the appeal.
- 3. Growth Management Comprehensive Plan
 - a. Set hearing for June 18
 - b. Update on 60-day notice to State Commerce
 - c. Update on development regulations review
- 4. Adjournment

Individuals requiring special assistance in order to participate in the hearing should contact Mr. Fleck prior to the meeting. Please call at 360/374-5412, ext. 111.

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May 13, 2025

Mr. Rod Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331

VIA EMAIL: rod@forkswashington.org

RE: Vertical Bridge Special Use Permit – Appeal to Planning Commission
Federal Preemption of Matters Related to Radio Frequency Emissions

Dear Rod:

On behalf of VB BTS III, LLC (“Vertical Bridge”), the applicant for the special use permit for a wireless tower at 285 West Division Street, we write to confirm the broad federal preemption of matters related to radio frequency (“RF”) emissions in advance of the May 21, 2025, appeal hearing before the Forks Planning Commission.

Mr. Dave Ferguson has appealed the city’s approval of Vertical Bridge’s special use permit to the City’s Planning Commission. Issues 2 and 3 of the appeal argue that RF emissions from the proposed tower will impact the health of persons and/or animals in the area.

Enclosed with this letter is an RF Certification of Compliance provided by T-Mobile. This certification confirms that T-Mobile’s wireless facility will operate in compliance with federal RF regulations.

Please consider the following as you prepare the staff report for the upcoming appeal hearing.

Under the Telecommunications Act of 1996, a jurisdiction is preempted from considering the environmental effects of RF emissions (including health effects) from a proposed wireless site if the site will operate in compliance with federal regulations.¹ This statute provides:

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal

¹ 47 U.S.C. § 332(c)(7)(B)(iv).

wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.²

As stated, the preemption extends to all environmental effects of RF emissions. "Environmental effects" is not defined in the statute, but at least one reviewing court has relied on the Black's Law Dictionary definition, which is "the natural or artificial disturbance of the physical, chemical, or biological components that make up the environment."³

The federal preemption extends to alleged harm to both humans and animals. In one example in which the plaintiffs alleged various harmful environmental effects of RF emissions, including "harm [to the] the environment, causing changes in animal behavior, decreases in reproduction, increases in mortality, and negative impacts to the health of both animals and plants[.]" the court dismissed the complaint for failure to state a claim.⁴

Again, broadly, where federal law and Federal Communications Commission ("FCC") rules have occupied the field of RF regulation, any local regulation of RF emissions is preempted and void.⁵

This means that local jurisdictions do not have authority to regulate on the subject matter of RF emissions, and in particular, a local jurisdiction:

- Cannot deny or condition a wireless facility based on concerns about RF emissions. *AT&T Wireless Services v. City of Carlsbad*, 308 F.Supp.2d 1148 (S.D.Cal. 2003)(a denial may not be indirectly based upon concern over the environmental effects of RF emissions and how such concern may impact property values). *Sprint Spectrum L.P. vs. Ringwood Zoning Board*, 898 A.2d 1054 (2005)(a 1000-foot setback is preempted).
- May not require post-installation RF testing/monitoring or enforce FCC limits on RF emissions. *Crown Castle USA Inc. v. City of Calabasas* (Los Angeles Superior Court BS140933, 2014).
- Cannot enforce compliance with FCC guidelines or require mitigation of RF interference ("RFI") or cessation of a wireless facility's operation. *Southwestern Bell Wireless, Inc. v. Johnson County*, 199 F.3d 1185 (1999)(local authority may

² Id. (emphasis added).

³ *Santa Fe Alliance for Public Health v. City of Santa Fe*, Civ. No. 18-1209 (D. NM May 6, 2020), citing Black's Law Dictionary, 238 (11th ed. 2019).

⁴ Id.

⁵ *Southwestern Bell Wireless, Inc. v. Johnson County*, 199 F.3d 1185, 1193 (1999).

May 13, 2025

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not determine whether RFI exists and/or order that operation from a wireless site be ceased).

- May not require a wireless applicant to demonstrate that its proposed facility will not cause RFI. *New York SMSA Limited Partnership v. Town of Clarkstown*, 612 F.3d 97, 105 (2nd Cir. 2010).
- May not adopt local mitigation requirements for RF emissions, such as warning signs, barriers, or similar requirements. *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields; Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, 34 FCC Rcd 11687 (2019), ¶ 114.

This field preemption is determinative so long as the proposed wireless facility will meet the FCC guidelines regarding RF emissions. Here, Vertical Bridge has included with this letter a Certification of Compliance from T-Mobile, demonstrating that the proposed facility will operate in accordance with the FCC's RF emissions regulations.

Accordingly, this issue is preempted under federal law and any testimony or documents introduced relating to the environmental or health effects of RF emissions associated with the proposed facility should be disregarded in this proceeding.

Consistent with this broad federal preemption, city staff has properly avoided analysis of Vertical Bridge's project's RF emissions in its SEPA review,⁶ and Vertical Bridge asks that the City's Planning Commission be advised that the federal preemption similarly bars consideration of alleged impacts to humans and animals under the City's special use permit criteria.

We appreciate your consideration of this matter.

Sincerely,



Meridee Pabst
meridee.pabst@wirelesspolicy.com

Encl.

⁶ See April 4, 2025, Mitigated Determination of Non-Significance issued for this project.

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Phone: 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Members of the Forks Planning Commission

15 May 2025

FROM: Rod Fleck, City Attorney/Planner

RE: Staff Report of Record & Legal Authorities

This memo is being prepared and provided as part of the Staff Report/City Response regarding the Ferguson appeal of the issued Special Use Permit for Vertical Bridge's telecommunications tower to be located within the City owned property formerly known as the Campbell Gravel Pit. I am providing the Commission this staff report regarding the record and associated legal authorities associated with this matter.

Record Associated with the Approved SUP

On 28 February 2025, the City received the application for a Special Use Permit (SUP) from the designated agent, Sheena Polk with SMW Engineering Group, of VB BTS III, LLC¹ of Florida. The application was perfected with the payment of the required fees on 18 March 2025. Accompanying the application for the SUP was a completed State Environmental Policy Act (SEPA) Checklist as required by City code in association with a major land use action. The request for the SUP was for a telecommunications tower to be located on City owned property located in the former Campbell's Pit at a location in the SW corner of the property that is now described as Lot 4 of the Campbell Pit Survey. This property is zoned as "Public Land."²

Proponents were seeking a SUP for the following described land use:

Construction and installation of a 152-foot monopole telecommunications tower located on property leased from the City of Forks within the former Campbell's Gravel Pit (Lot 4 of the Campbell Pit Short Plat). Pole would serve T-Mobile and have the capacity to serve three additional communication carriers. The tower location was selected to address needs for better cell phone signal transmission in this region. For operational

¹ Vertical Bridge REIT, LLC changed its operation name associated with this project to VB BTS III, LLC with the City's permission. The City has used Vertical Bridge interchangeable, and the SUP was issued for the project with VB BTS III, LLC being the correct and ultimate entity responsible for the project.

² Property was rezoned by the City as part of the annual 2022 zoning amendment process completed in 2023 with the adoption of City Ordinance No. 663.

needs, electricity, telecommunications, and fiber optics would be extended to the site and into the associated small service buildings and tower. Most of the lot, except for an existing easement, will be fenced and the tower will sit in the middle of the fenced area. Lot 4 is approximately 0.21 acres or — 9,000 sq. ft.

The request was reviewed by me, and a decision was made to grant the request for a SUP on the property. In addition, a mitigated determination of non-significance (MDNS) was made on the proposed use to be permitted by the SUP. These decisions were made on 4 April 2024.

Notice of the decisions were published in the Forks Forum on 10 April 2025. In addition, a copy of both the SUP and MDNS were mailed to all property owners of record with the Clallam County State Auditor's Office.³ Each of the decisions detailed the decision made and provided for an appeal of the decisions. A comment was received from the Olympic Regional Air Agency regarding compliance with its regulations if a generator was to be incorporated into the project.

An appeal was received from Dale Ferguson within the appeal period. Mr. Ferguson paid the necessary fees for the appeal. Five specific issues were raised in the appeal:

1. *Proximity to residential houses with the proposed tower at that location being "intrusive and inappropriate" and it would "significantly alter the character and livability of the our neighborhood."*
2. *Health concerns raised in association with "the long-term health effects of 5G technology and electromagnetic radiation" requiring "a more cautious approach, especially in residential zones."*
3. *Environmental concerns associated with the tower being "in such close proximity to a residential and ecologically sensitive area" the tower would "adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure."*
4. *Property values and aesthetics would be impacted by the tower which would "likely diminish property values for nearby homeowners" creating a "blight on the otherwise natural and scenic environment that characterizes Forks."*
5. *Lack of sufficient public input as the appellant and others "were not adequately notified or given the opportunity to provide input before the tower was approved" and additional "community engagement transparency" should occur before such a project is approved.*

On 30 April 2025 notice of this appeal was mailed to the same 70 owners of record. This notice was also published in the Forks Forum on 1 May 2025. The notice set an open record appeal to be heard by the Forks Planning Commission during its regularly scheduled meeting of 20 May 2025. It is this appeal that is being heard by the Commission this coming Wednesday.

In addition, a typo was noted by the appellant with a potentially confusing reference to another

³ Notices were mailed to all of those property owners of record with the County Auditor's Office and a list of 70 such owners were mailed copies of the decisions on 8 April 2025. These 70 owners of record were within 500 feet of the larger parcel number.

type of use in one place. The City mailed out corrected copies of the notice to all of the previous recipients of the April notice.

The City has received a response from the proponent and that entire response is attached to this memorandum.

Procedural Legal Authorities

The purpose of a Special Use Permit is explained in the Forks Municipal Code at FMC 17.90.010. The review undertaken in assessing a permit is to assure that "certain conditions within the City are maintained." *Id.* Those include the "maintenance of compatibility between uses within the various areas of the city, the prevention of nuisances, hazards, and other adverse impacts, and the conformance of development to the comprehensive plan and city codes." *Id.*

An appeal of a Special Use Permit occurs pursuant to FMC 17.90.050. Following the close of the hearing, the Planning Commission has up to 21 days to "affirm, reverse, remand, or modify (including attaching additional conditions) the decision of the planning director. FMC 17.90.050(2).

The agenda for the appeal is set out to provide the appellant, the proponent, and the City an opportunity to provide information to the Commission. The public can participate during the public comment period. All of which may be considered by the Commission in its review and deliberations.

As some of the appeal issues also involve legal issues, I will address those in my response. I will note that the City received materials from the proponents. I have referenced those in a few of the responses as they provide detailed legal analysis relevant to the matter you are considering during the hearing.

City's Response to Appeal Issues

Proximity to Residential Homes.

Attached to this memo are two exhibits that show two different locations of the tower. Exhibit A shows the location associated with the Special Use Permit and utilizes a 300' radius from where the tower will be situated. This shows that the approved tower is limited by the Federal Aviation Administration (FAA) to less than 152' in height above ground elevation and the proponent had noted that maximum height in the application. The proponent's certification of compliance with the Federal Communications Commission (FCC) notes that the height is actually 146' above ground elevation. The radius used in the illustrations is two times the height of the tower and clearly shows that the tower is quite some distance from housing units.

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As a comparison, the original location for the tower was at a different location as shown in Exhibit B. In June of 2023, the City Council held a public hearing on this proposed tower as it was part of a lease agreement that the Council was considering. While that is discussed further, for this part of the appeal issue, Exhibit B is being shown to illustrate where the residential units are in relationship to this portion of the City's ownership of the former gravel pits.

Health Concerns of 5G

Federal laws prohibit the City from taking permitting action on telecommunications towers on the basis of environmental and health impacts per the Telecommunications Act of 1996. Proponent's detail the limitations on local governments in this regard. See *Letter of Meridee Pabst dated 13 May 2025*. One Washington case summarized the federal supremacy in this area by holding that the Telecommunications Act prevents local zoning authorities such as the City from prohibiting or taking action that would "have the effect of prohibiting the provision of personal wireless services." *City of Medina v. T-Mobile USA*, 123 Wash. App. 19 (2004) at 26.

This federal preemption applies to this appeal issue and is absolutely controlling provided that the applicant is able to certify that their tower will be in compliance with the federal standards developed by the Federal Communications Commission. In the materials received from the applicants, attached, you will find a copy of the T-Mobile 'Certification of Compliance' from its designated radio engineer. See *Certification of Compliance dated 9 May 2025*.

As a result, the Planning Commission is federally preempted from considering health related impacts associated with radio frequencies in its deliberations and decision making process.

Environmental and Wildlife Impact

The City did not receive any comments from the Washington State Department of Fish and Wildlife in response to the MDNS. That decision and the accompanying SEPA Checklist were published in the State's SEPA Register which provides all state agencies of notice of a permit involving any environmental review and analysis. The lack of any comment by said agency upon impacts to wildlife should be given some weight by the Commission.

Further, the height of the proposed tower, less than 152' is such that it would create an obstruction of any type to any migratory birds. Forks, like all of Washington, is located within the Pacific Flyway. Two other towers, one being a radio tower near Klahndike Boulevard and the other a telecommunications tower at the intersection of Calawah Way and Spartan Avenue, are located within the City and seem to have little impact upon wildlife.

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Finally, as noted above, the federal Telecommunications Act prevents local jurisdictions from addressing environmental impacts associated with radio frequencies from such communications towers.

Property Values and Aesthetics

The Commission will need to listen to the arguments offered by the appellant and the proponent regarding this issue. The proposed tower will have a change to the viewscape and that is not in dispute before the Commission. The appellant has asserted that the tower will create a blight on "*blight on the otherwise natural and scenic environment that characterizes Forks.*" *Ferguson Appeal, Issue No. 4*

In addition, location of the tower is such that it is located within the transition between formerly active gravel mining pits. In most cases, the immediately neighboring properties are oriented away from the gravel pits. This is highly likely a result of those dwellings being built during the four plus decades in which that area was actively associated with gravel mining, crushing, and processing. At one point, the Ferguson property was associated with the operating of this former industrial use.

Lack of Sufficient Public Input

A. Special Use Permit associated with zoning

The nature of a special use permit is one where the City Planner has to review and assess the application. The code notes:

FMC 17.90.010

The special use permit procedure is used to permit the city planning director to review certain proposed uses to assure that certain conditions within the city are maintained. These conditions include the maintenance of compatibility between uses within the various areas of the city, the prevention of nuisances, hazards, and other adverse impacts, and the conformance of development to the comprehensive plan and city codes.

This same portion notes that any conditions imposed are reasonable in maintaining such conditions and preventing adverse impacts. *Id.*

The property was rezoned by the Council from Industrial to Public to address uses where there general public interests can be served. In this case, that zoning designation identified towers as being a Special Use reflecting the interest in addressing communication needs while also preventing hazards and impacts. In the materials provided by the proponent and their associate, T-Mobile, there is a document showing

how the tower, with its required colocation aspects, would improve mobile telecommunications service coverage and capacity within the greater Forks area.

B. Lease notice and input sought from City Council

Another issue raised by the appellant is that there was not sufficient public input into this type of proposed development.

The matter was first submitted to the City Council in April of 2023. The Council was being asked to consider leasing a portion of the former gravel pit property to Vertical Bridge (VB BTS II, LLC) with a draft long term lease being the matter to be considered. The Council voted to table matter was tabled until May to allow the Council additional time to consider the lease. In May of 2023, the City Council again had schedule in its agenda the consideration of a proposed lease of a portion of the property to Vertical Bridge. At the 8 May 2023 meeting, a representative of Vertical Bridge was in attendance via ZOOM and was engaged in answering questions during the "lengthy discussion" that ensued. *See Forks City Council Meeting Minutes, 8 May 2023, Item No. 4.* The Council tabled the matter until 12 June 2023.

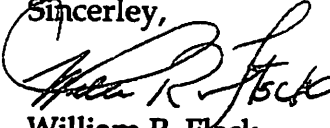
That matter was not returned to for consideration until 26 June 2023. During that meeting, a public hearing was held on the matter following a presentation from representatives of Vertical Bridge. *See Vertical Bridge Power Point.* Notice of the Public Hearing was published in the Forks Forum on 15 June 2025. *See Legal Invoice dated Jun 15, 2023.*

The City Council agenda for 26 June 2025 noted that the public hearing, as well as the lease, were scheduled to be heard that evening. The public hearing was called and only one person is noted as asking a question about coverage area to La Push. After that question was answered in the affirmative, the Mayor closed the public hearing and the council considered the proposed lease. The lease was approved on a 3-1 vote, one council member being absent, during that meeting. *See Forks City Council Meeting Minutes, 26 Jun 2023.*

Appeal Hearing

The Planning Commission's hearing is a quasi-judicial activity. Prior to the start of the presentations or comments, the Commission will be surveyed for any ex parte communications, conflicts of interest, or external interactions with the parties on this matter. At the conclusion of the testimony in this open-record appeal, the Commission must take action within twenty-one days. Action can be taken after the close of the hearing with such action ranging from affirming, reversing, remanding (sending matter back to the Planner to address issues), or modifying the SUP decision.

If there are any questions about this memo, or the process, please bring those with you to the hearing so that they can be addressed on the record before the participants.

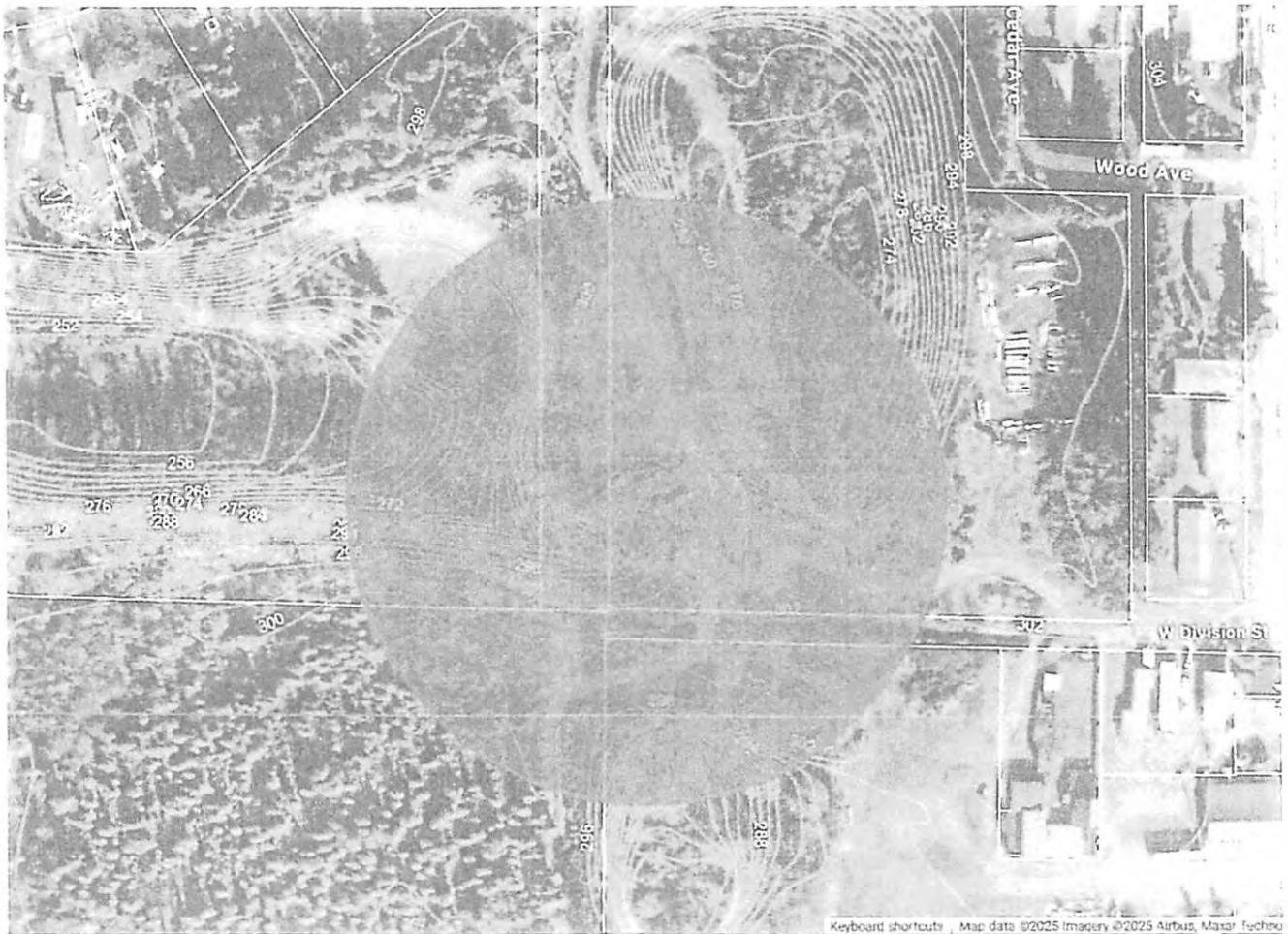
Sincerley,

William R. Fleck
Attorney/Planner

Attachments:

1. Email from Meridee Pabst, 13 May 2025
 - a. Letter from Wireless Policy Group, LLC.
 - b. T Mobile Certification of Compliance
 - c. FAA Determination of No Hazard to Air Navigation
 - d. RF (radio frequency) Justification/Coverage Maps
2. Forks City Council Meeting Minutes, 24 April 2023
3. Forks City Council Meeting Minutes, 8 May 2023
4. Forks City Council Meeting, 26 Jun 2023
 - a. Invoice and Proof of Publication of "Notice of Public Hearing"
 - b. Email sent to Forks Forum by Planner Fleck w/ Notice
 - c. Forks City Council Agenda, 26 June 2023
 - d. Forks City Council Meeting Minutes, 26 June 2023
 - e. Email with presentation made to Forks City Council by SMW Engineering Group

Exhibit A

Aerial Map Showing Tower Location with Adjacent Property in 300' Radius



no

Exhibit B

Original Location Associated with 26 June 2023 City Council Public Hearing
300' radius circle



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Formal Property Access Dispute – Wireless Tower Project

David Ferguson
284 West Division Street
Forks, WA 98331

May 21, 2025

To:

Planning Department and Development Partner

City of Forks / Vertical Bridge REIT, LLC

City of Forks, WA and Vertical Bridge REIT, LLC, 750 Park of Commerce Drive, Suite 200, Boca Raton, FL 33487

Subject: Formal Objection to Unauthorized Use of Easement and Request for Relocation Wireless Tower Project

Dear Planning Commission and Forks City Council,

I am the legal owner of property located in the Southeast Quarter of the Northwest Quarter of Section 9, Township 28 North, Range 13 West, W.M., Clallam County, Washington. It has come to my attention that access to the recently approved wireless tower is planned via a corridor that crosses the northwest corner of my property.

After a thorough review of my title documents, including my policy of title insurance, deed records, and public plats, I must formally object to this use based on the following:

1. ****Easement Overreach and City Conflict of Interest****:

- The recorded utility easement (Rec. No. 506415) is held by the Public Utility District for electric infrastructure only.
- The City of Forks holds a sewer easement (Rec. No. 584634), limited to installation and maintenance of a side sewer.
- The City is now attempting to use this limited-purpose easement to access its own property, located on the far side of my parcel, which it has leased to a private tower company.
- This dual role—as both easement holder and a financially interested party in the tower lease—creates a significant conflict of interest and intensifies the legal and ethical concerns of overburdening the

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easement.

- Neither easement grants access for construction vehicles, equipment, or third-party development related to wireless infrastructure.
- Any such use constitutes an unauthorized overburdening of those easements.

2. ****Drainage and Infrastructure Conflicts****:

- The northwest and northeast corners of my land contain protected drainage and culvert areas under a 1938 Clallam County easement (Rec. No. 178513).
- Heavy construction traffic will likely damage this infrastructure, disrupt stormwater flow, collapse culvert structures, and potentially impact public and private drainage systems.

3. ****Right-of-Way Ambiguity****:

- Based on surveys and plats, my property boundary extends just past the midpoint of the adjacent access road.
- There is no recorded public right-of-way across the full width of that corridor onto my parcel.
- Any assumption of access must be legally established by deed or grant, not implied or presumed.

4. **Waiver of Claim for Damages and Consent to Locate Road**:

An older waiver (Clallam County Instrument No. 670096, recorded June 19, 1992) exists allowing Clallam County to establish and maintain a county road. However, this waiver:

- Does not grant or imply access rights to the City of Forks or any private developer.
- Applies only to a specific surveyed corridor and does not constitute blanket access across my deeded parcel.
- Cannot be used to justify tower construction access or the extension of use beyond the described right-of-way.

****Request for Action****:

I respectfully request that the wireless tower site itself be relocated entirely, to a location farther from my property and more suitable for a project of this scale. The current location creates an undue burden on surrounding residential properties and existing infrastructure. It must not come at the expense of my property rights or local environmental safeguards.

If unauthorized access proceeds, I reserve all rights to pursue injunctive relief, seek damages for trespass, and record an affidavit of easement restriction.

Attached is a marked survey plat illustrating the access path and critical impact areas.

Special Exceptions:

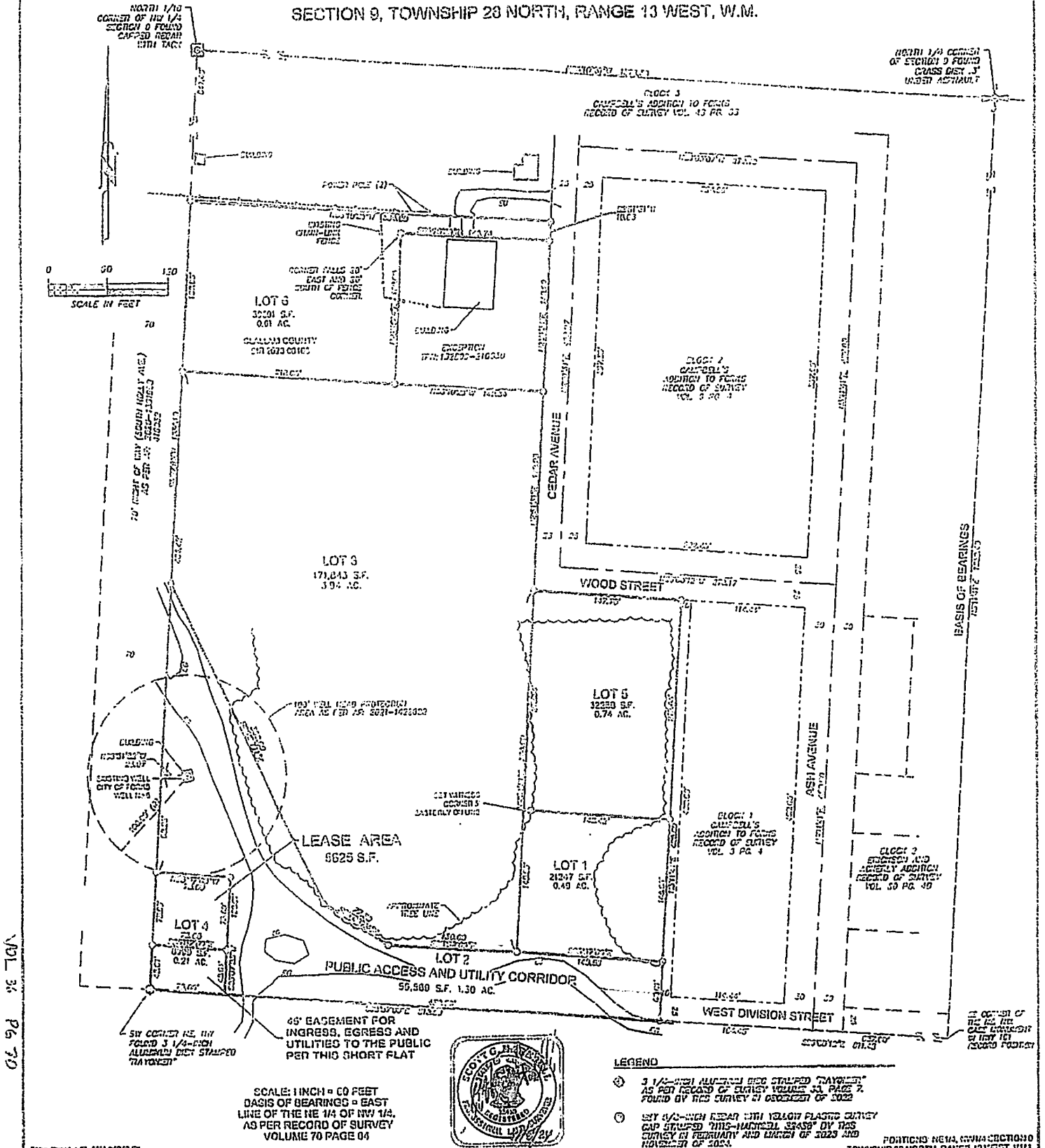
1. General Taxes. The first portion \$1,359.77 becomes delinquent after April 30th. The second portion \$1,359.69 becomes delinquent after October 31st.
Year: 2023
Amount Billed: \$2,719.46
Amount Paid: \$1,359.77
Amount Due: \$1,359.69, plus interest and penalty, if delinquent
Tax Account No.: 132809 240055
Assessed value: \$315,610.00
PID: 5420
2. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, **whether or not** the interests or rights excepted in (a) or (b) appear in the Public Records.
3. Easement, including terms and provisions contained therein:
Recorded: March 30, 1938
Recording No.: 178513
In favor of: Clallam County
For: Drainage Ditch
Affects: Portion of said premises
4. Easement, including terms and provisions contained therein:
Recorded: April 2, 1980
Recording No.: 506415
In Favor Of: Public Utility District No. 1 of Clallam County, a municipal corporation
For: Electric transmission and/or distribution system
5. Easement, including terms and provisions contained therein:
Recorded: November 17, 1986
Recording No.: 584634
In favor of: The City of Forks, a municipal corporation
For: **To install, repair, replace and maintain a side sewer connection**
Affects: Portion of said premises
6. Waiver of Claim for Damages and Consent to Locate Road imposed by instrument recorded on June 19, 1992, under Recording No. 670096
7. Deed of Trust and the terms and conditions thereof:
Grantor: David Henry Ferguson, a single man, and Sharon Elizabeth Sweadner and Robert B. Sweadner Jr., wife and husband, as joint tenants
Trustee: Clallam Title Company
Beneficiary: Mortgage Electronic Registration Systems, Inc., ("MERS"), solely as nominee for Lender and Lender's successors and assigns; Lender is American Pacific Mortgage Corporation
Amount: \$348,758.00
Dated: April 10, 2023
Recorded: April 13, 2023
Recording No.: 2023 1448669

BT

CAMPBELL PIT SHORT PLAT

SECTION 9, TOWNSHIP 28 NORTH, RANGE 13 WEST, W.M.

SHEET 2 OF 2



VOL 34 Pg 70

DATE	11/06/24
DRAWN BY	ABR - JCH
CHECKED	JCH
REVIEW	JCH
SHEET 2 OF 2	

NTIS
NTI SURVEYING

PORT ANGELES, WASHINGTON
3601 485-0601
NTISURVEYING.COM

CAMPBELL PIT SHORT PLAT
for
CITY OF FORKS



Handwritten signature or initials.



Property Values

- No relevant City code criteria in Forks Municipal Code.
- Consistent with preemption regarding health impacts, a concern over a decrease in property values may not be considered as reason to deny or condition a wireless facility if the fear of property value depreciation is based on concern over the health effects caused by RF emissions. *AT&T Wireless Services v. City of Carlsbad*, 308 F.Supp.2d 1148 (S.D.Cal. 2003).
- No substantial evidence presented by Appellant.

Johnson v. Eugene, LUBA 2002-031 (Oregon).

- **Substantial evidence not found:**

- Generalized testimony that is not site-specific or does not quantify the loss in property value for the *particular* site is not substantial evidence,
 - There, neighbors proffered newspaper articles, law review articles and real estate newsletters from national and state entities to estimate that their property values would drop 4-40%. *Johnson v. Eugene, LUBA 2002-031*.
- The authorities typically cited for up to a 20% decrease in property values as alleged in commonly made public comments are based largely on a 2003 study by Sandy Bond, PhD (published in 2005), which has been since discredited.¹ Sandy Bond herself was unable to replicate the results of her 2003 study in a 2004 study in Florida, which found only a *de minimus* (approximately 2%) variation in property values.²

¹ See discussion by Dr. Jonathan L. Kramer, Esq., a telecommunications advisor to the League of California Cities and many California municipalities at:

<https://jonathankramer.com/?s=sandy+bond>.

² Sandy Bond, PhD, "The Effect of Distance to Cell Phone Towers on House Prices in Florida" *The Appraisal Journal* (Fall 2007).

- Public comments also often refer to a 2014 survey by the National Institute for Science, Law and Public Policy, which suggested that a high percentage (90%) of respondents believed that a cell tower would impact property values. This survey was far from a scientific study, and similar to the Bond study, its results are tied to perceived health effects. The sample used was self-selected through circulation of the survey through social media and email, and the bias of the respondents is obvious when considering that a high percentage of respondents also believed that they had suffered physical (63%) or cognitive (57%) effects from radiation.
- In contrast, potential impacts to property values are often not found or found to be insignificant. Submitting two such studies into the record tonight.
- Finally, with so few homeowners retaining a landline phone (as of 2023, 76% of adults and 86.8% of children lived in wireless-only households³), good wireless service is critical to home value.

³ *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2023*, available at:
<https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202406.pdf>

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Wireless Communications Initiative Study

Wireless Facilities Impact on Property Values

November 2012

Background

Wireless technology has dramatically changed the way the world communicates. There are over 6 billion wireless phones being used worldwide. In the United States the number of wireless phones is greater than the population. Conversely, with the advent of smart phones and wireless devices, there is increasing strain being put on already stressed wireless infrastructure. The goal of the Wireless Communications Initiative (WCI) is to enable the deployment of a 21st century wireless infrastructure. Silicon Valley is clearly driving wireless innovation and the region has consistently been an early adopter of these products.

However, compared to feature phones, smartphones place 24 times the demand on wireless networks, and smart devices such as tablets command 120 times as much. Carriers are trying to respond to this revolution in technology by deploying what is called Next Generation technology. Carriers tout the capacity of their 4G or LTE (Long Term Evolution) networks as significantly more efficient in managing the burgeoning demand placed on networks by applications such as streaming video.

The significant challenge facing the next phase in technology deployment is the need to place wireless facilities in residential neighborhoods. These facilities need to be closer to consumers to allow signals to be accessible within homes. This is increasingly important given that about 30 percent of homes rely solely on wireless phone service. In addition, almost 400,000 calls to 911 are made each day using wireless phones. Access to a wireless network has now become a public safety imperative.

Carriers are working with cities to identify neighborhood sites for wireless facilities. However, this task has been made more difficult in some cases when a few residents raise concerns about the placement of wireless towers. These residents oppose carrier applications because of

trepidations related to Radio Frequency (RF) emissions or suspicions about a negative impact on property values. The anxiety that wireless towers impact property values has been a powerful argument used by opponents to carrier applications. Oftentimes, anecdotal evidence is used to bolster these arguments, absent any factual evidence regarding the veracity of these claims.

Carrier and city attempts to address these concerns can lead to long delays in deploying and upgrading wireless facilities. It isn't unusual for a single application to be delayed for a year or more while community concerns are being addressed.

This study has been designed to assess the actual effects of wireless facilities on property values. We have the capability to consider wireless facilities that have been in place for several years. We can look at hundreds of recent real estate transactions to determine what effects are present.

The Study Partners

The Santa Clara County Association of REALTORS® and the Silicon Valley Association of REALTORS® (SILVAR) partnered with WCI to produce the study. The members of these two organizations are involved with most transactions involving single family residences in Silicon Valley. The Associations are over 100 years old and have a rich history paralleling the growth of the region. The organizations represent thousands of real estate agents who have a deep commitment to furthering the professionalism of the industry.

In addition, WCI partnered with MLS Listings to perform the actual data analysis. MLSListings, Inc. was founded in 2007 by a collaboration between several established regional multiple listing services, notably Silicon Valley's RE InfoLink and California's Central Valley MLS. The company created by this merger, MLSListings Inc. serves nearly 16,000 subscribers and 6,000 firms. MLSListings typically handles listings totaling nearly \$70 billion annually.

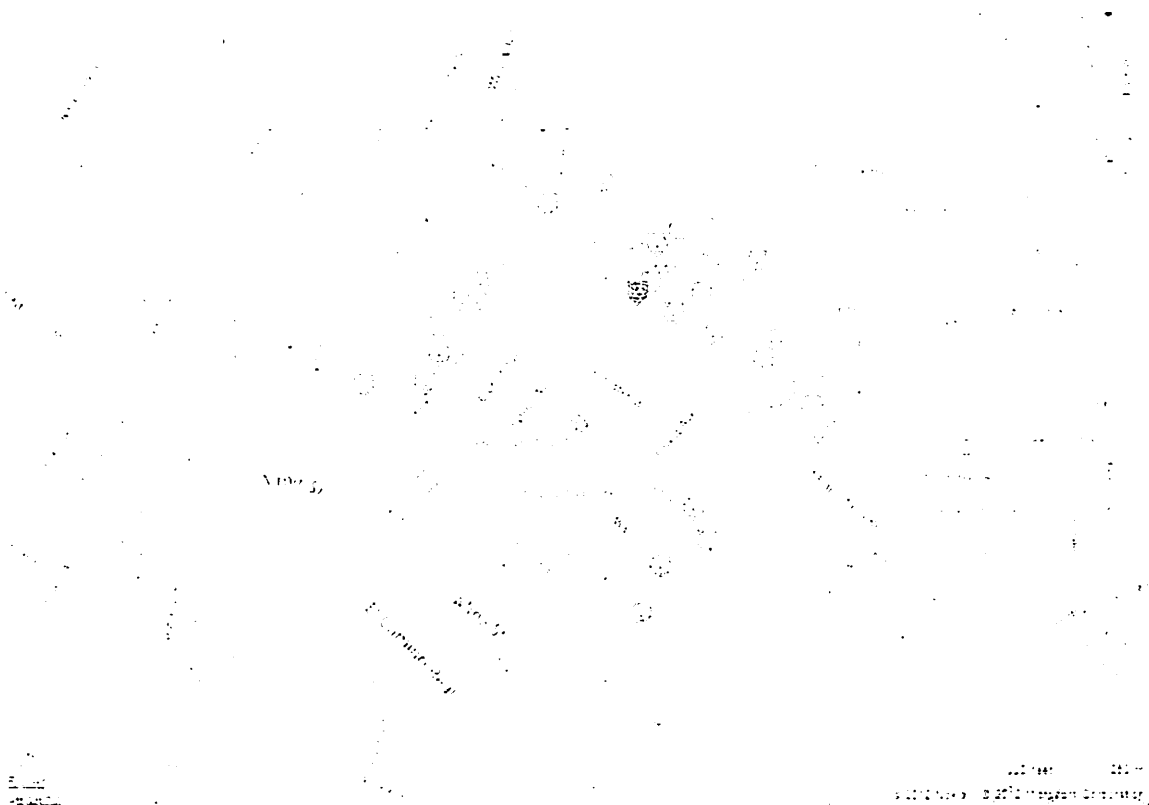
See Appendix B for more information about these organizations.

The Methodology

The data was compiled using over 1600 single-family home transactions from January to September 2012. A total of 70 wireless sites were selected in Palo Alto, Redwood City, Saratoga and San Jose. The survey compared the “list” and “sale” price for transactions based on the distance from the wireless facility. The transactions were grouped by those 1) within 1/8th of a mile, 2) 1/8 to a quarter mile and 3) a quarter to one-half mile.

In addition, the study included all types of wireless facilities. These facilities may be A) a wireless tower, B) equipment placed on buildings (e.g. church, offices) or C) placed on a utility structure (e.g. pole, tower).

See Appendix D for sample photographs of the sites.



Sample MLS listing data query

The chart below displays the aggregated results for the study. The list and sale prices are an aggregate of the all of the transactions that occurred within the specified distance from the wireless site during January to September 2012. The fourth column is derived as a percentage of the sale price to the list price.

	Total List Price	Total Sale Price	%List to Sale
Palo Alto			
0-0.125 mile	\$ 33,093,000	\$ 34,243,125	103%
0.125-0.25	\$ 219,641,507	\$ 233,276,629	106%
0.25-0.5	\$ 1,058,288,821	\$ 1,094,507,081	103%
Redwood City			
0-0.125 mile	\$ 9,111,888	\$ 9,306,000	102%
0.125-0.25	\$ 36,670,398	\$ 36,738,500	100%
0.25-0.5	\$ 91,938,794	\$ 92,571,249	101%
Saratoga			
0-0.125 mile	\$ 11,116,000	\$ 11,168,000	100%
0.125-0.25	\$ 77,914,560	\$ 77,601,045	100%
0.25-0.5	\$ 353,092,390	\$ 350,550,126	99%
San Jose			
0-0.125 mile	\$ 29,024,249	\$ 28,695,250	99%
0.125-0.25	\$ 57,135,400	\$ 57,075,940	100%
0.25-0.5	\$ 157,404,541	\$ 158,404,215	101%

A listing of the addresses for the wireless sites is in Appendix A.

Conclusion

It is quite clear from the data that the distance from a wireless facility has no apparent impact on the value or sale price of a home. The relationship between the list and sale price remained the same no matter how close the property was to the wireless facility. In addition, we see that all the cities in the survey had similar results. The sites across all cities represent a variety of properties including those in neighborhoods with higher priced homes versus those in communities with more moderately priced homes.

Most real estate professionals believe there are multiple factors that affect property values. These professionals still believe in the old adage that there are three factors: location, location, location. However, it is quite obvious that the overall economic climate can have an overriding effect on the real estate market. This year has seen a significantly stronger market for home sales, both in the number of transactions and sellers' ability to obtain their asking price. Other factors that tend to impact property values include schools and access to transportation.

This study should provide a data-based explanation of the relationship between home values and the proximity to wireless facilities. The conclusions can be understood to suggest that communities and carriers have done well in considering the placement of the technology. The Wireless Communications Initiative believes this continued commitment to resolving deployment issues will benefit our region and its neighborhoods.

(Appendix A)

Wireless Facilities Included In Study

Palo Alto

1082 Coronado

101 Alma St

1985 Louis Road

3990 El Camino

305 N California

10950 Channing

1501 Page Mill Rd

200 Page Mill Rd

2047 bayshore

2300 Geng Rd

260 Sheridan

2666 E Bayshore Rd

2675 Hanover St

2701 Middlefield Rd

300 Pasteur Dr

3000 Alexis

3141 Maddux Dr

3401 & 3431 Hillview

345 Hamilton Ave

3475 Deer Creek Rd

3600 W Bayshore Rd

3600 Middlefield

3672 Middlefield

3862 Middlefield

4009 Miranda

4243 Manuela Ave

4249 El Camino Real

488 University Ave

525 University Ave

531 Stanford Ave
695 Arastradero
711 Colorado
724 Arastradero
850 Webster St
855 El Camino
900 Blake Wilbur Dr
799 Arastradero
760 Porter
3000 El Camino Real
675 El Camino Real
2595 E Bayshore
Junipero & Stanford
Page Mill & Foothill

Redwood City

3025 Jefferson Ave
468 Grand St
1175 Palomar
1251 Annette
2900 Whipple Ave

Saratoga

14407 Big Basin Way
14000 Fruitvale
13000 Glen Brae
13750 Prune Blossom
14091 Quito Rd
12770 Saratoga Ave
1777 Saratoga Ave
13601 Saratoga Ave
20508 Saratoga Los Gatos
19491 Saratoga Los Gatos
12393 Saratoga Sunnyvale

12413 Saratoga Sunnyvale
Hwy 9 & Quito

San Jose

2827 Flint Ave
930 Remillard Ct
3675 Payne Ave
144 S Jackson
366 Saint Julie Dr
1529 Newport Ave
1200 Fleming Ave
2110 Story Rd
1635 Park Ave
1700 Moffat St

Disclaimer: the data was pulled on 10/2/2012 pulling only single family residence (class 1 in MLSListings, Inc.) with a time frame of all sales from 1/1/2012 to 10/2/2012

Wtd

Appendix B

Santa Clara County Association of REALTORS®

History

Santa Clara County Association of REALTORS®, established in 1896, has a long and rich history paralleling the history of Santa Clara Valley. SCCAOR, the first trade association in California, is the largest real estate board in Northern California, and was listed as one of the nation's top 20 associations by the Foundation of the American Society of Association Executives. It has come a long way since its first members took potential buyers to preview properties in horse-drawn buggies.

Over the years, its members have made very significant contributions, both in the real estate industry and to the quality of life in Santa Clara County, through their community service activities. Santa Clara County Association of REALTORS®'s history is one of recognizing changing needs in the real estate industry, economy, and technology, and leading the way in responding to those needs.

Santa Clara County Association of REALTORS® was the first real estate board in California to employ a Government Affairs Director to represent the interest of property owners, REALTORS® and the real estate industry, at all levels of government. Threats to property rights remain an increasingly "hot" item on legislative agendas.

The Board's educational activities for members and the public consistently win state and national awards for high quality and leadership, including the Real Estate Assistants Program, developed in 1994. Ongoing classes and seminars provide Members with the most current, professional education for the benefit of their clients and their careers.

In support of the many communities our members serve, SCC REALTORS® FOUNDATION, a nonprofit corporation designed to direct Member's monetary contributions to the most vital community needs, was formed in 1991.

Integrity, strength and innovation are the foundation of Santa Clara County Association of REALTORS®'s history. In the same tradition, established during the past century, we are committed to being an industry leader, bringing positive action and service to our Members and communities for the next 100 years.

The Silicon Valley Association of REALTORS®

The Silicon Valley Association of REALTORS® (SILVAR) is a professional trade organization representing over 4000 REALTORS® and Affiliate members engaged in the real estate business on the Peninsula and in the South Bay. SILVAR promotes the highest ethical standards of real estate practice, serves as an advocate for homeownership and homeowners, and represents the interests of property owners in Silicon Valley.

It is the duty and responsibility of every REALTOR® member of this Association to abide by the "Code of Ethics" of the National Association of REALTORS®. The term "REALTOR®" is a registered collective membership mark which identifies a real estate professional who is a member of the National Association of REALTORS® & who subscribes to its strict Code of Ethics.



MLSListings, Inc. was founded in 2007 as a collaboration between several established regional multiple listing services, notably Silicon Valley's RE InfoLink and California's Central Valley MLS. As the company created by this merger, MLSListings Inc. serves nearly 16,000 subscribers and 6,000 firms in Santa Clara, Santa Cruz, Monterey, San Mateo, San Benito, Merced, San Joaquin and Stanislaus Counties – an area of approximately 28,000 square miles, reaching from San Francisco to Big Sur, and including some of the most valuable real estate in the world. MLSListings typically handles listings totaling nearly \$70 billion annually.

In April, 2008, MLSListings, Inc. joined with three other Northern California MLS services – San Francisco MLS, Bay Area Real Estate Services, and MetroList Services – in an unprecedented alliance to share multiple listing data throughout Northern California. This new alliance serves nearly 50,000 brokers in 19 Northern California Counties, a total population of nearly 9 million people.

Appendix C

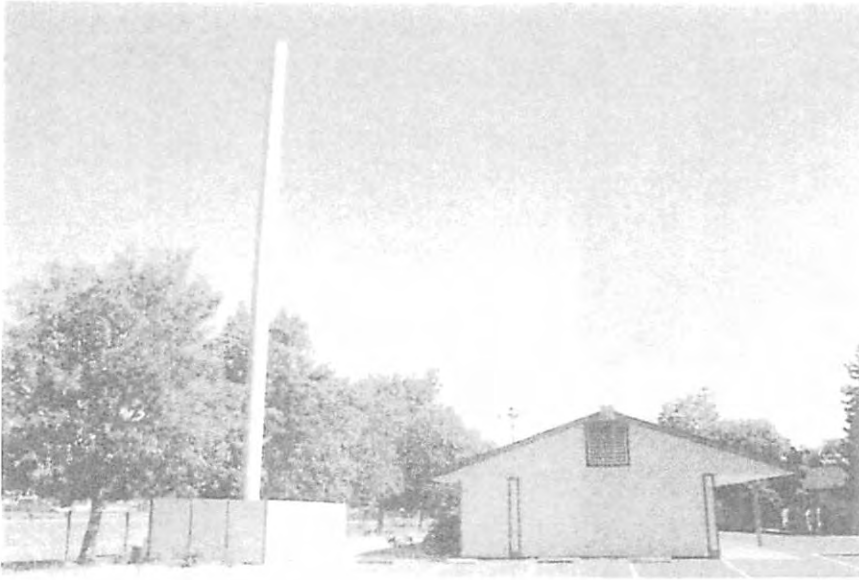
Wireless Site Photographs (Sampling)



366 St. Julie Drive, San Jose



2110 Story Road, San Jose



3675 Payne, San Jose



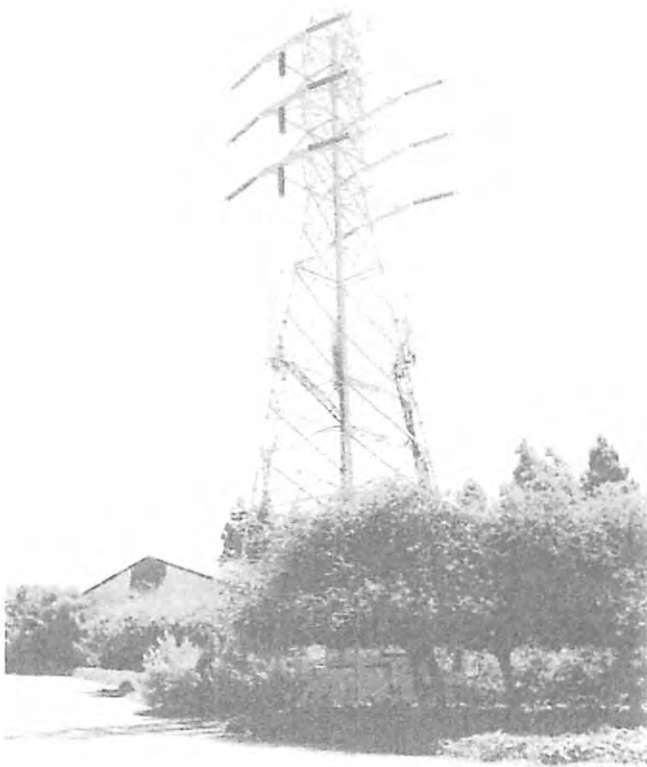
12770 Saratoga Ave, Saratoga



14407 Big Basin Way



675 El Camino, Palo Alto



1082 Colorado St. Palo Alto



1985 Louis Road, Palo Alto



4009 Miranda, Palo Alto



4243 Manuela, Palo Alto, CA



2575 Hanover, Palo Alto

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Valbridge

NEWS 2018

[NEWS](#)[MARKET SPOTLIGHTS](#)[NEWS 2018](#)[NEWS 2017](#)[NEWS 2016](#)[NEWS 2015](#)[NEWS 2014](#)[NEWS 2013](#)

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How Does the Proximity to a Cell Tower Impact Home Values?

September 14, 2018

Valbridge Property Advisors conducts market studies to determine the impact of wireless communication towers on property values in four metropolitan U.S. cities

Valbridge Property Advisors recently completed market studies in Boston, Dallas, Phoenix, and Raleigh, to determine the impact of the presence of wireless communications towers on residential property values.

THE PROCESS

The studies were conducted in multiple sub-areas of each city, which were then compiled to produce measurable results. Home sale values demonstrated no measurable difference for those homes within a 0.25-mile radius sphere of influence of the cell tower and those homes in a 0.50-1.0 mile radius outside of the cell tower sphere of influence. In many of the sub-areas, home prices increased nominally. No measurable difference is defined as a less than 1% difference; nominal difference is defined as 1-3%.

To prepare the sub-area studies, the center points of each sub-area's primarily single-family residential areas or specific subdivisions were identified by latitude and longitude. Single-family residential sales with both a qualified buyer and a qualified seller from the first quarter 2015 through first quarter 2018 were located and verified to assess the transactions.

THE RESULTS ARE IN

BOSTON

The Boston study revealed 10 of 22 pairings of home sales with higher sale prices within the 0.25- mile sphere of influence, 11 of 22 pairings with lower home prices, and one pairing indicating no difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers. Overall, the measurable difference is less than 1% in both the increasing and decreasing home price indications.

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DALLAS

In Dallas, for homes in the .25 to 1.00-mile radius, there was no measurable difference. Out of 33 paired sales in five sub-areas, 20 pairings indicated higher values for those sales within the 0.25-mile sphere of influence, while 12 pairings indicated lower values and one indicated no difference. Overall, Dallas shows no measurable difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers.

PHOENIX

There were 37 paired sales in the Phoenix market, and 20 of the pairings indicated increased home prices within the 0.25-mile sphere of influence while seventeen of the 37 pairings indicated decreased home prices. Four of the five sub-areas studied had no measurable difference and one sub-area had a nominal difference.

RALEIGH

In Raleigh, fourteen of 22 pairings indicated higher home prices within the 0.25-mile sphere of influence while eight of 22 indicated slightly decreased home prices. Overall, the average and median prices increased in four of the five sub-areas and one sub-area indicated no measurable difference. The data indicates cell towers do not have a negative impact on property values within a .25-mile radius of cell towers. Overall, the measurable difference is less than 1% in both the increasing and decreasing home price indications.

DIG DEEPER

To request a copy of the study findings, visit Valbridge.com.

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REQUEST A CONSULTATION

Find your local Valbridge office for more information or to receive a customized proposal for services.

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Dave Ferguson

284 West Division Street

Forks, WA 98331

ideaguides@gmail.com

Date: May 22, 2025

To:

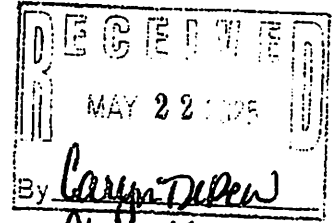
Forks City Council

Forks Planning Commission

City Clerk's Office

500 East Division Street

Forks, WA 98331



**RE: Formal Complaint – Appearance of Fairness Doctrine Violation & Conflict of Interest
Concerning Vertical Bridge Wireless Communication Tower**

Dear Councilmembers, Commissioners, and Clerk,

I am writing as a concerned property owner to formally submit a complaint under **RCW 42.36**, the **Appearance of Fairness Doctrine**, regarding a potential conflict of interest in the permitting process or the proposed wireless communication tower by **Vertical Bridge REIT, LLC**.

Background and Concern:

It has come to my attention that **Mr. Rod Fleck**, who serves as both **City Attorney** and a **signatory on the lease agreement** between the City of Forks and Vertical Bridge, also played an advisory and initially decision-shaping role in the related planning and permitting process.

Specifically, Mr. Fleck:

- 1 **Signed or approved the lease agreement** between the City of Forks and Vertical Bridge as a representative of the city;
- 2 **Provided legal counsel** to the Planning Commission regarding the same project;
- 3 **Engaged in communication with Vertical Bridge** in a representative capacity;
- 4 **Failed to disclose a conflict of interest or recuse himself**, despite having a direct role in the lease negotiation and execution.

This presents an **actual or perceived conflict of interest** under the Appearance of Fairness Doctrine, which requires impartiality in quasi-judicial proceedings and mandates the **recusal of any official whose impartiality might reasonably be questioned**.

RCW 42.36.060 states:

If such violation is discovered before the rendering of a decision, it shall be disclosed and the disqualified person shall withdraw from the proceedings. The failure to disclose the disqualification may render the decision void."

This standard has been upheld in multiple Washington court rulings, where even the **appearance of bias or undue influence** has been deemed sufficient to vacate land use decisions.

Requested Actions:

- **Immediate recusal of Mr. Fleck** from any current or future involvement, advisory or administrative, in this matter;
- **Appointment of independent legal counsel** to the Planning Commission for continued

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consideration,

- **Disclosure and release of all communications** between Mr. Fleck and representatives of Vertical Bridge;

- **Nullification and review of any permits or decisions** made under this conflict;

Reopening of the public comment period if the integrity of the original process is determined to have been compromised.

I respectfully request this complaint be entered into the **official public record** concerning the Vertical Bridge proposal and that the City provide **written confirmation of receipt** and a timeline for response or hearing on this matter.

Thank you for your attention and your commitment to public integrity and transparency.

Also an **easement overreach** by the city to cross the corner of my property which I will be seeking legal representation for if this permit is not withdrawn. Any further communications from you "the city" I'd like in email form.

Sincerely,

Dave Ferguson

Reaideguides@gmail.com

Property Owner

184 West Division Street

Yorks, WA 98331



500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Milton Beck, Ph.D.
Chair, Forks Planning Commission

30 May 2025

RE: Request that Planning Commission Reopen Ferguson SUP Appeal

Chairman Beck,

Initially thank you for your continued service as the Planning Commission's Chair. You and your fellow members are appreciated for the time provided to our Community.

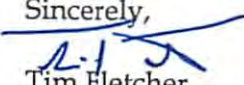
The City received the attached letter the day after the Commission heard an appeal on a Special Use Permit issued to VB BTS III, LLC (also referred to as Vertical Bridge) that was properly appealed by Dave Ferguson. The letter has also been provided to the Council. The attached letter raises issues with the appeal that was heard before the Planning Commission, and as a result of those issues being raised, I request that the matter be reopened and that the Commission have separate legal counsel at that reopened hearing. While the City administration disagrees with the arguments made in the letter, this approach would provide additional openness and would prevent the matter from becoming more political in nature.

The attached letter raises issues with the appeal that was heard before the Planning Commission, and as a result of those issues being raised, I request that the matter be reopened and that the Commission have separate legal counsel at that reopened hearing. While the City administration disagrees with the arguments made in the letter, this approach would provide additional openness and would prevent the matter from becoming more political in nature.

Staff is working to secure the separate legal counsel for a reopened hearing on this matter. They will coordinate that individual's availability with that of the Commission. In addition, they will also undertake the necessary notice requirements to include publication of the notice in the Forks Forum, mailing to registered owners of record with the Clallam County Auditor's Office, and to participants in the reopened hearing.

I appreciate your service and assistance in coordinating this matter.

Sincerely,


Tim Fletcher
Mayor

Attachments – Letter to City Council from Dave Ferguson, dated 22 May 2025



Dave Ferguson

284 West Division Street

Forks, WA 98331

Realdealguides@gmail.com

Date: May 22, 2025

To:

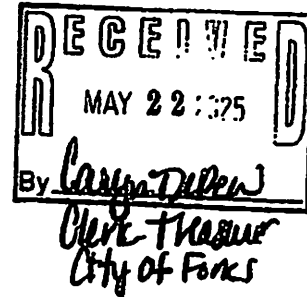
Forks City Council

Forks Planning Commission

City Clerk's Office

500 East Division Street

Forks, WA 98331



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- 3 Engaged in communication with Vertical Bridge in a representative capacity;
- 4 Failed to disclose a conflict of interest or recuse himself, despite having a direct role in the lease negotiation and execution.

This presents an **actual or perceived conflict of interest** under the Appearance of Fairness Doctrine, which requires impartiality in quasi-judicial proceedings and mandates the recusal of any official whose impartiality might reasonably be questioned.

RCW 42.36.060 states:

"If such violation is discovered before the rendering of a decision, it shall be disclosed and the disqualified person shall withdraw from the proceedings. The failure to disclose the disqualification may render the decision void."

This standard has been upheld in multiple Washington court rulings, where even the **appearance** of bias or undue influence has been deemed sufficient to vacate land use decisions.

Requested Actions:

- **Immediate recusal** of Mr. Fleck from any current or future involvement, advisory or administrative, in this matter;
- **Appointment of independent legal counsel** to the Planning Commission for continued

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deliberation;

- **Disclosure and release of all communications between Mr. Fleck and representatives of Vertical Bridge;**
- **Nullification and review of any permits or decisions made under this conflict;**
- **Reopening of the public comment period if the integrity of the original process is determined to have been compromised.**

I respectfully request this complaint be entered into the **official public record** concerning the Vertical Bridge proposal and that the City provide **written confirmation of receipt** and a timeline for response or hearing on this matter.

Thank you for your attention and your commitment to public integrity and transparency.

Also an **easement overreach** by the city to cross the corner of my property which I will be seeking legal representation for if this permit is not withdrawn. Any further communications from you "the city" I'd like in email form.

Sincerely,

Dave Ferguson

Realdealguides@gmail.com

Property Owner

284 West Division Street

Forks, WA 98331

Rod Fleck

From: Rod Fleck
Sent: Thursday, June 12, 2025 12:30 PM
To: Dave Ferguson; Meridee Pabst
Subject: City of Forks - Notice for Reopened Appeal Hearing - 1 July 2025, 5:15 pm
Attachments: REOPENED Appeal Notice of SUP Vertical Bridge Final.pdf

Please find attached to this email a copy of the notice for the Reopened Appeal Hearing to be held on 1 July 2025 at 5:15 pm. Planning Commission will be advised in this special meeting by outside counsel.

Sincerely,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Rod Fleck
Sent: Monday, June 9, 2025 8:29 PM
To: Dave Ferguson; Meridee Pabst
Cc: Nerissa Davis
Subject: Forks - Ferguson Appeal of SUP awarded to Vertical Bridge

Good evening,

The Mayor just read the following into the record during his report at tonight's City Council meeting. He read the "subject to availability" as subject to authorization but the intent was the same.

Public notice will be developed in the next few days for this hearing and disseminated accordingly.

Responding to the letter of Mr. Dave Ferguson that was provided to the Council in its packet at the last meeting, I wrote to Chairman Beck and asked that the Planning Commission reopen its appeals hearing associated with Mr. Ferguson's appeal of the Special Use Permit that had been granted by the City to Vertical Bridge.

The Commission will reopen the hearing on the evening of 1 July 2025 subject to availability of the commission members. Details for that meeting will be included in the published and mailed public notice for that reopened appeals hearing. The City has contracted with separate legal counsel to provide legal support and advice to the Planning Commission for this reopened appeals hearing.

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Rod Fleck
Sent: Monday, May 19, 2025 3:32 PM
To: Dave Ferguson; Meridee Pabst
Subject: FW: Vertical Bridge - Appeal
Attachments: Appeal - Vertical Bridge.pdf; Staff Report of Record and Legal Authorities.pdf
Importance: High

Good afternoon,

Attached please find the agenda and the staff report for Wednesday's appeal. Both went out to the Planning Commission moments ago.

I look forward to seeing you both at Wednesday's meeting.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rod@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

From: Nerissa Davis <nerissad@forkswashington.org>
Sent: Monday, May 19, 2025 3:24 PM
To: Rod Fleck <rod@forkswashington.org>
Subject: Vertical Bridge - Appeal

Nerissa Davis
Personnel Coordinator/Legal Secretary
City of Forks
500 East Division Street, Forks, WA 98331
(360) 374-5412 x 109 (office)
(360) 374-9430 (fax)
nerissad@forkswashington.org

Be happy, Be bright, Be you. Have a nice day!

Wb

ITEM 2

Rod Fleck

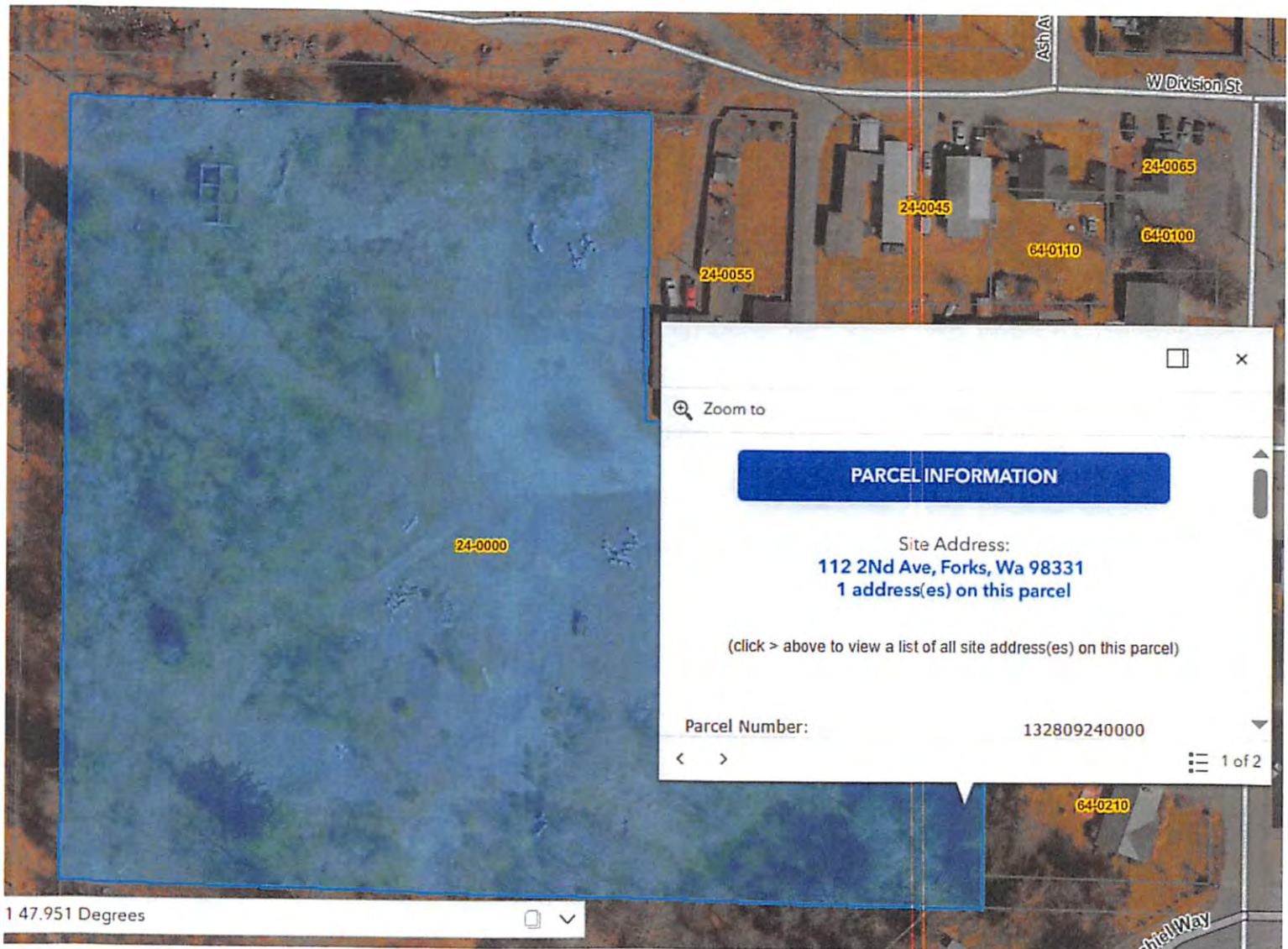
From: Rod Fleck
Sent: Friday, June 13, 2025 4:52 PM
To: Dave Ferguson; Meridee Pabst
Subject: City of Forks - Vertical Bridge SUP Appeal - Title Reports to date
Attachments: South Holly Deed.pdf; 178513.pdf; 506415.pdf; Map.pdf; Plant Information Guarantee (Linked).pdf; Taxes.pdf; Title Guarantee for 112 Ash Ave - 1135036-TO; Vesting Deed .pdf; (DEV)US-WA-5185_TITINS_ Title Report for the Cell Tower Lease in the Former Campbell Pit Property.pdf; Campbell Pit Short Plat.pdf; E911 1995.pdf

I wanted to provide both of you with the materials to date that we have regarding access to the City's property associated with the SUP subject to appeal.

The email file is the title report correspondence associated with an effort to determine who is the owner of the area identified on County Plat maps used in the 1994 E-911 dating system showing a 20' right of way denoted as "West Division Street" south of the City owned property that was platted in the Campbell Pit Short Plat a copy of which is attached. The documents associated with the OPT title report are items: 178513, 506415, Map, Plant Information Guarantee (Linked), Taxes, and Vesting Deed associated with the Title Guarantee for 112 Ash Ave – 1135036-TO. The 20-25' feet immediately south of the City's property was not associated with various parcels further south. City is researching the matter further. See E-911 1995 map attached.

A copy of the title report that Vertical Bridge undertook is also provided. References have been made to the document found at page 25 of this title report. This easement references on its face that the easement applies to "Tax #'s 1135 and 305." The City is the owner of what was Tax #1135. Tax #305 is a parcel that is still owned by the Campbell Family Partnership. I have clipped a copy of the Assessor's online map for ease of locating this parcel.

City also has access as noted in the Campbell Pit Short Plat to its property to the west via a 70' extension of South Holly Street. Deed to this is also attached.



Additional research is being undertaken, but I wanted to provide a copy of these materials to all parties in the appeal.

Sincerely,

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Rod Fleck
Sent: Tuesday, June 17, 2025 10:38 AM
To: Dave Ferguson; Meridee Pabst
Subject: RE: City of Forks - Vertical Bridge SUP Appeal - Title Reports to date - Resent 1
Attachments: Plant Information Guarantee (Linked).pdf; South Holly Deed.pdf; Taxes.pdf; Vesting Deed .pdf; West Division Street - OPT Title Report.pdf; 178513.pdf; 506415.pdf; Campbell Pit Short Plat.pdf; E911 1995.pdf; Map.pdf

Importance: High

Resending this as apparently neither of you got the attachments that were with this.

This is resent email 1 – OPT Title Materials

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rod@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

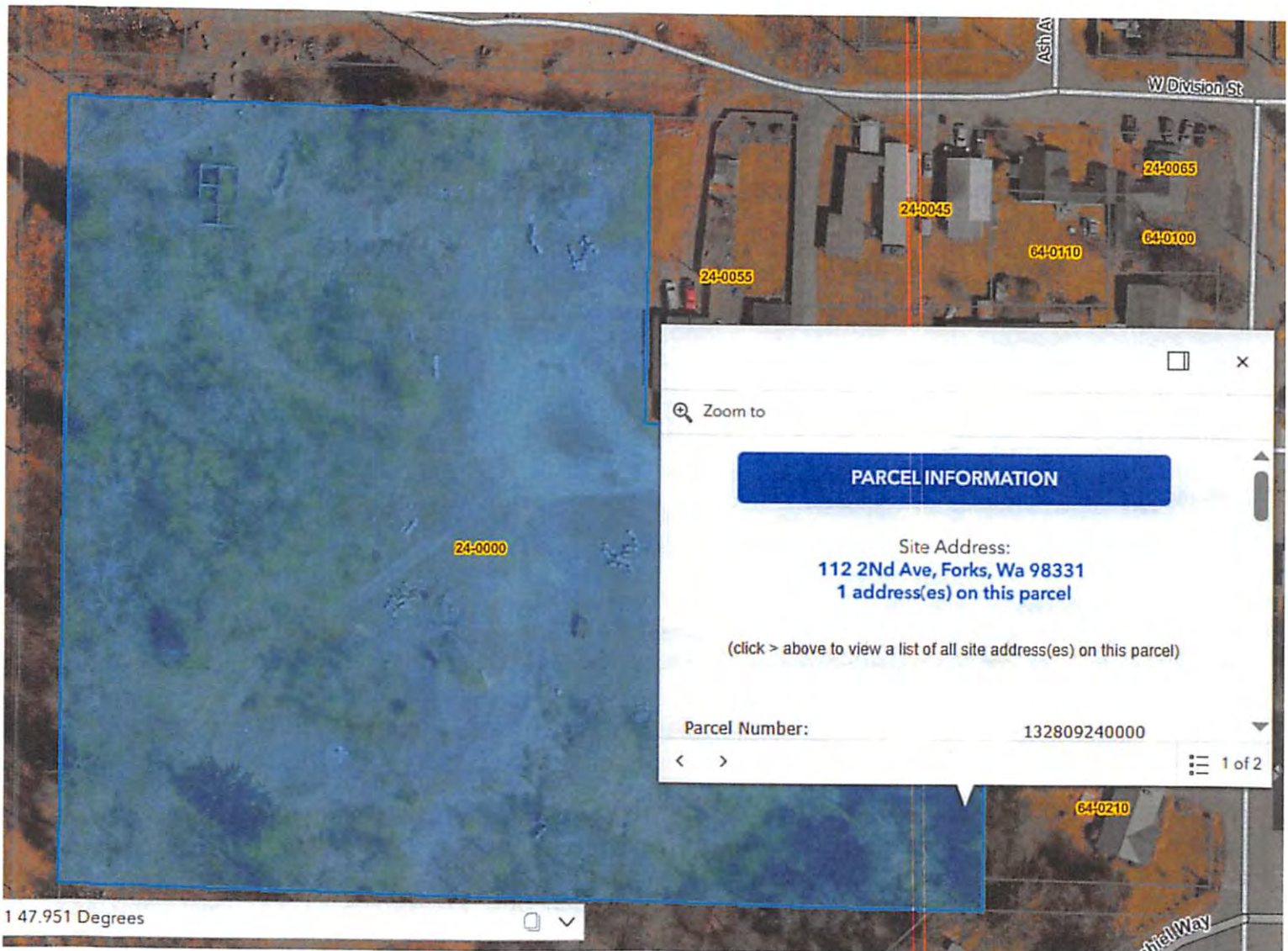
From: Rod Fleck
Sent: Friday, June 13, 2025 4:52 PM
To: Dave Ferguson <realdealguides@gmail.com>; Meridee Pabst <meridee.pabst@wirelesspolicy.com>
Subject: City of Forks - Vertical Bridge SUP Appeal - Title Reports to date

I wanted to provide both of you with the materials to date that we have regarding access to the City's property associated with the SUP subject to appeal.

The email file is the title report correspondence associated with an effort to determine who is the owner of the area identified on County Plat maps used in the 1994 E-911 dating system showing a 20' right of way denoted as "West Division Street" south of the City owned property that was platted in the Campbell Pit Short Plat a copy of which is attached. The documents associated with the OPT title report are items: 178513, 506415, Map, Plant Information Guarantee (Linked), Taxes, and Vesting Deed associated with the Title Guarantee for 112 Ash Ave – 1135036-TO. The 20-25' feet immediately south of the City's property was not associated with various parcels further south. City is researching the matter further. See E-911 1995 map attached.

A copy of the title report that Vertical Bridge undertook is also provided. References have been made to the document found at page 25 of this title report. This easement references on its face that the easement applies to "Tax #'s 1135 and 305." The City is the owner of what was Tax #1135. Tax #305 is a parcel that is still owned by the Campbell Family Partnership. I have clipped a copy of the Assessor's online map for ease of locating this parcel.

City also has access as noted in the Campbell Pit Short Plat to its property to the west via a 70' extension of South Holly Street. Deed to this is also attached.



Additional research is being undertaken, but I wanted to provide a copy of these materials to all parties in the appeal.

Sincerely,

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Rod Fleck
Sent: Friday, June 27, 2025 3:16 PM
To: Dave Ferguson; Meridee Pabst; Corey Pearson
Cc: Nerissa Davis
Subject: FW: City of Forks - Vertical Bridge Special Use Permit - Proponent Memo, City Amended Staff Report
Attachments: Vertical Bridge - Forks PC - FINAL - 06-27-2025.pdf; Amended Staff Report for 1 July 2025 Reopened Appeal Hearing.pdf

Good afternoon,

The following was sent to the Planning Commission and their legal counsel in advance of the hearing next Tuesday. Out of courtesy, I have also included Ms. Pearson as there is a reference to a matter she has raised that may or may not be intended to be part of next week's appeal.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

From: Rod Fleck
Sent: Friday, June 27, 2025 3:10 PM
Subject: City of Forks - Vertical Bridge Special Use Permit - Proponent Memo, City Amended Staff Report

Good afternoon,

In advance of the reopened appeal hearing on Tuesday, 1 July 2025 at 5:15 pm, the City received the attached memorandum from Vertical Bridge submitted by them to Mr. Ferguson and the City Planning Commission. It is being provided as an attachment to this email.

There is also an amended staff report with its attachments that is attached as well. A copy of this will be provided to both the Appellant and the Proponent in the same fashion in a few moments.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331

rodf@forkswashington.org

360/374-5412

"Fortes Fortuna Juvat"



REOPENED PUBLIC HEARING ON APPEAL OF SPECIAL USE
PERMIT
ASSOCIATED WITH VERTICAL BRIDGE AND APPEALED BY
DAVE FERGUSON BEFORE THE FORKS PLANNING COMMISSION

5:15 PM, Tuesday, 1 July 2025
Forks City Council Chamber
500 East Division Street
Forks, WA 98331

Following matters raised by the Appellant during and immediately after the original appeals hearing held on May 21, 2025, at 5:15 PM in the Forks City Council Chambers on the matter described below, Mayor Fletcher requested of Chairman Beck that the Planning Commission reopen the appeals hearing. In response to that request, notice is hereby provided that the Forks Planning Commission will reopen the appeals hearing associated with a special use permit granted to Vertical Bridge for the construction and installation of their 150' monopole telecommunications tower to be installed/constructed at 285 West Division Street. A special meeting of the Forks Planning Commission will be held at the time and place noted above. As this is reopening the previous appeal hearing, testimony given during the May 21, 2025, meeting need not be repeated and will be considered part of the record.

Appellant(s): Dave Ferguson
284 West Division Street
Forks, WA 98331

Project

Proponent: Sheena Rae Polk of SMW Engineering on behalf of
VB BTS III, LLC Vertical Bridge REIT, LLC¹
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

General Legal

Description: 285 West Division Street, Forks, WA 98331
Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Basis for

Appeal: A special use permit for a monopole telecommunications tower was issued by the City on 4 April 2025 with notice provided to those owners of record within 500' of the outer edge of the property subject to a lease to the project proponents by the City. The City requires a special use permit (SPU) for any tower built in a "public land" zoning designation. See FMC 17.15.060. The respondent proponents Permitting the installation of a 152-foot

¹ Vertical Bridge REIT, LLC changed its operation name associated with this project to VB BTS III, LLC with the City's permission. The City has used Vertical Bridge interchangeable, and the SUP was issued for the project with VB BTS III, LLC being the correct and ultimate entity responsible for the project.

telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. Property was the site of a former gravel pit, rock washing, and concrete operation. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement.

In the letter appealing the decision to grant the SPU, the appellant's stated the following for their basis for appealing this decision:

Five issues raised in appeal are as follows:

1. *Proximity to residential houses with the proposed tower at that location being "intrusive and inappropriate" and it would "significantly alter the character and livability of the our neighborhood."*
2. *Health concerns raised in association with "the long-term health effects of 5G technology and electromagnetic radiation" requiring "a more cautious approach, especially in residential zones."*
3. *Environmental concerns associated with the tower being "in such close proximity to a residential and ecologically sensitive area" the tower would "adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure."*
4. *Property values and aesthetics would be impacted by the tower which would "likely diminish property values for nearby homeowners" creating a "blight on the otherwise natural and scenic environment that characterizes Forks."*
5. *Lack of sufficient public input as the appellant and others "were not adequately notified or given the opportunity to provide input before the tower was approved" and additional "community engagement transparency" should occur before such a project is approved.*

During the original appeal hearing held on 21 May 2025, Mr. Ferguson also raised issues associated with the legal doctrines of the appearance of fairness and conflict of interest associated with Attorney/Planner Fleck's involvement in a lease between Vertical Bridge and the City as well as aspects with planning matters undertaken by Fleck in that capacity.

The Notice of Special Use Permit stated that an appeal must state the specific problems that the proposed use would have regarding the public interest; the creation of nuisances, hazards, and other adverse impacts; and/or, the lack of conformance between the proposed development and the comprehensive plan. See Chapters 17.90 and 17.135 of the Forks Municipal Code.

AGENDA

FOR PUBLIC During a special meeting of the Forks Planning Commission, this matter will be reopened as part of the appeal process associated with the above described special use permit and appeal. The agenda for the special meeting will be as follows

1 July 2025, 5:15 PM
Forks City Council Chambers
500 East Division Street
Forks, WA 98331

During the special meeting of the Forks Planning Commission, the Commission will reopen the appeal filed by Mr. Ferguson. The proposed agenda for this hearing is as follows:

- 1. Welcome and Introductions of Members & Staff**
- 2. Reopening of Appeal by Ferguson of SUP Granted for a Tower at 285 West Division Str.**
 - a. Opening of the Public Hearing**
 - b. Public Comment**
 - c. Additional Staff Reports of Record & Legal Authorities**
 - d. Appellant Ferguson's Position on Basis for Appeal**
 - i. Statement and Case Presentation from Mr. Ferguson**
 - ii. Statements by other signatories on Appeal Letter**
 - iii. Questions, if any, by Planning Commission Members**
 - e. Proponent's Position**
 - i. Statement by the Vertical Bridge or their Representatives'**
 - ii. Questions, if any, by Planning Commission Members**
 - f. Appellant's Rebuttal, if any**
 - g. Closing of Public Hearing**
 - h. Deliberations of Planning Commission Members--This may occur in chambers" due to quasi-judicial nature of this proceeding. (See RCW 42.30.140(2))**
 - i. Decision of Planning Commission**
 - i. Action on Appeal**
 - ii. Authorize the Chair to Sign Findings and Decision Document**
 - iii. Authorize the signed document to act as meeting minutes/record of the appeal.**
- 3. Adjournment**

Individuals requiring special assistance in order to participate in the hearing should contact Mr. Fleck prior to the meeting. Please call at 360/374-5412, ext. 111.



500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

Forks Planning Commission

18 June 2025

Wednesday, 5:15 pm

City Council Chambers

500 East Division Street, Forks

Notice is hereby given that the Forks Planning Commission will meet on 18 June 2025 at 5:15 pm. Agenda is below. A ZOOM link may be available for those interested in attending and unable to do so in person. Please contact Mr. Fleck prior to the meeting. Meeting materials can also be obtained by contacting Mr. Fleck.

Information or questions can be directed to Mr. Fleck via email (rodf@forkswashington.org) or via post at 500 East Division Street, Forks, WA 98331

Meeting Agenda

1. Call to Order/Welcome
2. Adopt April Meeting Minutes
3. Announcement of Special Meeting – 1 July 2025 Reopening of Appeals Hearing
(No action or comments taken as reopened hearing is the proper forum for such comments)
4. Public Comment – General Planning Related Issues
5. Growth Management Act (GMA) Comp Plan
 - a. *Status of Planning Effort So Far*
 - i. *60 Day notice to Commerce – still not completed*
 - ii. *SEPA Checklist – still not completed*
 - b. *Public Comment on Comp Plan Elements*
 - c. *Reschedule Public Hearing – July/August?*
6. Other business of the Commission – Affirm next regularly scheduled meeting
7. Adjourn

**Notice of Affirmation of
SPECIAL USE PERMIT**

**Vertical Bridge Telecommunications Tower
284 West Division Street
Forks, WA 98331**

- Applicant:** Sheen Rae Polk of SMW Engineering on behalf of
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
- Description of Proposal** Construction and installation of a 152-foot monopole telecommunications tower located on property leased from the City of Forks within the former Campbell's Gravel Pit (Lot 4 of the Campbell Pit Short Plat). Pole would serve T-Mobile and have the capacity to serve three additional communication carriers. The tower location was selected to address needs for better cell phone signal transmission in this region. For operational needs, electricity, telecommunications, and fiber optics would be extended to the site and into the associated small service buildings and tower. Most of the lot, except for an existing easement, will be fenced and the tower will sit in the middle of the fenced area. Lot 4 is approximately 0.21 acres or ~9,000 sq. ft.
- Location of Proposal** Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.
- Lead Agency** Rod Fleck, City Attorney/Planner
City of Forks
500 East Division
Forks, Washington 98331
- Proposed Project** Permitting the installation of a 152-foot telecommunications monopole tower that would be used by T-Mobile and up to three other providers on property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. This use requires a special use permit which triggered the need for the State Environmental Policy Act (SEPA) review.

DETERMINATION

Property was the site of a former gravel pit, rock washing, and concrete operation. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement. The proponents will be installing a monopole telecommunications tower in a location that will provide increased cellular phone coverage for personal, business, and emergency users. The project required review by the FAA and as a result of that review the height of the

monopole was reduced to what was proposed as part of the special use permit. The proposed use will have minimal demands upon utilities, and in fact could significantly improve the telecommunications offering within this portion of western Clallam County. There will be a change to the visual skyline of the community as a result of this pole. However, based on materials the proponent originally provided to the City, the impact will be similar to the former radio tower that is located approximately a thousand feet to the north of the proposed location for this tower. Access to the property will be through the existing lot that was created in the above referenced short plat to provide ingress, egress, and utility access from the end of West Division to the project site.

AFFIRMED APPROVAL OF PROJECT

Notice is hereby given that the City of Forks Planning Commission affirmed the special use permit granted to the above referenced applicant for the use described in the project description with two additional conditions. One, the City or the applicant must consult with the Quileute Tribe regarding any possible concerns with the project. Two, the City or the applicant must consult with the Washington State Department of Fish and Wildlife regarding any concerns with the project.

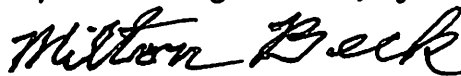
A special use permit was required for any tower built in a "public land" zoning designation. A determination was made that the proposed use would not conflict with uses in that immediate area and neighborhood, nor result in hazards or adverse environmental impacts arising from the proposed special use. A SEPA determination regarding this use in relationship to potential environmental factors has been made. Additional information can be found in the SEPA review and permit issued by the City Planner. A copy of this is attached to those mailed this notice, and those reading the printed version of this may obtain a copy from Mr. Fleck at 360/374-5412, ext. 111.

APPEAL PROCESS

Dave Ferguson or the Forks Planning Director may appeal the decision of the Forks Planning Commission to the Forks City Council. The appeal and the required fees shall be filed in writing with the City Clerk on forms established for this purpose. Once a hearing time is established proper notification shall be given concerning time, place and purpose of such a hearing and shall be in conformance with Chapter 17.135, *et al* Forks Municipal Code. Upon receipt of the appeal the City Clerk shall publicize and schedule a public hearing by the council.

Within twenty (20) days of the close of any such hearing, the City Council shall affirm or reverse the decision of the Forks Planning Commission.

Dated 18 of July 2025 pursuant to the authorization and direction of the Forks Planning Commission at its special meeting held on 1 July 2025.



Milton Beck
Chair, Forks Planning Commission

12

Findings, Determinations and Decision
On the Special Use Application of

***Vertical Bridge Telecommunications Tower
284 West Division Street
Forks, WA 98331***

I. Findings.

- A. On 11 February 2025, the City of Forks (City) received a Clallam County application for a City of Forks Special Use Permit from Sheena Polk (Polk) who was authorized by Vertical Bridge (VB) to act on their behalf.
- B. Later that same day, Forks City Attorney/Planner Fleck (Fleck) suggested meeting to go over the documents that the City would need for a special use permit associated with Vertical Bridge's proposed monopole tower construction.
- C. On 20 February 2025, VB submitted the jurisdictionally required documents that included:
 - 1. Request for a special use permit in the form of a letter, standard for the City, describing the project;
 - 2. Letter authorizing Polk to act as the agent in association with VB's applications for permits;
 - 3. SEPA Checklist completed by Daniel Risman, dated 11 Oct 2024 inclusive of site photographs and a VB site survey;
 - 4. Waiver of height exemption requirement authored by Bill Paul, Fire Chief Clallam County Fire District No. 1.
- D. On 4 April 2025, Fleck issued a Special Use Permit (SUP) for the project and determined that:
 - 1. The project was occurring in a former gravel pit, rock washing, and concrete operation;
 - 2. The project would provide increased cellular phone coverage for personal, business, and emergency users.
 - 3. The FAA's review had reduced the height of VB original tower to what was proposed as part of the SUP.
 - 4. The project would have minimal impact upon utilities and could improve telecommunications needs within the Westend.
 - 5. The project would have similar impacts as a former active radio tower about 1,000 feet to the north.
 - 6. The project's access was noted as being through a combination of West Division Street and the City-owned short-platted property's easement adjacent to that street.
- E. The SUP noted that the decision could be appealed with a written appeal and the payment of a \$100 appeal fee and a \$100 publication/notice deposit as part of the written appeal filing.
- F. On April 4, 2025, Rod Fleck issued a mitigated determination of non-significance (MDNS) under the Washington State Environmental Policy Act (SEPA) for the project that included four conditions. The mitigation requirements imposed in the SEPA MDNS were:
 - 1. Compliance with FAA height determination and any associated lighting requirements to address flight safety needs.

2. Maintaining all storm water runoff associated with the project on sight, and if dry wells are to be used, the possibility of registration of those with the Department of Ecology.
 3. If excavation occurs and historical/cultural objects or human remains are discovered, proper notification of the Department of Archaeology and Historic Preservation would occur immediately after ceasing all work.
 4. Exterior lighting within the fenced compound area be installed in a way that directs light downward to remain primarily on site.
- G. The City published notice of the MDNS and SUP in the Forks Forum on April 10, 2025, and mailed notice to the property owners of record. The City also uploaded the MDNS and SUP to the Washington State SEPA Register and provided the materials to the Quileute Tribe Natural Resources staff.
- H. The Olympic Region Clear Air Agency (ORCAA) commented that if an emergency generator of 500 horsepower or greater is installed as part of the project, it would require a permit.
- I. On 17 April 2025, Dave Ferguson (Ferguson) filed an appeal and paid the associated fees. Ferguson filed his appeal within the 14-day period associated with the SUP decision and notice.
- J. Ferguson's appeal cited five issues:
1. Proximity to residential houses with the proposed tower location being "intrusive and inappropriate," and it would "significantly alter the character and livability of our neighborhood."
 2. Health concerns raised in association with "the long-term health effects of 5G technology and electromagnetic radiation" requiring "a more cautious approach, especially in residential zones."
 3. Environmental concerns associated with the tower being "in such close proximity to a residential and ecologically sensitive area" and that the tower would have "adverse effects on local species, particularly birds and pollinators, which are sensitive to EMF exposure."
 4. Property values and aesthetics would be impacted by the tower which would "likely diminish property values for nearby homeowners" creating a "blight on the otherwise natural and scenic environment that characterizes Forks."
 5. Lack of sufficient public input as the appellant and others "were not adequately notified or given the opportunity to provide input before the tower was approved" and additional "community engagement transparency" should occur before such a project is approved.
- K. On 18 April 2025, the Washington State Department of Ecology commented on the SUP noting the need to use clean fill in the clearing and grading and to properly dispose of any materials. The comment also noted five sites with underground storage tanks or clean-up within 750 feet of the site. The Washington State Department of Ecology submitted their comment to the SEPA registry, and it was not discovered until after the initial appeal hearing.
- L. The City scheduled the appeal hearing for the May meeting of the Forks Planning Commission. The City mailed and published notice of the hearing in a similar manner as the SEPA notice. The City mailed the notice on 20 April 2025.
- M. VB submitted a certificate of compliance with FCC standards dated 9 May 2025 for the proposed property.

- N. On or about 12 May 2025, Ferguson notified the City of an error in the appeal notice that referenced a "vacation rental." The City mailed a corrected notice of appeal to the recipients of the original notice and provided copies to the Forks Forum.
- O. VB provided a letter explaining the role of federal preemption regarding radio frequencies and cell towers and the prohibition on local governments from regulating the "placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions..." Quoting the Telecommunications Act of 1996 codified at 47 U.S.C. Section 332(c)(7)(B)(iv).
- P. On 15 May 2025, Fleck provided, via email, a staff report on the appeal to both parties and the members of the Planning Commission. The seven-page staff report also included additional attachments. The staff report included:
1. A summary of the record associated with the proponent's application for a SUP for a proposed monopole telecommunications tower, which was granted on 4 April 2025.
 2. Reference to a comment received by the Olympic Regional Air Agency.
 3. Appeal issues raised by Ferguson in his appeal of the SUP.
 4. Summary of the procedural authorities from the Forks zoning code.
 5. The City's response to the appeal issues:
 - a. Proximity to residential homes – referencing an illustration showing the location was over 300' – roughly twice the height of the pole – away from residences.
 - b. Health concerns regarding 5G – the City accepted the proponent's assessment of federal preemption of these issues as found in the Telecommunications Act of 1996. Also, further limitations on local zoning authorities referencing City of Medina v. T-Mobile USA, 123 Wash. App. 19 (2004).
 - c. Environmental and Wildlife Impact – Noted that the state's Department of Fish and Wildlife did not provide comment on the SEPA MDNS; also, argued that the height was not such it would interfere with migrations of birds; reiterated the limitations on discussing environmental impacts per the Telecommunications Act.
 - d. Property Values and Aesthetics – encouraged the Commission to listen to the arguments offered by the parties. Fleck acknowledged that the tower would change the viewscape from its location within a former gravel mining, crushing, and processing facility.
 - e. Lack of Public Input – Fleck noted that the property was rezoned by the City Council. Further, that during the Spring of 2023, the Council had on two occasions discussed the agenda item associated with the lease of the property. This culminated at the 26 June 2023 Council meeting with a public hearing, presentation by the proponent, and Council authorizing the City to proceed with the lease.
 6. A reminder to the Commission of the quasi-judicial nature of the appeal hearing and also the timeline for action.
 7. The emailed materials submitted by Pabst to the Commission consisting of a memorandum on the Telecommunications Act of 1996, T-Mobile certification of Compliance, FAA determination, and radio frequency coverage maps. Also attached to the staff report were copies of City Council meeting minutes for three meetings. The third meeting, held 26 June 2023 included the published notice, agenda, meeting minutes, and a copy of the presentation made by consultants for the proponents.

Q. On 21 May 2025, the Forks Planning Commission opened the appeal hearing This is a summary of the proceedings that were both audio and video recorded. Those recordings are incorporated by reference as if fully set forth and should be consulted for additional information.

1. Attendees:

- a. Commissioners DeAnna Beck, Trent Thurman, and Chair Milton Beck were in attendance with Commissioner Weekes absent and one position vacant.
 - b. Fleck and Nick Dias attended on behalf of the City.
 - c. Both Ferguson and Pabst were present.
 - d. Corey Pearson and Tyler Maxfield were in attendance in person, while Tom Beckwith, City's consultant for comprehensive planning, was present via ZOOM.
2. At 5:15 pm, on a motion by D. Beck, seconded by Thurman, the meeting started with M. Beck presiding.
3. The public hearing was opened on a motion by Thurman, seconded by D. Beck and passed unanimously. The public was invited to provide public comment.
- a. Maxfield commented on having excellent service where he lived near the proposed site, but that the coverage dropped at places like Division Street. He inquired as to whether an analysis of locations of best and worst service had been done to locate if the expensive infrastructure could be placed on other City owned properties.
 - b. Fleck reminded Commissioners that they were not to answer questions asked during public comments and that information by the parties may cover the question asked by Maxfield.
 - c. Pearson stated that there were a lot of risks associated with locating a cell tower within the community. After the city had removed fluoride from its water system, the presence of a cell tower was a decision that should be questioned. She discussed issues with radio frequency radiation (RF) and exposure to non-ionized radiation. She shared that there was antidotal information associated with living close to cell towers regarding impact to sleep, headaches, fatigue, memory problems, heart palpitations, and skin rashes. These symptoms were referred to as electromagnetic hypersensitivity, which while not often officially recognized, was becoming more and more studied by the medical community. Further, she noted that the International Agency for Research on Cancer had classified RF radiation as carcinogenic with evidence of carcinogenicity in humans and animals. She shared that children may be more sensitive to RF due to their developing nervous systems and thinner skulls. Because of this, she stated that some scientists advocate for cautionary responses when towers are near homes, schools, and day cares. Further, there is data that RF with its electromagnetic fields has impacts upon birds which should be a concern to the community as well. She shared that local individuals could protect themselves from RF with protective curtains, utilizing paints, but questioned whether the community should be asking its other members and

families to protect themselves from something that may yield a profit to the City. She closed by thanking the Commission for listening.

- d. Fleck noted that there were no others seeking to comment and suggested that the Commission close the public hearing portion. D. Beck moved to do so with Thurman seconding and the motion passed closing the public hearing period.
4. Fleck summarized the staff report he had provided to the Commission, which is summarized above. At the conclusion of his report, due to the quasi-judicial nature of the proceeding, Fleck inquired if there had been any *ex parte* contacts by the appellant or the proponent. The commissioners indicated that there had not been any such contacts. Fleck then inquired as to any business connections with either party. The commissioners indicated that there were no connections with the parties. Fleck then concluded his staff report by asking if the Commission had questions. There were none.
5. Ferguson began his presentation on his appeal of the SUP. After introducing himself and sharing that he had lived in the community for six years, he discussed his issues. He provided a document of his concerns during his presentation entitled "Formal Property Access Dispute – Wireless Tower Project."
 - a. He noted that he did not see the notices before as he does not receive the Forks Forum. He noticed a lot of clerical errors which surprised him including the original notice with its mistaken reference to vacation rentals. He also stated that the first time anyone he knew had heard of this proposal was when he got something in the mail.
 - b. He had concerns with the SUP and the application. He wanted more information on how it came to be. He referenced the application's SEPA checklist on page eight regarding health effects and had researched this learning that there was nothing that could be done about those issues at the City level. On that page, with reference to animals on or near the site, the response was "N/A" when in fact a lot of those were in the area. He asked what study, information, or time was put into that answer.
 - c. He noted that on page 10, there was reference to specific levels of humming and asked about the specific decibel level of the humming as he lives within 400' of the tower location.
 - d. He questioned the access referenced on page 11, and specifically the use of any easement that would cross the corner of his property. With a handout he provided the Commission, Campbell Pit Short Plat, he argued that the gravel road crosses his property and neither the 1938 or the PUD easement specific to maintenance of power lines provided access for such a use. The PUD easement being only 12-15' in width was not adequate to allow construction equipment to access the City's property.
 - e. The proceedings were paused briefly to allow Thurman to take a personal call. They were continued upon his return.

- f. Ferguson stated that the proposed access would be an overreach of the easement and that there was a conflict of interest with the City being the leaseholder and granting access to the private tower company. He noted that neither easement grants access for construction equipment or for wireless infrastructure. He also said that there are ambiguities in the right-of-way with his property extending beyond the middle point of the roadway.
 - g. He also noted that a 1992 waiver of claim and consent to local roadway existed to allow Clallam County to establish a roadway, but this did not provide rights to the City or a private developer. He said that this only applies to a specific survey corridor and does not provide blanket access across his deeded parcel. As a result, he could not justify a tower, its construction, access or use beyond the right-of-way.
 - h. He requested that the Commission consider addressing better coverage by providing a better tower location. He asked if there had been studies of other locations and indicated that there were other City-owned lands. These other locations were not within 70+ homes who, he believed, did not want to look at the tower.
 - i. He noted that in his packet he provided the surveys provided by the tower company with one he had highlighted with the only access to the property. He asked the Commission to reconsider. He stated he was not against a tower but believed that there are better locations for it.
6. M. Beck noted that most questions he had had been answered. Thurman appreciated the commentary and appreciated the good information. M. Beck felt that the federal law preventing the discussion of the environment limited his ability to comment based upon his background as a veterinarian and many years doing environmental related work.
7. Maxfield asked if he could make a few points. Fleck noted that the public comment period had been closed. Maxfield asked for further clarification as to whether he was a bystander at this point. Fleck affirmed that, because it was Ferguson's appeal to the Commission. Maxfield then asked how he could comment on what the appellant shared and if he could speak. Fleck noted that the comment period was concluded. Pearson asked if the Commission wanted to reopen for public comment. Fleck noted that that was up to the Commission. Thurman was not against it, M. Beck noted he hadn't seen that occur before, but did not object.
- a. Maxfield proceeded and responded to the issue of property values. He noted he had lived in Seattle and moved to Forks where his family was from. One of his reasons for doing so was to be far away from electro-magnetic radiation and all of the infrastructure of the city. He felt that the natural beauty here had an effect upon property values. He shared that that factored into his decision and would affect someone who brings a high six figure job into this area for the community. Others would make a similar decision if they were trying to get away from such things.
 - b. Pearson commented that there was a conflict of interest for the City as the City was making a profit off of the City's access across other people's property. In addition,

the lack of comments from Fish and Wildlife may be because the application materials stated there were no birds on the site.

- c. M. Beck closed the public comment. He then called forward the proponent's representative.
8. Pabst had submitted slides in advance and the display screen had those available. She introduced herself on behalf of Vertical Bridge. She noted that she had prepared responses to the five issues raised in the appeal, but the new issues raised by the appellant in the hearing were not part of their appeal letter. This was new information to her. She objected to the adding of new issues, she but was prepared to address them.
- a. Pabst began by restating that the appellant had the burden to indicate that there was error in granting the special use permit. She also noted that there was a federal standard regarding evidence. In addition, the Telecommunications Act had preserved local zoning authority, but decisions made by local authorities had to be supported by substantial evidence. Finally, she noted that if the Commission were to reverse the staff approval, their decision would have to be supported by substantial evidence.
 - b. She explained the importance of wireless improvements. T-Mobile is proposing a new facility that would provide significant coverage and in-building coverage north and northeast of Forks along Highway 101 and Calawah Way. She noted that 76% of adults and almost 87% of children live in wireless households. As result of dependency on wireless coverage, T-Mobile and other wireless carriers now build to an indoor standard that would allow signals to penetrate the concrete, brick, and wood materials of a structure. She also noted that wireless was important to emergency response with over 85% of 911 calls originating from cell phones. Wireless connectivity is important to access public services, education, health care, social, and governmental services.
 - c. Referring to the propagation slide, she explained that the T-Mobile service now would be improved after the development of the tower. As shown in the after-service map, the signal strength would be increased significantly along Calawah Way, as well as along Forks Avenue.
 - d. Regarding the SUP, she noted that the City's municipal code had three conditions for a special use permit. These conditions are: compatibility; prevention of nuisances, hazards and adverse impacts; and, conformance of the development with the comprehensive plan and city code. The Comprehensive Plan Utility Policy 1.7 states that "The City will work with service providers to improve the coverage of wireless communication opportunities including high speed internet access within the Forks UGA."
 - e. She noted that the federal preemption associated with issues of health effects had been sufficiently covered. On the issue of compatibility, she noted that the former use of the site was a gravel pit, rock washing, and concrete operation that had been zoned general industrial which is usually considered the most intense zone within

a city. In 2023, the zoning was changed to public land zoning and the Commission and City Council adopted in its land use table for towers in two zones, Public Land and Industrial Park, a staff level decision was sufficient for review subject to an appeal. She contrasted this with a conditional use permit when the Commission would make the decision to permit or prohibit the use. She argued that this hierarchy evidenced the City's policy preferring public lands zoning for this type of development which is important to the issue of compatibility.

- f. Pabst noted that the City had other towers and above ground infrastructure with similar visual impact. She said she had noticed that there were transmission towers running along Division Street. In her opinion, the viewscape would not be radically different. Since the FAA determining that no mitigation was needed on the tower in the form of paint or lighting, this also addressed compatibility.
- g. Regarding height, Pabst said that there were two different heights in the materials provided. This is because the two federal agencies, FAA and FCC, measure height differently under their regulatory schemes. The FAA measures overall height inclusive of the attached lightning rod, while FCC measure only RF emissions portion of the tower which ends six feet below the lightning rod.
- h. Pabst noted that no party had identified environmentally sensitive areas requiring mitigation.
- i. In addressing safety in regard to a nuisance or hazard associated with the tower, the T-Mobile engineer certification shows with FCC rules. The FAA determination indicated that there is no hazard. The Fire Chief also approved the height of the tower. Finally, the tower will be built in accordance with applicable building, fire, and structural codes.
- j. The tower is set back more than two tower lengths from the nearest residence. The City does not have a code provision establishing a setback for wireless towers, while other jurisdictions do with a typical setback of 110' or 120% of tower height.
- k. Responding to the argument regarding the impact to property values, Pabst noted that the code did not have specific language for property values. Consistent with the federal preemption on health effects, property values cannot be the deciding factor if the decline in property values is based upon a fear of negative health effects. Ferguson's appeal gave some reasons for impacts to property values based upon concerns regarding health effects. Further, the appellant did not show substantial evidence that the tower would have an impact resulting in a decline in property values. Pabst was unaware of a Washington case but was aware of an Oregon case where a tower proposed in Eugene was challenged on appeal regarding property values. There the reviewing board found that there was not substantial evidence, but rather only generalized evidence in the form of newspaper articles, law review articles, and no site-specific analysis of a decline in property values at the challenged location.

- l. Pabst addressed that in some cases, people cite studies that are faulty, and she was prepared to rebut those. She provided a handout rebutting those issues to be included in the record, including a study that was a joint venture undertaken in Silicon Valley. There, a research group worked with two local real estate associations to study potential property impacts in multiple cities in that region. Their study concluded that the distance from a wireless facility had no apparent impact upon the value of a home. The sites studied represented a variety of residential areas including those with higher priced homes versus those with more moderately priced homes. She also provided a summary of four studies done by Valbridge in four different cities that found no measurable difference between the property values of homes within ¼ mile distant radius compared to those within a half mile or full mile radius of a tower. Finally, with so few home buyers retaining a landline phone, adequate wireless service becomes critical to the value of one's home.
- m. Regarding the access and easement, Pabst noted that the survey submitted by the applicant shows public right-of-way to the south of the shared property line where the gravel driveway is currently constructed. She noted that having just seen the evidence, it appeared that Clallam County had a right-of-way along this strip. Typically, if the area was in the County and the City annexes this area, the City succeeds to the County's rights. She added it is quite possible that there has been adverse possession or prospective rights to use this road since it had been there historically. She offered several access options, and staff may have advice about those. One option is to impose a condition of approval, if the Commission choose to uphold the staff's approval, that the applicant will confirm the existence of public access. Or, the driveway could be moved as there is City right-of-way on the north side of the shared property line. Or, the City could assert a proscriptive easement through adverse possession. She argued that there were a number of means of addressing this issue including the Commission continuing or leaving open the record to provide additional background information or fact finding to resolve this issue.
- n. Pabst asked the Commission if they had any questions. M. Beck noted that he had no questions. Thurman asked about Ferguson's issues, more out of curiosity, regarding the decibel level of the tower itself. He noted that he had lived next to a tower, and the decibel level of that tower was associated with its wires. He continued by asking about the type of construction being used.
- o. Pabst replied that the tower would be a steel monopole. Thurman asked if there would be tension cables to hold it in place. Pabst asked if he meant guy wires and noted that this tower would have no guy wires. Thurman again asked about the decibel levels of the proposal and there being a constant humming. She said that generally speaking, unless there was a generator on site, there usually was not noise generated by this type of tower. If there was an associated HVAC unit with

the tower, there could be noise from that, but there was no need for such a unit here.

- p. Regarding the SEPA issue and birds, Pabst noted that in general, someone completes the checklist after making a site visit taking note of what is there at the time. People write down songbirds as that might be expected, but there was no intent to not disclose birds or other animals on site. Pabst was asked by the audience if this was done independently or by the applicant. She responded regarding the checklist that it had been completed by the applicant's consultant.
 - q. She asked if there were any further questions. Hearing none, she concluded by thanking the Commission.
9. Fleck noted that the agenda provided a chance for appellant rebuttal, and it is up to them as to whether they wanted to speak, but that they did not need to do so. Ferguson took the opportunity to do so. Ferguson agreed that the Telecommunications Act prevented health issues from being raised, but as Pabst had done so, he wanted to respond. He stated he understood that the Commission could not make a decision on those grounds. M. Beck acknowledged that that was true. Ferguson stated that he had read studies where property values decreased from 1.8% to up to 20% because of a tower. He could not recall as to whether that was due to an eyesore or if it was a health concern. Regarding the claim of no noise from the tower itself, Ferguson said he recall the application indicating that there could be some humming. He closed his rebuttal by saying that he liked where he lived and loves Forks and how it looks. Around the site, he noted that there were good alder and other trees coming back in areas not being used by the City for dumping brush, street sweepings, etc. He asked the Commission if they had questions of him, and hearing none, he thanked the Commission.
 10. Fleck suggested that the entire hearing be closed. Thurman made a motion to close the hearing that was seconded by D. Beck and passed unanimously. M. Beck declared the hearing closed.
 11. Fleck referred to the agenda and that the Commission was in its deliberations which would be quasi-judicial in nature. He noted that the Commission could raise questions, but the scope of the questions should be narrow to what had been raised. The Commission could also review the issues that they see, they could go through the five issues raised on appeal, and discuss those issues, etc. He noted that if there were items raised that the Commission would like more information regarding, it would need to be carefully defined with regard to what was presented by the parties. If there were factual matters needing clarification, that too could be addressed limited to the record. M. Beck noted that he understood. Fleck asked how the three commissioners would like to proceed.
 12. M. Beck stated there were some questions he would like time to consider and that he did not expect it to take 21 days to reach a decision. Fleck inquired if the discussion of the questions would be with the Commission and M. Beck said that they would be with Fleck. Fleck asked what the questions were.

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13. M. Beck shared that Ferguson had brought up issues regarding the easement and wanted to know if there could be a solution to that. Fleck responded that there were two pieces of evidence made part of the record. The first, referring to a map showed West Division Street continuing with twenty-five feet (25') intersection with the City's parcel. Then in the other survey, there is a note that says "ROW" for right-of-way. The property came into the City with the City's creation in 1945. He did not believe the Campbell property had been annexed but had not checked that having not known that the issue was being raised. Fleck noted that in addition to the easements shown in the map, there was the extension of Holly Street that was dedicated to the City that ran along the Campbell Pit Short Plat. He noted that the northern portion of West Division Street runs into and is expanded upon by Lot 2 with the gravel road in question running "all loopy" in this area. Fleck stated that there was room to move that onto the 25' of West Division onto the City's dedicated Lot 2 of the short plat. Fleck provided access to a larger copy of the Campbell Pit Short Plat, the same map but in a larger size, being the NTIS survey and page two of Ferguson's exhibit. Ferguson and M. Beck studied that map noting the same features. Fleck noted that if there was additional information needed on the right-of-way issue, he only had the information available in the hearing.
14. Fleck asked if M. Beck had other questions. M. Beck noted that if there was a solution to the easement, his questions were answered. Fleck explained that the Commission's deliberations and discussions could make a decision on the appeal contingent on confirming information regarding the right-of-way. He noted that that would require title related work. Ferguson offered that he had the parcel numbers. Fleck said the work could involve additional work regarding the ROW annotation. Fleck noted that that possibly implied that there is an extension of West Division.
15. Fleck noted that the Commission could make that decision, and that the Commission could deliberate and go through the five issues raised on appeal. If the Commission decided that a decision were to be made that evening, or if they were to continue, the continuation needed to be based upon additional research regarding the easement beyond what had been provided in the record.
16. Maxfield interjected from the audience with a question as to whether the Commission had questions regarding the Propagation Map that was project on the screen. Thurman responded with a question as to whether Maxfield utilized a cell phone to which Maxfield responded in the affirmative. Thurman noted his question was not to be sarcastic, but that there were waves received regardless of how signals occurred with people being exposed. Pearson began to reply, and Fleck intervened and called for a return to the regular order of the Commission. He suggested that the interchange should end as that there were reasons in a quasi-judicial hearing things are done a certain way.
17. M. Beck noted that issues two and three of the appeal were subjects that the Commission could not discuss or rather use information concerning those issues. He then noted that property value questions remained as to whether they would be impacted or not. He gave an example where another structure was argued to impact property values and was fought

- against, but in that example the values increased. He felt that that was a personal decision and had no way of knowing if the values would increase or decrease. He felt the issues regarding proximity to residential houses was addressed with the fourth issue.
18. M. Beck felt that regarding issue number five, lack of sufficient public input, the City had done what was necessary for public input. Thurman agreed with M. Beck nothing that how this matter progressed, he felt that the City went about in the correct way. M. Beck noted that the City had completed SEPA while recalling his ten years of work with the US Air Force undertaking NEPA decisions. He also said he would have liked more evaluation as to where the tower could be placed, but at this point that would be counterproductive. Thurman agreed and felt that the City had done its due diligence on most of the properties.
 19. M. Beck asked if they could make a decision. Thurman said while tough, there was good and bad to both. He felt he needed to look at the issue from an unbiased perspective. Thurman felt that with the current permit, the Commission should move forward with what they had.
 20. M. Beck noted that he could see both sides, and what the law allows severely limits what they could do. He asked if Thurman wanted to make a motion.
 21. Thurman referenced approving a conditional use permit. Fleck read from the staff report that the Commissions options regarding the SUP appeal were "affirm, reverse, remand, or modify" which meant to include conditions.
 22. D. Beck said that she did not understand much of that. She asked if they approved it, they would build the tower. Fleck responded yes and explained that that would be affirming the approval of the SUP, which was appealed, and the Commission would be affirming that approval. Fleck said the Commission could reverse. Also, they could remand it, which would send it back for Fleck to do other work or review, or they could modify it, which would be affirming but modifying the SUP to address various conditions explained by the Commission. D. Beck wondered if the tower would improve cell phone coverage. She noted that she did not have a cell phone and wondered if it would really improve coverage in this area. She noted that most of the people who have cell phones get coverage where they can get it. Would the tower really improve that? She stated that she still used a land line and would be doing without though that was personal.
 23. Thurman asked if the easement issue had been addressed. He continued by asking if there are options to modify that to at least help. Fleck noted that the area that the City uses to access the property is an easement, or rather right-of-way, for Division Street that comes into the City's property. There were questions about an extension of West Division along the southern side of the City owned property as there are indications of 25' right-of-way being there. Fleck noted that he was unaware of this being an issue until this evening and that he felt there were other sources he could consult, but he did not want to go outside the record. Thurman wanted to help where he could and understood that Ferguson did not want this suffering on his property. Thurman felt that that was the best that the Commission, or he felt he could do.

24. Thurman made a motion to affirm the permit with modifications regarding the easement. Fleck sought clarification to his understanding of the motion, which was to affirm with modifications that the access be from a public right-of-way or the City's property. Thurman stated that that was correct and that that was the motion. D. Beck seconded the motion, M. Beck called for the vote. All three voted in favor of the motion.
25. There were two other motions made following a discussion about the rest of the agenda and how the meeting had already gone 90+ minutes. Fleck was authorized to write up a summation and submit that to the Chair for approval which he could sign upon his satisfaction that it reflected the proceedings. Thurman restated that as a motion, D. Beck seconded the motion, and it passed unanimously.
26. The second motion was that if satisfied and signed, that that document would reflect the decision of the Commission regarding the SUP appeal. D. Beck made the motion, Thurman seconded it, and the motion passed unanimously.¹
- R. On May 22, 2025, Ferguson raised concerns about Rod Fleck's dual role as City Planner and City Attorney. In his dual role, Fleck had signed the Vertical Bridge lease on behalf of the City and provided legal advice to the Planning Commission.
- S. As a result of Ferguson's concerns, Forks Mayor Tim Fletcher asked the Planning Commission to reopen the appeal hearing with separate legal counsel for the Planning Commission. The City retained Heidi Greenwood of Ogden Murphy Wallace PLLC to provide counsel to the Planning Commission.
- T. The City provided notice for the reopened appeal hearing by mailing it to the property owners of record on 17 June 2025 and publishing the notice in the Forks Forum.
- U. The Planning Commission reopened the appeal hearing on July 1, 2025. As this was a continuation of the prior hearing, the records includes the testimony and presentations from the previous hearing. Chair M Beck reopened the public hearing. Present were Commissioners M Beck, T Thurman, and D Beck. Commissioner B Weekes was present, but he did not participate as he had not participated in the prior meeting. Greenwood started the meeting by qualifying the Commission members pursuant to the appearance of fairness doctrine.
 1. Several members of the public addressed the commission:
 - a. Sarah Ferguson mentioned several federal cases that required telecommunications towers to comply with conditional use permit process and that this tower requires a conditional use permit. Ferguson also said that this site is within a wellhead protection zone.
 - b. Taylor Soha requested that the Planning Commission either deny the permit or pause the process to ensure consultation with Washington State and tribal authorities.
 - c. Sarah Huilien requested that the Commission pause the process until the City responded to a public records request.

¹ The Commission then returned to the rest of the agenda which was associated with the Growth Management Act and the City's effort to undertake the statutory update. No other aspect of the appeal was discussed in the remaining portion of the meeting.

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- d. Heather Gaddy said that the City had dismissed public concerns, failed to consult with tribal authorities and the Washington State Fish and Wildlife Department, and denied due process.
 - e. Nicole Rodriguez agreed with the previous comments.
 - f. Sarah Johnson mentioned the need to consult with environment and tribal authorities to ensure preservation of ecological and cultural resources.
 - g. Marcia Gillispie concurred with the prior comments and asked for input from all stakeholders.
 - h. Corey Pearson discussed the wellhead protection zone and requested that City consult with the Quileute Tribe and Washington State Fish and Wildlife Department.
2. Fleck presented the updated staff report. In this report, Fleck discussed the access to the site and showed several options for access from public rights-of-way. He also mentioned the Washington State Department of Ecology comment that was discovered after the previous hearing.
 3. Ferguson mentioned the unclear access and unclear legal status of West Division Street. Ferguson discussed that telecommunications are not public utilities. He discussed the site's location in relation to the wellhead protection zone. He discussed the monopole's potential impact on property values.
 4. Pabst, on behalf of VB, discussed the Forks Municipal Code, and the tower's classification under the use matrix of the Forks Municipal Code. She discussed that Forks Municipal Code requires a special use permit rather than a conditional use permit. She also discussed the SEPA checklist and the National Environmental Protection Act process. Pabst stated that project is outside the wellhead protection zone. She noted the compliance with the FAA and FCC requirements. She noted that cell sites do not affect property values.
 5. Ferguson offered a rebuttal that telecommunications are not public utilities in that they do not have power of eminent domain per the Washington State Code.
 6. The public hearing was closed at 6:55 PM. T Thurman made the motion to close the public hearing and D Beck seconded the motion. The motion passed unanimously.
 7. The Commission adjourned into a close session pursuant to RCW 42.30.140(2). The Commission returned to open session at 7:31 PM
- V. During the hearing, the Planning Commission affirmed the Special Use Permit with the added conditions that City or the applicant consult with the Quileute Tribe and the Washington State Department of Fish and Wildlife. D Beck made the motion and T Thurman seconded. The motion passed unanimously.

II. Determinations. Based upon the above findings, the Commission made the following determinations:

- A. The City or the applicant must consult with the Quileute Tribal leadership to confirm that any Quileute Tribe concerns are mitigated or address in the project.
- B. The City of the applicant must consult with the Washington State Department of Fish and Wildlife to confirm that any concerns for local wildlife are mitigated or addressed in the project.

III. Decision.

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Based upon the above findings and determinations, the Forks Planning Commission affirmed by unanimous vote the Special Use Permit Application with the incorporated conditions found in Staff Report (from the SEPA MDNS) and the conditions noted in section II above.

Pursuant to the Forks Zoning Code, specifically that section regarding appeals, notice of the decision shall be provided to the City of Forks City Council, participants in the hearing, and those who have already received notice of the permit. Said notice shall provide information regarding the process of appeal. Staff was authorized to prepare the necessary paperwork reflecting the Commissioners' decision.

Commissioner M. Beck was authorized to sign the decision based upon his determining that the documents adequately reflect the activities of the Commission during the meeting and the signed document would serve as the meeting minutes. Commissioner Thurman made the motion providing such authorization with a second by Commissioner D Beck. Motion passed unanimously.

Signed this 18 July 2025 and in so signing certifying that the above reflects the proceedings of the Forks Planning Commission's special meeting held on 1 July 2025.



Milton Beck

Chairman - Forks Planning Commission

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FORKS, WA 98331-9117

JOEL AND SONJA NICOLE GENTLEMAN
21 E DIVISION ST
FORKS, WA 98331-9549

SEAN AND HILARY NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

FORKS SAND AND GRAVEL LAND INC
PO BOX 907
LANGLEY, WA 98260

JACKIE LOUTHAN JODY KELLER ET AL JTWROS
PO BOX 780
FORKS, WA 98331

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

DAVID FERGUSON ET AL
284 W DIVISION ST
FORKS, WA 98331

BRIAN W AND LAURIE A TURNER
910 RIPPLEBROOK LANE
PORT ANGELES, WA 98362

CHARLES AND NADINE CALDERON DIXON
154 AND 156 WOOD ST
FORKS, WA 98331

JULIAN PABLO ORTIZ AND MARIA CALMO CARRILLO
PO BOX 993
FORKS, WA 98331

MICHAEL D AND AMY LYNN DILLEY
PO BOX 626
FORKS, WA 98331

RICHARD R PRESTON III AND REBECCA PFAFF
P O BOX 2406
FORKS, WA 98331

JERRY R AND MARGARET J KING
1750 CALAWAH WAY
FORKS, WA 98331

CHRISTIAN AND ANNA MATSCHE
5405 UPPER HOH ROAD
FORKS, WA 98331

JAY D MURPHY
181 W DIVISION ST
FORKS, WA 98331

10 @ 1.9028
1.24.25
1.24.25

JOHANNA R AND GEORGE CLARK ESTATE
P O BOX 742
FORKS, WA 98331

MIRANDA PUKSTA
PO BOX 1142
FORKS, WA 98331

MICHAEL A REAVES
PO BOX 116
FORKS, WA 98331-0116

RICHARD C MOODY
780 PALMER RD
FORKS, WA 98331-9242

DALE A RABEN
PO BOX 634
FORKS, WA 98331-0634

JOSEPH F SOHA
PO BOX 2001
FORKS, WA 98331

RICHARD AND CHERYL MOODY
780 PALMER RD
FORKS, WA 98331-9242

ANDREA PERKINS AND MICHAEL PEPPERS
PO BOX 501
BEAVER, WA 98305

FORKS DEVELOPMENT LLC
PO BOX 2001
FORKS, WA 98331

CHET A AND SHANA M HUNT
321 EVERGREEN LOOP
FORKS, WA 98331-9680

JESSICA SIMONS AND JOSHUA FLETCHER
PO BOX 1071
FORKS, WA 98331

MARK HENRY
PO BOX 754
FORKS, WA 98331

BRIAN RICHARDS
P O BOX 486
FORKS, WA 98331

TIMOTHY FLETCHER
PO BOX 627
FORKS, WA 98331

JENNIFER A SMITH AND TERESA A SMITH
PO BOX 74
FORKS, WA 98331

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

JOHN DEAN HILLCAR
P O BOX 210
FORKS, WA 98331

JESSICA MANSFIELD
PO BOX 11
FORKS, WA 98331

LLYWELYN C AND ATHENA GRAEME
171 CAMPBELL ST
FORKS, WA 98331

SETH SCHWENKER
16412 HWY 112
CLALLAM BAY, WA 98326

SHANE AND DEVENNIE ANDERSON
PO BOX 725
FORKS, WA 98331

TYLER D AND ERICA M MAXFIELD
PO BOX 2012
FORKS, WA 98331

HOH INDIAN TRIBE
PO BOX 2196
FORKS, WA 98331

JOSEPH AND LINDA SOHA
260 CEDAR AVENUE
FORKS, WA 98331

NANCY J AND RAY MAXWELL
PO BOX 416
FORKS, WA 98331

KIRK S CHRISTIANSON
173 QUAIL RUN RD
PORT ANGELES, WA 98362-7403

JAMES AND ELLYN GRIBBON
490 KLAHNDIKE BLVD
FORKS, WA 98331

LORENZO SALAZAR MANZANAREZ AND VERONICA GUADALUPE SORRELL
1750 CALAWAY WAY TR# 46
FORKS, WA 98331

NORTH OLYMPIC REGIONAL VETERANS HOUSING
250 ASH AVE
FORKS, WA 98331-9198

SUSAN BROWN
470 KLAHNDIKE BLVD
FORKS, WA 98331

29

ELBERT AND ELSIE HAMPTON
PO BOX 2002
FORKS, WA 98331-2002

JAMES M AND LESLIE KLAHN TTES
19034 40TH PL NE
LAKE FOREST PARK, WA 98155-2812

HILKKA H HAMALAINEN
430 KLAHNDIKE BLVD
FORKS, WA 98331

JANIS E SCHROEDER
514 AMERICAS WY #18466
BOX ELDER, SD 57719

SEAN MALEY
410 KLAHNDIKE BLVD
FORKS, WA 98331

ROICE O MILES
470 TERRA EDEN ST
FORKS, WA 98331

TERRA EDEN APARTMENTS LLC
21016 7TH AVE S
DES MOINES, WA 98198

GARY E KILMER
PO BOX 788
FORKS, WA 98331-0788

ALLEN A AND RUBY P NELSON
879 KILMER RD
FORKS, WA 98331

MINH AND THAO TRUONG
PO BOX 2402
FORKS, WA 98331

BRIAN AND BRITTANY DIOR LORIA
21016 7TH AVE S
DES MOINES, WA 98198

CHAR-EL MONTANA
PO BOX 1784
FORKS, WA 98331

ROBERT R CHRISTENSON
510 KLAHNDIKE BLVD
FORKS, WA 98331-9104

CELSO AGUILAR AND NIEVES GUEVARA
PO BOX 1184
FORKS, WA 98331

Rod Fleck

From: Rod Fleck
Sent: Tuesday, July 22, 2025 6:06 PM
To: Dave Ferguson
Cc: Caryn Depew
Subject: RE: Planning commission
Attachments: VB QT and WDFW.pdf

Good evening Dave,

I am in and out of the office today and tomorrow. But, I believe you got the decision document last Friday. As to the communications from the City to the Quileute Tribe and WDFW, please see the attached. Those have been initiated. I asked the Mayor if he had any response from the Tribal Chairman, and he said he had not, but this past weekend was Quileute Days and there is a lot that tribal leadership does to make that event happen. WDFW response so far is also enclosed. I will try to get back to you tomorrow, or more likely Thursday, about the roadway question you also sent.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

From: Dave Ferguson <realdealguides@gmail.com>
Sent: Friday, July 18, 2025 6:19 PM
To: Rod Fleck <rodf@forkswashington.org>
Subject: Planning commission

Good afternoon, I'd like to know if the planning commission has made there final decision on the vertical bridge decision? Also if the tribe has responded? Could I receive any documents of that communication as well. I appreciate your hard work.
Also, is there an email to the head of the planning commission?

Thank You
Dave Ferguson
(724) 591-2714

Realdealguides@gmail.com

Realdealguides.com

Rod Fleck

From: Rod Fleck
Sent: Friday, July 18, 2025 4:40 PM
To: Dave Ferguson; Meridee Pabst
Cc: Corey Pearson
Subject: City of Forks - Decision on D. Ferguson Appeal of Special Use Permit for Vertical Bridge Telecommunications Tower
Attachments: 07182025_Notice of Affirmation of SPECIAL USE PERMIT.pdf

Good afternoon,

The attached documents were received and reviewed by Chairman Milton Beck earlier today. He returned them with his signature earlier this afternoon. The City will work with the Forks Forum to have the Notice of Affirmation of Special Use Permit published in the Forks Forum. Those property owners of record that had received the prior notices will be mailed a copy of the Notice of Affirmation and the Findings, Determinations, and Decision. That mailing will be initiated on Monday with the notices deposited either Monday evening or Tuesday morning with the US Post Office here in Forks.

Sincerely,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Rod Fleck
Sent: Wednesday, July 23, 2025 9:13 AM
To: Dave Ferguson
Cc: Caryn Depew
Subject: RE: Planning commission
Attachments: 07182025_Notice of Affirmation of SPECIAL USE PERMIT.pdf

Good morning,

Here is the attachment – a 2mb file – for the Notice of Affirmation that was signed by Milton Beck. In addition, I have uploaded that and the documents I sent you attached to yesterday's email into the dropbox folder as stand alone items. The link to the Notice of Affirmation is

https://www.dropbox.com/scl/fi/vhrbajvcxyj4p73z7uamv/07182025_Notice-of-Affirmation-of-SPECIAL-USE-PERMIT.pdf?rlkey=gct5imp8sucomro0xn2bgurro&st=w69tnecp&dl=0

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412

"Fortes Fortuna Juvat"

From: Dave Ferguson <realdealguides@gmail.com>
Sent: Tuesday, July 22, 2025 6:56 PM
To: Rod Fleck <rodf@forkswashington.org>
Subject: Re: Planning commission

Thanks for responding but I did not receive the attachment from last Friday. I just got an email you sent saying he signed it. Please resend

Thank You
Dave Ferguson
(724) 591-2714
Realdealguides@gmail.com
Realdealguides.com

On Tue, Jul 22, 2025 at 5:05 PM Rod Fleck <rodf@forkswashington.org> wrote:

34

Good evening Dave,

I am in and out of the office today and tomorrow. But, I believe you got the decision document last Friday. As to the communications from the City to the Quileute Tribe and WDFW, please see the attached. Those have been initiated. I asked the Mayor if he had any response from the Tribal Chairman, and he said he had not, but this past weekend was Quileute Days and there is a lot that tribal leadership does to make that event happen. WDFW response so far is also enclosed. I will try to get back to you tomorrow, or more likely Thursday, about the roadway question you also sent.

Take care,

Rod

William R. Fleck

City Attorney/Planner

500 East Division Street

Forks, WA 98331

rodf@forkswashington.org

360/374-5412

"Fortes Fortuna Juvat"

From: Dave Ferguson <realdealguides@gmail.com>

Sent: Friday, July 18, 2025 6:19 PM

To: Rod Fleck <rodf@forkswashington.org>

Subject: Planning commission

Good afternoon, I'd like to know if the planning commission has made there final decision on the vertical bridge decision? Also if the tribe has responded? Could I receive any documents of that communication as well. I appreciate your hard work.

Also, is there an email to the head of the planning commission?

Thank You

Dave Ferguson

(724) 591-2714

Realdealguides@gmail.com

Realdealguides.com



500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Members of the Forks Planning Commission

FROM: Rod Fleck, Attorney/Planner

RE: Transmittal of Appeal of Planning Commission Decision to Forks City Council

DATE 27 August 2025

Members of the Commission,

Attached please find a copy of the Formal Appeal filed by Mr. Dave Ferguson on 7 August 2025 as discussed in the memo for the City Council. Originally, this was to be delivered to you on Monday. However, over the weekend, Mr. Ferguson requested the City Council reschedule the 8 September 2025 date to 22 September 2025. The Council approved that during its meeting Monday night.

This transmittal was delayed to allow for my office to make the changes to the public notice which is also attached.

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500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Mayor Fletcher
Members of the Forks City Council

22 August 2025

FROM: Rod Fleck, Attorney/Planner

RE: Transmittal of Appeal of Forks Planning Commission's Affirmation of the
Special Use Permit Issued to Vertical Bridge

Attached please find a copy of both the Formal Appeal – Request to Overturn Planning Commission's Final Decision on Vertical Bridge Special Use Permit filed by Mr. Dave Ferguson on 7 August 2025; and, pursuant to the Forks Municipal Code, the Notice of Consideration of Appeal to be held by the Forks City Council on 8 September 2025.

Pursuant to Forks Municipal Code 17.135.030, in addition to the City Council, the same documents will be provided to the members of the Forks Planning Commission, and the Forks Building Inspector by mail or delivery by close of business 25 August 2025.

The notice of the appeal hearing has been emailed and mailed to the Appellant, Mr. Ferguson, and will be published in the 28 August 2025 edition of the Forks Forum.

Also, on 25 August 2025, the notice of the appeal hearing will be mailed to all property owners of record located within 500' of the property associated with the permit being appealed.

Finally, the related matter on the Council Agenda for 25 August 2025 under "discussion" will be for the sole purpose of noting on the record the transmittal of the received appeal and the scheduled appeal hearing date and time.

38

Dropped off by
Corey Pearson at
4:10 pm



Forks City Council
City of Forks
500 East Division Street
Forks, WA 98331

RE: Formal Appeal – Request to Overturn Planning Commission’s Final Decision on Vertical Bridge Special Use Permit

Dear Mayor and Members of the Forks City Council,

I respectfully submit this formal appeal asking the City Council to overturn the Planning Commission’s final decision approving the Special Use Permit granted to Vertical Bridge for the construction of a 152-foot telecommunications monopole near my residence and property. Notice of Planning Commission’s decision was mailed on July 18, 2025. This appeal is being filed pursuant to Section 17.135.010 of the Forks Municipal Code (“FMC”), which provides that the Planning Commission’s decision “become[s] final unless and appeal is filed with the board within 30 days of said decision.”

Pursuant to FMC 17.35.020(a) and (b), my name and mailing address are:

Dave Ferguson
Property Owner
284 W Division Street
Forks, WA 98331

The Planning Commission’s decision should be reversed on the following grounds:

1. Easement Overreach and Misrepresentation of Public Right-of-Way

Vertical Bridge’s submitted survey inaccurately labels a portion of land across my property as a “public right-of-way.” This is not correct. The area in question is a utility easement, designated exclusively for use by the City and Clallam County PUD to access and maintain electrical lines, the sewer head, and the stormwater drainage ditch. This easement does not grant public access, construction access, or general right-of-way use.

The applicant’s misrepresentation of this easement constitutes a clear overreach and invalidates their claim of legal access to the project site. The permit should not be allowed to stand based on a false premise.

2. Conflict of Interest and Denial of Due Process

MA

The appeals process before the Planning Commission was compromised by a conflict of interest involving City Attorney Rod Fleck, who previously negotiated and signed the lease agreement with Vertical Bridge.

Although a different attorney was present at the second appeal hearing, Mr. Fleck continued to participate in an official capacity—reading the Planning Commission's minutes into the record and addressing the board. His ongoing involvement in a matter where he held a direct financial and professional interest in the outcome is deeply inappropriate and undermines the neutrality of the appeal process.

Most notably, during the hearing, Planning Commission members openly stated, "our hands are tied," a clear indication that the outcome had already been predetermined. This statement confirms that my appeal was not given an impartial or genuine review, and that I was effectively denied due process.

3 List of Parties with Financial Ownership Interests in Properties within 300 feet of Subject Property

Pursuant to FMC 17.135.020(3), I am providing the following list of all parties having an ownership interest in property within 300 feet of the exterior boundaries of the subject property. I certify that this list is true and accurate to the best of my knowledge and ability. The information below was compiled using the University of Washington's GIS portal for the City of Forks at <https://www.onrc.washington.edu/city-of-forks-mapping-and-gis-portal/>.

DAVID FERGUSON ET AL
284 W DIVISION ST
FORKS, WA 98331

ALBERTA R STROM
240 W DIVISION ST
FORKS, WA 98331-9117

FORKS SAND AND GRAVEL LAND
INC
PO BOX 907
LANGLEY, WA 98260

JF/ME WALLACE FAMILY LTD
PTSHF
PO BOX 907
LANGLEY, WA 98260

JULIAN PABLO ORTIZ AND
MARIA CALMO CARRILLO
PO BOX 993
FORKS, WA 98331

FORKS ABUSE PROGRAM

SEAN AND HILARY
NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

MCVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

CLALLAM COUNTY PUBLIC
HOSPITAL DIST 1
530 BOGACHIEL WAY
FORKS, WA 98331

530 BOGACHIEL WAY
FORKS, WA 98331

RICHARD R PRESTON III
AND REBECCA PFAFF
P O BOX 2406
FORKS, WA 98331

JAY D MURPHY

JAMES M AND LESLIE KLAHN
TTES
19034 40TH PL NE
LAKE FOREST PARK, WA
98155-2812

JANIS E SCHROEDER
514 AMERICAS WY #18466
BOX ELDER, SD 57719

ROICE O MILES
470 TERRA EDEN ST
FORKS, WA 98331

GARY E KILMER
PO BOX 788
FORKS, WA 98331-0788

HOH INDIAN TRIBE
PO BOX 2196
FORKS, WA 98331

BRIAN AND BRITTANY DIOR
LORIA

PO BOX 1775
FORKS, WA 98331-1775

HOWARD F AND JELENE
SARNOWSKI
PO BOX 827
FORKS, WA 98331-0827

SALVADOR GUEVARA
MALDONADO
1750 CALAWAH WAY TRLR 55
FORKS, WA 98331

DALE A RABEN
PO BOX 634
FORKS, WA 98331-0634

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

SEAN AND HILARY NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

MARK HENRY
PO BOX 754
FORKS, WA 98331

BRIAN MOODY
PO BOX 2401
FORKS, WA 98331-2401

KIRK S CHRISTIANSON
173 QUAIL RUN RD
PORT ANGELES, WA 98362-7403

JENNIFER A SMITH AND TERESA
A SMITH
PO BOX 74
FORKS, WA 98331

FORKS BROADCASTING INC
8014 NE 112 ST
KIRKLAND, WA 98034

TOWN OF FORKS
500 E DIVISION ST
FORKS, WA 98331

MARIANO MARTIN PEREZ AND
SANTA MENDOZA CHALES

181 W DIVISION ST
FORKS, WA 98331

ELYSE WACH
70 RHODEY AVE
FORKS, WA 98331
RYAN CELUSTA AND
STUART A BERNETT
PO BOX 4
FORKS, WA 98331

JEFFREY MARK AND
KELLEY VANESSA
JOHNSON
10814 181ST AVE NE
REDMOND, WA 98052

PATRICK E MONAGHAN
30 RHODEY AVE
FORKS, WA 98331

JASON A GOAKEY
187155 HIGHWAY 101
FORKS, WA 98331

CITY OF FORKS
500 EAST DIVISION STREET
FORKS, WA 98331-8618

JESSICA SIMONS AND
JOSHUA FLETCHER
PO BOX 2592
FORKS, WA 98331

ANDREA PERKINS AND
MICHAEL PEPPERS
PO BOX 501
BEAVER, WA 98305

RICHARD C MOODY
780 PALMER RD
FORKS, WA 98331-9242

RICHARD AND CHERYL
MOODY
780 PALMER RD
FORKS, WA 98331-9242

CHET A AND SHANA M
HUNT
321 EVERGREEN LOOP
FORKS, WA 98331-9680

TIMOTHY FLETCHER

21016 7TH AVE S
DES MOINES, WA 98198

MINH AND THAO TRUONG
PO BOX 2402
FORKS, WA 98331

ALLEN A AND RUBY P
NELSON
879 KILMER RD
FORKS, WA 98331

TERRA EDEN APARTMENTS
LLC
21016 7TH AVE S
DES MOINES, WA 98198

NORTH OLYMPIC REGIONAL
VETERANS HOUSING
250 ASH AVE
FORKS, WA 98331-9198

FORKS DEVELOPMENT LLC
PO BOX 2001
FORKS, WA 98331

BRIAN RICHARDS
P O BOX 486
FORKS, WA 98331

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

RICHARD AND CHERYL
MOODY
780 PALMER RD
FORKS, WA 98331-9242

SETH SCHWENKER
16412 HWY 112
CLALLAM BAY, WA 98326

JOHN DEAN HILL CAR
P O BOX 210
FORKS, WA 98331

PO BOX 1374
FORKS, WA 98331

190 ASH AVE
FORKS, WA 98331

4. Relief Requested

In light of the above, I respectfully request that the Forks City Council:

1. Overturn the Planning Commission's final approval of the Special Use Permit issued to Vertical Bridge;
2. Review and clarify the legal limitations of the utility easement across my property and prohibit its use for unauthorized access;
3. Enforce full compliance with CCC 33.49 and 33.49.400 , including a requirement that alternative, less impactful sites be seriously evaluated;
4. Address the conflict of interest and predetermined outcome that tainted the Planning Commission's appeals process;
5. Revoke the SEPA Determination of Nonsignificance and require a new, complete, and accurate environmental review.

I am available to submit supporting documentation and further detail upon request. However, due to my current location and limited access, I once again ask that all correspondence be sent via email to: realdealguides@gmail.com.

Thank you for your time and attention to this matter. I trust the City Council will take the appropriate action to correct these substantial errors and uphold the integrity of the process.

5. Efforts to Comply with Forks Municipal Code 17.135

Forks Municipal Code 17.135 outlines specific requirements for appeals to the City Council, including that the appeal must contain a notarized signature attesting that I understand that the issues identified above represent a true and accurate representation of the issues raised on appeal; that I understand that only those issues raised in this appeal are before the Council; and that issues not raised in this appeal, and not raised within the time associated for an appeal, will result in a waiver of the right to appeal those issues.

I want to clarify that I am doing everything I can to comply with this process and to protect my property rights. However, I am currently working in an extremely remote location in Alaska, over 300 miles from the nearest road, and with very limited access to mail or telephone communication. I can only receive communications by email, and the City has already been made aware of this. Nor is it possible for me to have my signature notarized given my remote location.

Accordingly, I am providing my signature below in accordance with RCW 5.50.030, which provides that "if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration."

Pursuant to FMC 17.135.020(1)(e), I declare that the foregoing is a true and accurate representation of the issues raised on appeal by myself. I understand that only those issues raised in this appeal are before the council. I also understand that those issues not raised in this appeal, and not raised within the time associated for an appeal, will result in a waiver of the right to appeal those issues.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7 day of August, 2025 at Copper River Lodge (Lake Iliamna), Alaska

A handwritten signature in black ink, appearing to read "D. Ferguson", written in a cursive style.

Dave Ferguson
Real Deal Guides
Realdealguides.com
724-591-2714

Rod Fleck

From: Rod Fleck
Sent: Friday, August 29, 2025 4:56 PM
To: Dave Ferguson; Meridee Pabst
Cc: Charlotte A. Archer; Nerissa Davis
Subject: FW: Notice of Consideration of an Appeal to the Forks City Council of the Forks Planning Commission's Affirmation of the Special Use Permit issued to Vertical Bridge - Sept 22, 2025
Attachments: September 22, 2025.pdf
Importance: High

Good evening,

Attached please find the Notice of Consideration of an Appeal to the Forks City Council associated with the Planning Commission's 18 July Affirmation.

This notice will be published in next week's Forks Forum. It was mailed on Wednesday of this week.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rod@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

From: Nerissa Davis <nerissad@forkswashington.org>
Sent: Friday, August 29, 2025 2:31 PM
To: Rod Fleck <rod@forkswashington.org>
Subject: Notice of Consideration of an Appeal to the Forks City Council of the Forks Planning Commission's Affirmation of the Special Use Permit issued to Vertical Bridge - Sept 22, 2025

Nerissa Davis
Personnel Coordinator/Legal Secretary
City of Forks
500 East Division Street, Forks, WA 98331
(360) 374-5412 x 109 (office)
(360) 374-9430 (fax)
nerissad@forkswashington.org

Be happy, Be bright, Be you. Have a nice day!

Rod Fleck

From: Rod Fleck
Sent: Friday, August 22, 2025 3:03 PM
To: Dave Ferguson; Meridee Pabst
Cc: Caryn Depew; Nerissa Davis
Subject: City of Forks - Ferguson Appeal and City Council Notice of Consideration of Appeal Hearing
Attachments: Ferguson Appeal To Council and Notice.pdf

Good afternoon,

Attached please find the cover letter transmitting Mr. Ferguson's appeal of the Planning Commission's July decision. His appeal follows that. In addition, please find a copy of the Notice of Consideration of Appeal setting that appeal before the City Council on the Council's regularly scheduled meeting for 8 September 2025.

See the attached cover letter as it provides additional information regarding publication in the Forks Forum, mailing, etc.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412

"Fortes Fortuna Juvat"



**Notice of Consideration
of an Appeal to the Forks City Council
of the Forks Planning Commission's Affirmation of the
Special Use Permit issued to Vertical Bridge**

**DAVE FERGUSON, Appellant
VERTICAL BRIDGE, Permittee/Respondent**

**7:30 PM, Monday, 8 September 2025
Forks City Council Chamber
Forks, WA 98331**

Notice is hereby given that during the Council's Regular Meeting on 8 September 2025, the City Council will consider an appeal filed by Dave Ferguson, Appellant, of the Forks Planning Commission's 18 July 2025 Affirmation of the Special Use Permit issued to Vertical Bridge, Respondent, for the construction and installation of a 150' monopole telecommunications tower to be installed/constructed at 285 West Division Street. Pursuant to Forks Municipal Code (FMC) 17. 90.050, WAC 365-196-845(11), this is a closed record appeal and only the Appellant, Respondent, and City Staff will be allowed to present to the City Council, and the record before the City Council will be limited to the record established before the Forks Planning Commission at the previous hearings on this matter. No public comment on this appeal may be accepted during the City Council meeting.

Appellant(s): Dave Ferguson
284 West Division Street
Forks, WA 98331

Project
Proponent: Meridee Pabst, counsel of behalf of
VB BTS III, LLC formerly known as Vertical Bridge REIT, LLC¹
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

General Legal
Description: 285 West Division Street, Forks, WA 98331
Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Stated Basis for
Appeal: On 4 April 2025, the City issued a special use permit to Vertical Bridge REIT, LLC, known known as VB BTS III, LLC, hereinafter Vertical Bridge. This permit was for the construction

¹ Vertical Bridge REIT, LLC changed its operation name associated with this project to VB BTS III, LLC with the City's permission. The City has used Vertical Bridge interchangeable, and the SUP was issued for the project with VB BTS III, LLC being the correct and ultimate entity responsible for the project.

and installation of a 152' tall monopole telecommunications tower that would be used by T-Mobile and up to three other providers on City owned property that was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and the monopole's height was adjusted to meet FAA requirements. Further, the local fire chief provided a height waiver for this telecommunications infrastructure. Pole will be installed between the southern edge of a well-head protection area and the northern edge of an existing easement. Property was the site of a former gravel pit, rock washing, and concrete operation.

On 17 April 2025, Mr. Ferguson appealed the granting of the SUP to the Forks Planning Commission. The Forks Planning Commission heard the appeal on 21 May 2025. During the hearing Mr. Ferguson raised additional appeal issues and submitted additional issues by email the day following the hearing. The Forks Planning Commission initially affirmed the SUP, subject to clarifications on access. However, the Mayor requested the Commission reopen the appeals hearing to address these issues.

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On 7 August 2025 Mr. Ferguson submitted a written appeal of the 18 July 2025 Planning Commission's decision. A copy of the appeal is available on the City's website at <https://forkswashington.org/notices/> or upon request to the Clerk.

AGENDA FOR APPEAL HEARING

During the regularly scheduled meeting of the Forks City Council set for 8 September 2025, the Council will conduct a hearing to consider this appeal. Pursuant to FMC 17.90.050((4), the City Council "shall only affirm or reverse the decision of the Forks Planning Commission."

The appeal portion of the agenda of the City Council's 8 September 2025, 7:30 p.m., meeting will be as follows and will occur shortly after the start of the meeting.

Ferguson Appeal of Forks Planning Commissions Affirmation of Special Use Permit to Vertical Bridge - Charlotte Archer, Inslee Best, pro tem City Attorney to Council

- a. Attorney Archer's review of quasi-judicial procedures, conflict of interest and appearance of fairness disclosures, and City Council's role in a closed record appeal of Planning Commission's 18 July 2025 decision
- b. Staff Report of Proceedings
- c. Appellant Ferguson's Presentation on Appeal
 - i. Statement and Case Presentation from Mr. Ferguson
 - ii. Questions, if any, by City Council
- d. Proponent/Respondent's Position
 - i. Statement by the Vertical Bridge or their Representatives'
 - ii. Questions, if any, by Planning Commission Members

- e. Appellant's Rebuttal, if any
- f. Deliberations of the Forks City Council - This will occur "in chambers" due to quasi-judicial nature of this proceeding, per See RCW 42.30.140(2)
- g. Decision of City Council
 - i. Action on Appeal
 - ii. Authorize the Mayor to execute decision documents.

Individuals requiring special assistance in order to observe the meeting should contact Caryn DePew, Clerk/Treasurer prior to the meeting. Please call at 360/374-5412, ext. 106.

Rod Fleck

From: Dave Ferguson <realdealguides@gmail.com>
Sent: Saturday, August 23, 2025 12:43 PM
To: Rod Fleck
Cc: Meridee Pabst; Caryn Depew; Nerissa Davis
Subject: Re: City of Forks - Ferguson Appeal and City Council Notice of Consideration of Appeal Hearing

Thanks so much for your email, I'd like to ask if the hearing to city council can be pushed back to the next meeting, on the premise im trying to hire an attorney and my potential attorney cannot make it on the 8th.

Thank You

Dave Ferguson
(724) 591-2714
Realdealguides@gmail.com
Realdealguides.com

On Fri, Aug 22, 2025 at 2:03 PM Rod Fleck <rodf@forkswashington.org> wrote:

Good afternoon,

Attached please find the cover letter transmitting Mr. Ferguson's appeal of the Planning Commission's July decision. His appeal follows that. In addition, please find a copy of the Notice of Consideration of Appeal setting that appeal before the City Council on the Council's regularly scheduled meeting for 8 September 2025.

See the attached cover letter as it provides additional information regarding publication in the Forks Forum, mailing, etc.

Take care,

Rod

William R. Fleck

City Attorney/Planner

500 East Division Street

Forks, WA 98331

rodf@forkswashington.org

360/374-5412

"Fortes Fortuna Juvat"



Notice of Consideration
of an Appeal to the Forks City Council
of the Forks Planning Commission's Affirmation of the
Special Use Permit issued to Vertical Bridge

DAVE FERGUSON, Appellant
VERTICAL BRIDGE, Permittee/Respondent

(RESCHEDULED)
7:30 PM, Monday, 22 September 2025
Forks City Council Chamber
Forks, WA 98331

Notice is hereby given that during the Council's Regular Meeting on 22 September 2025, the City Council will consider an appeal filed by Dave Ferguson, Appellant, of the Forks Planning Commission's 18 July 2025 Affirmation of the Special Use Permit issued to Vertical Bridge, Respondent, for the construction and installation of a 150' monopole telecommunications tower to be installed/constructed at 285 West Division Street. Pursuant to Forks Municipal Code (FMC) 17. 90.050, WAC 365-196-845(11), this is a closed record appeal and only the Appellant, Respondent, and City Staff will be allowed to present to the City Council, and the record before the City Council will be limited to the record established before the Forks Planning Commission at the previous hearings on this matter. No public comment on this appeal may be accepted during the City Council meeting.

Appellant(s): Dave Ferguson
284 West Division Street
Forks, WA 98331

Project

Proponent: Meridee Pabst, counsel of behalf of
VB BTS III, LLC formerly known as Vertical Bridge REIT, LLC¹
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487

General Legal

Description: 285 West Division Street, Forks, WA 98331
Parcel is identified as Lot 4 of the Campbell Pit Short Plat recorded with Clallam County in Volume 36 of Short Plats at Page 40, and subject to subsequent boundary line adjustment (v. 36, Pg. 70), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of Section 9, Township 28 North, Range 13 West, W.M., in the City of Forks. Lot 4 of the Campbell Pit Short Plat was part of the original Tax Identification No. 132809210030.

Stated Basis for

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52

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ITEM 3



500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

Affidavit regarding Notices

19 September 2025

We the undersigned affirm and swear that we undertook the following regarding notice of Dave Ferguson's "Formal Appeal – Request to Overturn Planning Commission's Final Decision on Vertical Bridge Special Use Permit."

Following receipt of said appeal on 7 August, a copy was provided to Paul Hampton, Forks Building Inspector by Fleck.

Fleck created the notice and provided it to the Forks Forum which was published on 28 August 2025.

Fleck transmitted the appeal and notice of it to the City Council via their Council notebooks on 22 August 2025. He also emailed both Dave Ferguson (Ferguson), appellant, and Vertical Bridge's legal representative, Meridee Pabst the transmittal and the associated notice. To which Ferguson made a request that the Council consider postponing the hearing date to 22 September 2025. This request was taken to the Council which decided to agree to the postponement. City Attorney pro tem Charlotte Archer informed the parties of the Council's decision.

Fleck modified the earlier notice of appeal and provided it to Davis for her to undertake a mailing to individuals on both the list provided by Ferguson and those property owners of record who had received the earlier notices. The latter being those of record owning property located within five hundred feet of the property. This mailing occurred on 27 August 2025. Davis also transmitted the appeal and the notice to the Planning Commission via email.


Fleck provided the notice of the rescheduled appeal to the Forks Forum which printed it in their 4 September 2025 edition.

The notice of the appeal was also published on the City's website on 29 August 2025. It can be found at:

<https://forkswashington.org/notices/notice-of-consideration-of-appeal-to-the-forks-city-council/>

On 2 September 2025, Fleck provided a digital folder link, via Dropbox.com, along with an explanation of documents associated with the Ferguson appeal. This email was shared with the City's Clerk/Treasurer, Caryn DePew, who then individually forwarded the email to each member of the City Council.

On, 12 September 2025, Davis posted the notice near the site location on the large I-beam structure on the City's property.



William R. Fleck



Nerissa Davis



Response sent by
email 10:20am
8.27.2025

500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Members of the Forks Planning Commission

FROM: Rod Fleck, Attorney/Planner

RE: Transmittal of Appeal of Planning Commission Decision to Forks City Council

DATE 27 August 2025

Members of the Commission,

Attached please find a copy of the Formal Appeal filed by Mr. Dave Ferguson on 7 August 2025 as discussed in the memo for the City Council. Originally, this was to be delivered to you on Monday. However, over the weekend, Mr. Ferguson requested the City Council reschedule the 8 September 2025 date to 22 September 2025. The Council approved that during its meeting Monday night.

This transmittal was delayed to allow for my office to make the changes to the public notice which is also attached.



500 E. Division St. • Forks, Washington 98331-8618

(360) 374-5412 • Fax: (360) 374-9430 • TTY: (360) 374-2696
forkswashington.org

TO: Mayor Fletcher
Members of the Forks City Council

22 August 2025

FROM: Rod Fleck, Attorney/Planner

RE: Transmittal of Appeal of Forks Planning Commission's Affirmation of the
Special Use Permit Issued to Vertical Bridge

Attached please find a copy of both the Formal Appeal – Request to Overturn Planning Commission's Final Decision on Vertical Bridge Special Use Permit filed by Mr. Dave Ferguson on 7 August 2025; and, pursuant to the Forks Municipal Code, the Notice of Consideration of Appeal to be held by the Forks City Council on 8 September 2025.

Pursuant to Forks Municipal Code 17.135.030, in addition to the City Council, the same documents will be provided to the members of the Forks Planning Commission, and the Forks Building Inspector by mail or delivery by close of business 25 August 2025.

The notice of the appeal hearing has been emailed and mailed to the Appellant, Mr. Ferguson, and will be published in the 28 August 2025 edition of the Forks Forum.

Also, on 25 August 2025, the notice of the appeal hearing will be mailed to all property owners of record located within 500' of the property associated with the permit being appealed.

Finally, the related matter on the Council Agenda for 25 August 2025 under "discussion" will be for the sole purpose of noting on the record the transmittal of the received appeal and the scheduled appeal hearing date and time.

Forks City Council
City of Forks
500 East Division Street
Forks, WA 98331

Dropped off by
Corey Pearson at
4:10 pm



RE: Formal Appeal – Request to Overturn Planning Commission’s Final Decision on Vertical Bridge Special Use Permit

Dear Mayor and Members of the Forks City Council,

I respectfully submit this formal appeal asking the City Council to overturn the Planning Commission’s final decision approving the Special Use Permit granted to Vertical Bridge for the construction of a 152-foot telecommunications monopole near my residence and property. Notice of Planning Commission’s decision was mailed on July 18, 2025. This appeal is being filed pursuant to Section 17.135.010 of the Forks Municipal Code (“FMC”), which provides that the Planning Commission’s decision “become[s] final unless and appeal is filed with the board within 30 days of said decision.”

Pursuant to FMC 17.35.020(a) and (b), my name and mailing address are:

Dave Ferguson
Property Owner
284 W Division Street
Forks, WA 98331

The Planning Commission’s decision should be reversed on the following grounds:

1. Easement Overreach and Misrepresentation of Public Right-of-Way

Vertical Bridge’s submitted survey inaccurately labels a portion of land across my property as a “public right-of-way.” This is not correct. The area in question is a utility easement, designated exclusively for use by the City and Clallam County PUD to access and maintain electrical lines, the sewer head, and the stormwater drainage ditch. This easement does not grant public access, construction access, or general right-of-way use.

The applicant’s misrepresentation of this easement constitutes a clear overreach and invalidates their claim of legal access to the project site. The permit should not be allowed to stand based on a false premise.

2. Conflict of Interest and Denial of Due Process

The appeals process before the Planning Commission was compromised by a conflict of interest involving City Attorney Rod Fleck, who previously negotiated and signed the lease agreement with Vertical Bridge.

Although a different attorney was present at the second appeal hearing, Mr. Fleck continued to participate in an official capacity—reading the Planning Commission’s minutes into the record and addressing the board. His ongoing involvement in a matter where he held a direct financial and professional interest in the outcome is deeply inappropriate and undermines the neutrality of the appeal process.

Most notably, during the hearing, Planning Commission members openly stated, “our hands are tied,” a clear indication that the outcome had already been predetermined. This statement confirms that my appeal was not given an impartial or genuine review, and that I was effectively denied due process.

3 List of Parties with Financial Ownership Interests in Properties within 300 feet of Subject Property

Pursuant to FMC 17.135.020(3), I am providing the following list of all parties having an ownership interest in property within 300 feet of the exterior boundaries of the subject property. I certify that this list is true and accurate to the best of my knowledge and ability. The information below was compiled using the University of Washington’s GIS portal for the City of Forks at <https://www.onrc.washington.edu/city-of-forks-mapping-and-gis-portal/>.

DAVID FERGUSON ET AL
284 W DIVISION ST
FORKS, WA 98331

ALBERTA R STROM
240 W DIVISION ST
FORKS, WA 98331-9117

FORKS SAND AND GRAVEL LAND
INC
PO BOX 907
LANGLEY, WA 98260

JF/ME WALLACE FAMILY LTD
PTSHF
PO BOX 907
LANGLEY, WA 98260

JULIAN PABLO ORTIZ AND
MARIA CALMO CARRILLO
PO BOX 993
FORKS, WA 98331

FORKS ABUSE PROGRAM

SEAN AND HILARY
NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

CLALLAM COUNTY PUBLIC
HOSPITAL DIST 1
530 BOGACHIEL WAY
FORKS, WA 98331

530 BOGACHIEL WAY
FORKS, WA 98331

RICHARD R PRESTON III
AND REBECCA PFAFF
P O BOX 2406
FORKS, WA 98331

JAY D MURPHY

JAMES M AND LESLIE KLAHN
TTES
19034 40TH PL NE
LAKE FOREST PARK, WA
98155-2812

JANIS E SCHROEDER
514 AMERICAS WY #18466
BOX ELDER, SD 57719

ROICE O MILES
470 TERRA EDEN ST
FORKS, WA 98331

GARY E KILMER
PO BOX 788
FORKS, WA 98331-0788

HOH INDIAN TRIBE
PO BOX 2196
FORKS, WA 98331

BRIAN AND BRITTANY DIOR
LORIA

PO BOX 1775
FORKS, WA 98331-1775

HOWARD F AND JELENE
SARNOWSKI
PO BOX 827
FORKS, WA 98331-0827

SALVADOR GUEVARA
MALDONADO
1750 CALAWAH WAY TRLR 55
FORKS, WA 98331

DALE A RABEN
PO BOX 634
FORKS, WA 98331-0634

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

SEAN AND HILARY NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

MARK HENRY
PO BOX 754
FORKS, WA 98331

BRIAN MOODY
PO BOX 2401
FORKS, WA 98331-2401

KIRK S CHRISTIANSON
173 QUAIL RUN RD
PORT ANGELES, WA 98362-7403

JENNIFER A SMITH AND TERESA
A SMITH
PO BOX 74
FORKS, WA 98331

FORKS BROADCASTING INC
8014 NE 112 ST
KIRKLAND, WA 98034

TOWN OF FORKS
500 E DIVISION ST
FORKS, WA 98331

MARIANO MARTIN PEREZ AND
SANTA MENDOZA CHALES

181 W DIVISION ST
FORKS, WA 98331

ELYSE WACH
70 RHODEY AVE
FORKS, WA 98331
RYAN CELUSTA AND
STUART A BERNETT
PO BOX 4
FORKS, WA 98331

JEFFREY MARK AND
KELLEY VANESSA
JOHNSON
10814 181ST AVE NE
REDMOND, WA 98052

PATRICK E MONAGHAN
30 RHODEY AVE
FORKS, WA 98331

JASON A GOAKEY
187155 HIGHWAY 101
FORKS, WA 98331

CITY OF FORKS
500 EAST DIVISION STREET
FORKS, WA 98331-8618

JESSICA SIMONS AND
JOSHUA FLETCHER
PO BOX 2592
FORKS, WA 98331

ANDREA PERKINS AND
MICHAEL PEPPERS
PO BOX 501
BEAVER, WA 98305

RICHARD C MOODY
780 PALMER RD
FORKS, WA 98331-9242

RICHARD AND CHERYL
MOODY
780 PALMER RD
FORKS, WA 98331-9242

CHET A AND SHANA M
HUNT
321 EVERGREEN LOOP
FORKS, WA 98331-9680

TIMOTHY FLETCHER

21016 7TH AVE S
DES MOINES, WA 98198

MINH AND THAO TRUONG
PO BOX 2402
FORKS, WA 98331

ALLEN A AND RUBY P
NELSON
879 KILMER RD
FORKS, WA 98331

TERRA EDEN APARTMENTS
LLC
21016 7TH AVE S
DES MOINES, WA 98198

NORTH OLYMPIC REGIONAL
VETERANS HOUSING
250 ASH AVE
FORKS, WA 98331-9198

FORKS DEVELOPMENT LLC
PO BOX 2001
FORKS, WA 98331

BRIAN RICHARDS
P O BOX 486
FORKS, WA 98331

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

RICHARD AND CHERYL
MOODY
780 PALMER RD
FORKS, WA 98331-9242

SETH SCHWENKER
16412 HWY 112
CLALLAM BAY, WA 98326

JOHN DEAN HILLCAR
P O BOX 210
FORKS, WA 98331

PO BOX 1374
FORKS, WA 98331

190 ASH AVE
FORKS, WA 98331

4. Relief Requested

In light of the above, I respectfully request that the Forks City Council:

1. Overturn the Planning Commission's final approval of the Special Use Permit issued to Vertical Bridge;
2. Review and clarify the legal limitations of the utility easement across my property and prohibit its use for unauthorized access;
3. Enforce full compliance with CCC 33.49 and 33.49.400 , including a requirement that alternative, less impactful sites be seriously evaluated;
4. Address the conflict of interest and predetermined outcome that tainted the Planning Commission's appeals process;
5. Revoke the SEPA Determination of Nonsignificance and require a new, complete, and accurate environmental review.

I am available to submit supporting documentation and further detail upon request. However, due to my current location and limited access, I once again ask that all correspondence be sent via email to: realdealguides@gmail.com.

Thank you for your time and attention to this matter. I trust the City Council will take the appropriate action to correct these substantial errors and uphold the integrity of the process.

5. Efforts to Comply with Forks Municipal Code 17.135

Forks Municipal Code 17.135 outlines specific requirements for appeals to the City Council, including that the appeal must contain a notarized signature attesting that I understand that the issues identified above represent a true and accurate representation of the issues raised on appeal; that I understand that only those issues raised in this appeal are before the Council; and that issues not raised in this appeal, and not raised within the time associated for an appeal, will result in a waiver of the right to appeal those issues.

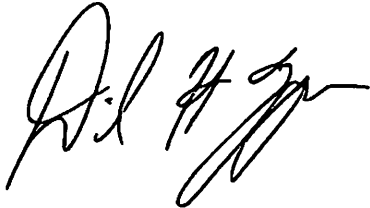
I want to clarify that I am doing everything I can to comply with this process and to protect my property rights. However, I am currently working in an extremely remote location in Alaska, over 300 miles from the nearest road, and with very limited access to mail or telephone communication. I can only receive communications by email, and the City has already been made aware of this. Nor is it possible for me to have my signature notarized given my remote location.

Accordingly, I am providing my signature below in accordance with RCW 5.50.030, which provides that "if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration."

Pursuant to FMC 17.135.020(1)(e), I declare that the foregoing is a true and accurate representation of the issues raised on appeal by myself. I understand that only those issues raised in this appeal are before the council. I also understand that those issues not raised in this appeal, and not raised within the time associated for an appeal, will result in a waiver of the right to appeal those issues.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7 day of August, 2025 at Copper River Lodge (lake Iliamna), Alaska

A handwritten signature in black ink, appearing to read "D. Ferguson", with a stylized flourish at the end.

Dave Ferguson
Real Deal Guides
Realdealguides.com
724-591-2714



**Notice of Consideration
of an Appeal to the Forks City Council
of the Forks Planning Commission's Affirmation of the
Special Use Permit issued to Vertical Bridge**

**DAVE FERGUSON, Appellant
VERTICAL BRIDGE, Permittee/Respondent**

**(RESCHEDULED)
7:30 PM, Monday, 22 September 2025
Forks City Council Chamber
Forks, WA 98331**

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*PDF to
Planning
mailed 7/27
2744
8-228*

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- c. Appellant Ferguson's Presentation on Appeal
 - i. Statement and Case Presentation from Mr. Ferguson
 - ii. Questions, if any, by City Council
- d. Proponent/Respondent's Position
 - i. Statement by the Vertical Bridge or their Representatives'

- ii. Questions, if any, by City Council
- e. Appellant's Rebuttal, if any
- f. Deliberations of the Forks City Council – This will occur “in chambers” due to quasi-judicial nature of this proceeding, per See RCW 42.30.140(2)
- g. Decision of City Council
 - i. Action on Appeal
 - ii. Authorize the Mayor to execute decision documents.

Individuals requiring special assistance in order to observe the meeting should contact Caryn DePew, Clerk/Treasurer prior to the meeting. Please call at 360/374-5412, ext. 106.

TOWN OF FORKS
500 E DIVISION ST
FORKS, WA 98331

CLAIRE L BURNETT
PO BOX 2657
FORKS, WA 98331

JASON A GOAKEY
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FORKS, WA 98331

CITY OF FORKS
500 EAST DIVISION STREET
FORKS, WA 98331-8618

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JEFFREY MARK AND KELLEY VANESSA JOHNSON
10814 181ST AVE NE
REDMOND, WA 98052

CLALLAM COUNTY PUBLIC HOSPITAL DIST 1
530 BOGACHIEL WAY
FORKS, WA 98331

MT OLYMPUS LODGE 298
C/O DARRELL MAXFIELD PO BOX 644
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RYAN CELUSTA AND STUART A BERNETT
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FORKS ABUSE PROGRAM
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FORKS, WA 98331

ALBERTA R STROM
240 W DIVISION ST
FORKS, WA 98331-9117

JOEL AND SONJA NICOLE GENTLEMAN
21 E DIVISION ST
FORKS, WA 98331-9549

SEAN AND HILARY NORBISRATH
120 CAMPBELL ST
FORKS, WA 98331

FORKS SAND AND GRAVEL LAND INC
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JACKIE LOUTHAN JODY KELLER ET AL JTWROS
PO BOX 780
FORKS, WA 98331

MCAVOY FAMILY TRUST
P O BOX 270
FORKS, WA 98331

DAVID FERGUSON ET AL
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FORKS, WA 98331

BRIAN W AND LAURIE A TURNER
910 RIPPLEBROOK LANE
PORT ANGELES, WA 98362

CHARLES AND NADINE CALDERON DIXON
154 AND 156 WOOD ST
FORKS, WA 98331

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MICHAEL D AND AMY LYNN DILLEY
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FORKS, WA 98331

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MIRANDA PUKSTA
PO BOX 1142
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MICHAEL A REAVES
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FORKS, WA 98331-0116

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FORKS, WA 98331-9242

DALE A RABEN
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FORKS, WA 98331-0634

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CHET A AND SHANA M HUNT
321 EVERGREEN LOOP
FORKS, WA 98331-9680

JESSICA SIMONS AND JOSHUA FLETCHER
PO BOX 1071
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MARK HENRY
PO BOX 754
FORKS, WA 98331

BRIAN RICHARDS
P O BOX 486
FORKS, WA 98331

TIMOTHY FLETCHER
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JENNIFER A SMITH AND TERESA A SMITH
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FORKS, WA 98331

WILLENA RICHARDS
PO BOX 125
FORKS, WA 98331-0125

JOHN DEAN HILLCAR
P O BOX 210
FORKS, WA 98331

JESSICA MANSFIELD
PO BOX 11
FORKS, WA 98331

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FORKS, WA 98331

SETH SCHWENKER
16412 HWY 112
CLALLAM BAY, WA 98326

SHANE AND DEVENNIE ANDERSON
PO BOX 725
FORKS, WA 98331

TYLER D AND ERICA M MAXFIELD
PO BOX 2012
FORKS, WA 98331

HOH INDIAN TRIBE
PO BOX 2196
FORKS, WA 98331

JOSEPH AND LINDA SOHA
260 CEDAR AVENUE
FORKS, WA 98331

NANCY J AND RAY MAXWELL
PO BOX 416
FORKS, WA 98331

KIRK S CHRISTIANSON
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PORT ANGELES, WA 98362-7403

JAMES AND ELLYN GRIBBON
490 KLAHNDIKE BLVD
FORKS, WA 98331

LORENZO SALAZAR MANZANAREZ AND VERONICA GUADALUPE SORRELL
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FORKS, WA 98331

NORTH OLYMPIC REGIONAL VETERANS HOUSING
250 ASH AVE
FORKS, WA 98331-9198

SUSAN BROWN
470 KLAHNDIKE BLVD
FORKS, WA 98331

ELBERT AND ELSIE HAMPTON
PO BOX 2002
FORKS, WA 98331-2002

JAMES M AND LESLIE KLAHN TTES
19034 40TH PL NE
LAKE FOREST PARK, WA 98155-2812

HILKKA H HAMALAINEN
430 KLAHNDIKE BLVD
FORKS, WA 98331

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514 AMERICAS WY #18466
BOX ELDER, SD 57719

SEAN MALEY
410 KLAHNDIKE BLVD
FORKS, WA 98331

ROICE O MILES
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FORKS, WA 98331

TERRA EDEN APARTMENTS LLC
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PO BOX 2402
FORKS, WA 98331

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DES MOINES, WA 98198

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FORKS, WA 98331

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510 KLAHNDIKE BLVD
FORKS, WA 98331-9104

CELSO AGUILAR AND NIEVES GUEVARA
PO BOX 1184
FORKS, WA 98331

Rod Fleck

From: Caryn Depew
Sent: Tuesday, September 2, 2025 5:01 PM
To: Joe Soha; joseph Soha
Cc: Rod Fleck
Subject: FW: Forks - Ferguson Appeal to City Council - Record, Findings, and Decisions
Importance: High

Caryn

From: Rod Fleck <rodf@forkswashington.org>
Sent: Tuesday, September 2, 2025 4:07 PM
To: Dave Ferguson <realdealguides@gmail.com>; Meridee Pabst <meridee.pabst@wirelesspolicy.com>
Cc: Charlotte A. Archer <carcher@insleebest.com>; Nerissa Davis <nerissad@forkswashington.org>; Caryn Depew <carynd@forkswashington.org>
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1 Jul 25 Reopened Appeal Materials
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Take care,

Rod

William R. Fleck
City Attorney/Planner
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rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Caryn Depew
Sent: Tuesday, September 2, 2025 5:02 PM
To: Jeff Gingell; Jeffery Nathan Gingell
Cc: Rod Fleck
Subject: FW: Forks - Ferguson Appeal to City Council - Record, Findings, and Decisions
Importance: High

Caryn

From: Rod Fleck <rodf@forkswashington.org>
Sent: Tuesday, September 2, 2025 4:07 PM
To: Dave Ferguson <realdealguides@gmail.com>; Meridee Pabst <meridee.pabst@wirelesspolicy.com>
Cc: Charlotte A. Archer <carcher@insleebest.com>; Nerissa Davis <nerissad@forkswashington.org>; Caryn Depew <carynd@forkswashington.org>
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rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

Rod Fleck

From: Caryn Depew
Sent: Tuesday, September 2, 2025 5:02 PM
To: Clint Wood
Cc: Rod Fleck
Subject: FW: Forks - Ferguson Appeal to City Council - Record, Findings, and Decisions
Importance: High

Caryn

From: Rod Fleck <rodf@forkswashington.org>
Sent: Tuesday, September 2, 2025 4:07 PM
To: Dave Ferguson <realdealguides@gmail.com>; Meridee Pabst <meridee.pabst@wirelesspolicy.com>
Cc: Charlotte A. Archer <carcher@insleebest.com>; Nerissa Davis <nerissad@forkswashington.org>; Caryn Depew <carynd@forkswashington.org>
Subject: Forks - Ferguson Appeal to City Council - Record, Findings, and Decisions
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Rod Fleck

From: Caryn Depew
Sent: Tuesday, September 2, 2025 5:03 PM
To: Armistead Coleman
Cc: Rod Fleck
Subject: FW: Forks - Ferguson Appeal to City Council - Record, Findings, and Decisions
Importance: High

Caryn

From: Rod Fleck <rodf@forkswashington.org>
Sent: Tuesday, September 2, 2025 4:07 PM
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Email of Decision on D. Ferguson Appeal - Notice of Affirmation	Pg 33
Email of Notice of Affirmation of Special Use Permit	Pgs 34 - 36
Transmittal of Appeal of Planning Commission to City Council	Pg 37
Transmittal of Appeal To City Council with Appeal	Pgs 38 - 43
Email of Notice of Consideration of Appeal	Pgs 44 - 45
Email of Notice of Consideration of Appeal w Notice	Pgs 46 - 49
Email Requesting Rescheduling of Appeal Hearing	Pgs 50 - 51
Notice of Consideration (RESCHEDULED)	Pgs 52 - 55

If you are unable to access the materials within the folder created, etc., please contact us as soon as possible so we can attempt to resolve the matter.

Further, if you would rather have a paper copy and videos downloaded onto a flash drive for your use, please in form Nerissa Davis of this request as soon as possible. We will attempt to get that mailed later this week or early next week.

Finally, I will be working on an administrative only staff report for the 22 September hearing. It will contain the certifications regarding notice, dates of mailings, responses or materials received that are referenced in the emails in the Ferguson Appeal Documents Part 2 that were shared with the parties, etc.

Take care,

Rod

William R. Fleck
City Attorney/Planner
500 East Division Street
Forks, WA 98331
rodf@forkswashington.org
360/374-5412
"Fortes Fortuna Juvat"

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Legal Notices

**Notice of Consideration of an Appeal to the
Forks City Council of the Forks Planning
Commission's Affirmative Decision on the Site Use
Permit issued to Vertical Bridge
DAVE FERGUSON, Appellant VERTICAL
BRIDGE, Permittee/Respondent
(RESCHEDULED)
7:30 PM, Monday, 22 September 2025
Forks City Council Chamber/Forks, WA 98331**

Notice is hereby given that on September 22, 2025, the City Council will consider an appeal filed by Dave Ferguson, Appellant, of the Forks Planning Commission's 18 July 2025 decision on the Site Use Permit issued to Vertical Bridge, Respondent, for the construction and installation of a 150 monopole telecommunications tower to be installed/constructed on the property located at Forks Municipal Code (FMC) 17.90.050, FMC 365-196-845(11). This is a closed record appeal and only the Appellant, Respondent, and the City Council are present to the City Council, and the record before the City Council will be limited to the record established before the Forks Planning Commission as well as any comment on this appeal may be accepted during the City Council meeting.

Appellant(s): Dave Ferguson
254 West Division Street, Forks, WA 98331
Project Proponent: Merilee Pabst, counsel on behalf of VB BTS III, LLC formerly known as Vertical Bridge REIT, LLC 750 Park of Commerce Drive, Suite 200, Everett, WA 98201
General Location: Section 2857 West Division Street, Forks, WA 98331 Parcel is identified as Lot 4 of the Campbell Pl Short Plat recorded with Clallam County in Volume 12,326 of Short Plats with Clarification. It is to be corrected by a boundary line adjustment (V 36, P. 26), and generally located within Portions of the S ½ of the NE ¼ of the NW ¼ of the S1 of S9, Township 25 North, Range 14 East, Section 2857, T25N, R14E, S1NW4. Lot 4 of the Campbell Pl Short Plat was part of the original Tax Identification No. 13260910030.

cial use permit to

Stated Basis for Appeal: On 4 April 2003, the City issued a special use permit to Vertical Bridge REIT, LLC, known known as VB BTS III, LLC, hereinafter Vertical Bridge. This permit was for the construction and installation of a 152' tall monopole telecommunications tower that would be used by T-Mobile and up to three other providers on City owned

property it was a former gravel pit. Project was reviewed by the Federal Aviation Administration (FAA) and the monies were authorized to be used for the project. Further, the local fire chief provided a heavy waiver for this telecommunications infrastructure. Pole will be installed between the southern edge of a well-heard protection area and the northern edge of an existing gravel pit. Property was used for concrete operation. On 17 April 2002, Mr. Ferguson appealed the granting of the SUP to the Forks Planning Commission. The Forks Planning Commission heard the appeal on 22 April 2002. During the hearing, the applicant raised additional issues and submitted additional issues by the end of the day following the hearing. The Forks Planning Commission initially affirmed the SUP, subject to clarifications on access to the SUP. The mayor requested that the commission reconsider the SUP and the three issues. On July

On August 25, the Forks Planning Commission held a second phase of the appeal hearing to address the issues raised after the first hearing. At the conclusion of the reopened appeal hearing, the Commission reaffirmed the issuance of the SUP with the condition that the City or the applicant consult with the Quileute Tribe and Washington State Department of Fish and Wildlife. This decision executed by the Chairman of the Planning Commission, Milton Beck, on July 2025. On 7 August 2025 Mr. Ferguson submitted a written appeal of the 18 July

2025 Planning Commission's decision. A copy of the appeal is available on the City's website at <https://forkswashington.org/notices/> or upon request to the Clerk. The previously scheduled hearing was rescheduled by the City Council to 22 September.

FOR APPEAL HEA

ularly scheduled meeting of the Forks City Council set for 22 September 2025, the Council will conduct a hearing to consider this appeal. Pursuant to FW 17.90.050(4), the City Council "shall only affirm or reverse the decision of the Forks Planning Commission."

The appeal portion of the agenda of the Council's 22 September 2025, 7:30 p.m., meeting will be as follows and will occur shortly after the start of the meeting.

Ferguson Appeal of Forks Planning Commission

— Charlotte Archer, Inslee Best, pro tem City Attorney to Council

- b. Staff Report of Proceedings
- c. Appellant Ferguson's Presentation on Appeal
 - i. Statement and Case Presentation from Mr. Ferguson
 - ii. Questions, if any, by City Council
- d. Proponent/Respondent's Position
 - i. Statement by the Vertical Bridge or

57
ment

their Representatives'
ii. Questions, if any, by City Council
e. Appellant's Rebuttal, if any
f. Deliberations of the Forks City Council - This
occur "in chambers" due to quasi-judicial nature
this proceeding, per See RCW 42.30.140(2)

g. Decision of City Council
i. Action on Appeal
ii. Authorize the Mayor to execute decision documents.
Individuals requiring special assistance in order to observe the meeting should contact Caryn DeFuria, Clerk/Treasurer prior to the meeting. Please call 360/374-5412, ext. 106.
FF: September 4, 2025
Legal No. 1018916

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Notice of Consideration of Appeal to the Forks City Council

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Notice is hereby given that during the Council's Regular Meeting on September 22, 2025, the City Council will consider an appeal filed by Dave Ferguson of the Forks Planning Commission's 18 July 2025 Affirmation of the Special Use Permit issued to Vertical Bridge for the construction and installation of a 150' monopole telecommunications tower at 285 West Division Street.

Ferguson Appeal

🕒 August 29, 2025 in [Community](#), [Legal](#)

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[Click here to view or pay your bill online!](#)

CITY COUNCIL MEETING

A Regular Meeting of the Forks City Council will be held online and in-person

September 8, 2025 beginning at 7:30pm

The meeting will be held in Council Chambers at City Hall. If you'd like to watch the meeting live, please click the link below.

[Click Here to Launch Zoom Meeting](#)

[Agenda 20250908](#)

PLANNING COMMISSION MEETING

The Planning Commission will hold a

FORKS WEATHER

Local Time 2:40 pm

Today
September 18, 2025  **66°F**
8 m/h

Friday
September 19, 2025  **68°F**
1 m/h

Rod Fleck

From: 3606400524@vzwpix.com
Sent: Friday, September 19, 2025 9:45 AM
To: Rod Fleck
Attachments: image000001.jpg

Nerissa's picture from 12 Sep 2025



ITEM 4



September 18, 2025

The Honorable Tim Fletcher, Mayor
Forks City Council
500 East Division Street
Forks, WA 98331

VIA EMAIL: carynd@forkswashington.org

RE: Vertical Bridge Special Use Permit – Ferguson Appeal to City Council
Request for Dismissal of Late-Filed Appeal under FMC Ch. 17.90

Dear Mayor Fletcher and Councilmembers:

On behalf of VB BTS III, LLC (“Vertical Bridge”), the applicant for the special use permit for a wireless tower at 285 West Division Street, we write regarding Dave Ferguson’s *Request to Overturn Planning Commission’s Final Decision on Vertical Bridge Special Use Permit*, filed with the City on August 7, 2025.

We ask you to dismiss this appeal because it was filed ***after the applicable appeal deadline***.

Chapter 17.90 (SPECIAL USE PERMITS) of the Forks Municipal Code governs the City’s consideration of special use permits. Mr. Ferguson previously appealed staff’s approval of Vertical Bridge’s special use permit to the Forks Planning Commission under this chapter (specifically, under FMC 17.90.040), and the Planning Commission denied the appeal in a July 18, 2025, decision. City staff emailed the July 18, 2025, decision to Mr. Ferguson and other interested parties on July 18, 2025.

Section 17.90.050(3) of the special use permits chapter provides:

(3) The decision of the Forks planning commission [on an appeal of a special use permit] may be appealed by either the planning director or the appealing party within 15 days from the date of decision. (Emphasis added.)

Fifteen days from the date of the decision (July 18, 2025) is August 2, 2025, a Saturday. Under typical rules of applying appeal deadlines (which often exclude a holiday or weekend if it is the final day of the applicable period), we can agree that the deadline may

September 18, 2025

Page 2

be interpreted to have extended to Monday August 4, 2025. Mr. Ferguson filed his appeal three days later, on August 7, 2025.

Nothing in FMC 17.90.050(3) delays the commencement of the appeal deadline; rather, the fifteen days are counted from *the date of decision*.

Based on a review of Mr. Ferguson's appeal statement, it appears he erroneously relied on FMC 17.135.010, which applies to a different category of appeals to City Council and imposes a 30-day appeal deadline. This section of the code is inapplicable in this instance; for example, it applies only to appeals of "any administrative decision or determination *made by any officer of the city* in the administration or enforcement of this code." FMC 17.135.010(emphasis added). By its terms, this section of the code does not apply to a Planning Commission decision.¹

The plain language of the City's code required the appeal to be filed no later than August 4, 2025.

Moreover, if the code were found to be ambiguous, under general rules of statutory construction the specific controls the general,² and the 15-day appeal deadline specifically applicable to special use permits controls.

Therefore, under both the plain language of the code and general rules of statutory construction, Mr. Ferguson's appeal was filed too late, and the appeal should be dismissed.

We appreciate your consideration of this request.

Sincerely,



Meridee Pabst
meridee.pabst@wirelesspolicy.com

Encls.

cc: Mr. Rod Fleck, City Attorney/Planner
Mr. Dave Ferguson, Appellant
Ms. Charlotte Archer, Special Legal Counsel for the City Council

¹ Two, but only two, of the sections of FMC Chapter 17.135 are incorporated by reference in FMC 19.70.050(3) – FMC 17.135.040 and -.050.

² *O.S.T. v. Regence BlueShield*, 181 Wash.2d 691, 701, 335 P.3d 416 (2014).