



# City of Colorado Springs

City Hall  
107 N. Nevada Avenue  
Colorado Springs, CO  
80903

## Meeting Minutes - Draft Planning Commission

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Thursday, June 20, 2019

8:30 AM

Council Chambers

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6.C. [CPC AP  
19-00069](#)

An appeal of the City Planning Commission's action to uphold administrative approval of a site plan for a building permit for the construction of a 10-foot tall fence on portions of the Flying W Ranch.

(QUASI-JUDICIAL)

Presenter:

Peter Wysocki, Director Planning and Community Development  
Meggan Herington, Assistant Planning Director

**Commissioner Hente** recused himself from this project because he lives in the community that is adjacent to the site.

**Meggan Herington**, City Planning Department, explained the appellant requested consideration to postpone the item based on reasoning's related to posting and notification.

**Mr. James Berdon**, Appellant

Mr. Berdon explained that although he was the only appellant on record, he represented more of the community and had spoken to over 40 people about the appeal and setback for the structure.

Mr. Berdon asked for a postponement due to the lack of meeting the minimum requirements for posting the public notice in two areas:

- Notifications through postcards
  - Believed that the buffer should have started further south because the fence structure goes further south than the address that was used and affects more parcels.
  - Only approximately 370 property owners were notified
  - The highlighted area on the postcards did not include a wider area
- Public notice through Posters
  - Signs were posted on gates and for at least two days, the gates were open and the signs could not be read
- Requested to postpone to a later date so a minimum of 10 day mandatory public notice is met

**Staff Presentation****Meggan Herington**, City Planning Department

- Postcard Notifications
  - The postcards that were sent out only show a general vicinity map where the application is taking place
  - The two parcels that run adjacent to Mountain Shadows were used as a visual to give the neighbors an approximate location of the fence
  - From that point, the notice included a 1000 foot buffer that totaled 382 neighbors
- Two Posters
  - Posters were visible from the public right-of-way
    - If the poster from Sceptor Way was not visible, there was another poster on Chuck Wagon Road
    - Homeowner's Associations were noticed
      - HOA for the patio homes closest to Chuck Wagon Road were aware of the application and staff spoke to them a number of times
      - The point of a public notice is to sufficiently make the public aware of what would be occurring
        - Received over 60 emails and 15 to 20 phone calls, as well as the presence of social media (NextDoor)

**Discussion:**

Commissioner Graham asked the commissioners if any of them saw a need to postpone. None of the commissioners felt there was a valid reason to postpone.

**Staff presentation:**

**Meggan Herington**, City Planning Department, presented a PowerPoint with the scope and intent of the project.

**Commissioner Raughton** asked if the fence would have been deemed and accessory structure if the application was only for a six foot fence.

- Ms. Herington answered that no, a six foot or less fence could go right on the property line as a fence.

**Commissioner Eubanks** asked if this fence follows the previous six foot fence that was up prior to the fire (referring to the Waldo Canyon Fire in 2012).

- Ms. Herington explained this fence is not in the same location as the previous fence but deferred the location of this fence in relation to the

previous fence to the applicant. Ms. Herington said the previous fence was not at a 10 foot setback but was further into the property.

**Commissioner Rickett** asked if from a code standpoint, this application was being looked at as a backyard structure (inaudible).

- Ms. Herington said accessory structures are not permitted in the front yard setback. A front yard setback twenty-five feet, so in an instance where staff has determined a front yard setback, the fence would need to be setback twenty-five feet from the property line.

**Appellant Presentation:**

**James Berdon**, Appellant and resident of Mountain Shadows

Mr. Berdon presented information regarding the criteria found in City Code Section 7.5.906.A.4.

- Express language of the zoning ordinance
  - Certain requirements were waived at the discretion of individuals reviewing only relevant select portions of the application exempting the ranch from submitting crucial information necessary for approval of the project. For example:
    - Not building easements
    - Not building setbacks
    - Ignoring height restrictions
    - No grading or soil erosion plan
  - Express intent of the zoning ordinance to apply consistency for all parties to level the playing field and minimize conflicts. Waiving certain requirements did not allow the staff to make an informed decision.
  - Unreasonable - the height, length, appearance and placement of the proposed structure eclipses anything within the community.
  - Erroneous - certain errors appeared in the development plan
  - Contrary to law
    - The ranch seems to stretch the law and avoid processes for permitting this project
  - Identify benefits and adverse impacts
    - The burden placed on the appellant outweighs the benefits accrued by the applicant.
- Mr. Berdon conveyed that the main issues are:
  - For most part, residents do not object to the fence, the wildlife barrier, or security barriers, but object to the manner in which those are being forced upon the community
  - Design is intrusive, in close proximity of Mountain Shadows community
  - Utility encroachment

- (several overheads were presented that were referenced by Mr. Berdon)
- Brogans Bluff address is the front of this parcel in which the fence is and Mr. Berdon recommended this parcel be called the front and not side
- Hillside overlay is supposed to preserve natural features
- Erosion

**Applicant:**

**Bruce Wright**, represents Flying W

**Aaron Winter**, General Manager

A PowerPoint was presented giving the background of the Flying W Ranch as well as why the fence is needed. Several pictures were shown to illustrate the development, as well as what should be considered the front of the property.

**Questions:**

**Commissioner Raughton** asked about the renderings of the posts for the fence where it shows horizontal posts but the photos show no horizontal posts.

- Mr. Wright explained the corner posts need to be horizontal, but once past the corner on the straight shots, they will be no horizontal posts.

**Supporters of the appeal:**

**Jeff Merten**, resides on Brogans Bluff

- Not opposed to the fence, but to the closeness to the backyards
- New fence will take away views of mountains
- Depreciation of property
- Why does it have to be ten feet tall
- Suggested the fence along Mountain Shadows should have a greater setback (100 feet) and not be ten feet tall so residents can retain the mountain view
- Fear of shutting off the entire area of the ranch could cause more deer to be in the Mountain Shadows area and cause problems with re-vegetation of the area and traffic concerns

**Lawrence Starr**, resident of Mountain Shadows

- Issue with how Flying W Ranch proposed this fence instead of having a discussion about it
- Not reasonable to have a 10 foot fence that will block views
- If there is a predatory fence, where will those animals now go since they will not be on the Flying W Ranch

**Lisa Marten**, resident of Mountain Shadows

- Where will the deer go and all the animals. If they are displaced from the ranch, they will be pushed into the neighborhood
- Placement of the fence will obstruct from the beauty of some of the mountain ranch and the whole valley looking down from the north
- The fence will destroy some of the beauty of the west side and the deer population in the neighborhood could increase dramatically
- Not right to allow the ranch to address their challenges to the detriment of the many surrounding areas

**Don Austin**, resident of Mountain Shadows

- Hillside overlay seeks to conserve the aesthetic qualities of hillside area and mitigate visual impacts upon off site areas
- Not opposed to fence just the placement of the fence

**Wes Tivel**, resident of Mountain Shadows

- Flying W has 1400 acres and there is room for them to move down the hill with the fence to where all of the neighbors that border there don't have to look at it out their windows so close to their property

**Danette Taylor**, resident of Mountain Shadows

- Concerned about the process
- This is about coexistence and compatibility
- The fence would impact several residents
- Trash from Flying W Ranch will be a major attractant to bears and other things

**Opponents of the appeal:****Bruce Barbaric**, resident of Mountain Shadows

- This is a property rights issue and compliance with current code and specifications that are in place
- I support the property owner
- If the process has been followed, it's been approved, then opinion would be to let this move forward

**Rebuttal:**Appellant Rebuttal: **James Berdon**

- Not opposed to the inside protection, but the perimeter
- Mr. Berdon asked what impact the letters and emails have that the commissioners receive on a project
  - **Commissioner Graham** explained to Mr. Berdon that every letter or email is read and valued

- **Ms. Herington** also explained to Mr. Berdon that all emails and letters are forwarded to Planning Commissioners, even the day of, including 24 emails from that morning
- **Commissioner Eubanks** stressed that she reads every correspondence and highlights them.

Applicant Rebuttal: **Bruce Wright**

- Mr. Wright said there is much concern over 150 acres of fencing and what is being overlooked is the 1300 acres of essentially private open space
- The existence of that open space is dependent upon a successful Chuck Wagon business to support it. If there is no Chuck Wagon business, another use has to be found for that land
- The code specifies what the setbacks are and if you are past those setbacks, you can build accessory structures in compliance with the rest of the code, which means eleven feet back, a 40 foot high fence could be built

**Aaron Winter**

- Mr. Winter made a point that even though the talk is about a ten foot tall fence, in actuality, the woven wire fence is only eight feet tall
- The posts are ten foot tall, but it is an eight foot tall fence with two strands of high tensile strength wire, not a ten foot chain link fence
- Consideration was made of the neighbors regarding the fence. Without having to pull a permit, the ranch could have put a six foot-six inch or seven foot chain link fence all around the property with razor wire at the top but did not want to have an industrial look and wanted it to be less obtrusive for the neighbors

**Commissioner Eubanks** expressed concern as to why the ten foot setback was pursued. Commissioner Eubanks said she understood the ten foot fence, but believes the setback could be further.

**Commissioner Graham** asked Ms. Herington to come back up and give a brief tutorial on the setbacks.

**Ms. Herington** outlined the following:

- The fence is considered an accessory structure and accessory structure setbacks are different than the principal structure setback and are established by zone district
- Accessory structures are not permitted in the front yard setback
- Determination was made by staff that the adjacency to Mountain Shadows is a side setback and is not the front of the ranch even though

the fence itself was given an address by Pikes Peak Regional Building Department after the fact of the ranch sitting down with the planning department determining the front being there is no access off Brogans Bluff and no main access off that side

- Staff considered the adjacency to the Mountain Shadows neighborhood from the water tank, Brogan's Bluff area, down to almost Rossmere near as the side of the property and applied the ten foot non-front setback
- If it had been determined that the area was the front, then it would only be required to have a twenty-five foot setback
- The disagreement with the appellant is that staff applied the wrong setback and it should have been determined as a front setback with the twenty-five feet, however, even if that were so, there is nothing in code that would state staff had the ability to push the fence back further unless the property owner was in agreement with that

**Commissioner Eubank** wanted to know why the applicant wanted the setback at ten feet instead of what it was before.

- Aaron Winter explained that pre-fire, the ranch was able to be accessed from every single position on Flying W Ranch property. The fire and erosion completely destroyed much of all our access roads. One of the areas that can still be accessed is the frontage road that basically goes up to the water tower which can be accessed via ATV or UTV and other vehicles more receptive to offer that kind of use. That portion of the property cannot be accessed from the Chuck Wagon area anymore, and that is why it was included within the fence line.

**Commissioner Almy** recognized staff for their planning on trying to adapt what appears to be more of a downtown or suburban code into a ranch setting.

**Motion by Satchell-Smith, seconded by Raughton, to deny the appeal, thereby upholding the administrative approval of the site plan for construction of a 10-foot fence with a 10-foot setback addressed as 2830 Brogans Bluff Drive, based upon the finding that the site plan complies with the development standards for accessory structures in City Code Section 7.3.105.A.1, as well as the finding that the appeal criteria in Section 7.5.906.A.4 are not met.**

**The motion passed by a vote of 6:0:2:1**

**Aye:** 6 - Raughton, Vice Chair Graham, Satchell-Smith, Rickett, Almy and Eubanks

**Absent:** 2 - McMurray and Chair McDonald

**Recused:** 1 - Hente