



PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Appeal of City Planning Commission's Decision to City Council

OLYMPIC CITY USA 2019 JAN 28 P 4: 46

Project Name: 28 Polo, LLC
Site Address: 28 Polo Dr., c/s 10 80906
Tax Schedule Number: 7425414008
Type of Application being appealed: Approval of preliminary and final plat and two non-use variations
Include all file numbers associated with application: AB PFP 18-00678, ARNV 18-00679, ARNV 18-00680
Project Planner's Name: 28 Polo, LLC
City Planning Commission Hearing Date: January 17, 2019

SUBMITTAL REQUIREMENTS: Submit an application for an appeal to City Council to the City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903) with the following items included:

- Appeal Statement:
- If the appeal is an appeal of a decision that was made administratively and then appealed to City Planning Commission, the appeal must include justification of City Code 7.5.906.A.4:
o Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following:
- Identify the explicit ordinance provisions which are in dispute.
- Show that the administrative decision is incorrect because of one or more of the following:
o It was against the express language of this zoning ordinance, or
o It was against the express intent of this zoning ordinance, or
o It is unreasonable, or
o It is erroneous, or
o It is clearly contrary to law.
- Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.
o If the appeal is an appeal of a City Planning Commission decision that was not made administratively initially, the appeal must identify the explicit ordinance provision(s) which are in dispute and provide justification to indicate how these sections were not met. For example if this is an appeal of a development plan, the development plan review criteria must be reviewed.
- A check for \$176 payable to the City of Colorado Springs.

CONTACT INFORMATION:

Appellant's name: 28 Polo, LLC Telephone: 719-499-2522
Address: 28 Polo Dr. City: Colorado Springs
State: CO Zip Code: 80906 e-mail: nzt4405@gmail.com
mccconkie@turbetlaw.com

APPELLANT AUTHORIZATION:

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

Signature of Appellant: [Handwritten Signature] Date: 1/27/2019

\*\* If you would like additional assistance with this application or would like to speak with the neighborhood outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 726-1118
Last Modified: 11/2/17 1

**City Authorization:**

Payment \$ 176.00

Date Application Accepted 1/28/19

Receipt No: 112709

Appeal Statement ✓

Intake Staff: Ellen Wagner

Completed Form ✓

Copy of Notice and Order (if applicable): \_\_\_\_\_

Assigned to: \_\_\_\_\_

<p>City Council  City of Colorado Springs, State of Colorado  30 S. Nevada, Suite 101  Colorado Springs, CO 80903</p>	
<p>Appeal from City Planning Commission  City of Colorado Springs, State of Colorado  30 S. Nevada Ave., Suite 105  Colorado Springs, CO 80903</p>	
<p><b>Appellant:</b></p> <p>28 POLO LLC, a Colorado Limited Liability Company</p> <p>v.</p> <p><b>Appellee:</b></p> <p>COLORADO SPRINGS CITY PLANNING  COMMISSION</p>	<p>▲ COMMISSION USE ONLY ▲</p> <hr/> <p>Case Number:</p> <p>Division:</p> <p>Courtroom:</p>
<p><b>Attorneys for Applicant</b>  Torbet Tuft &amp; McConkie, LLC  David G. McConkie, #39864  Elizabeth J. Vanatta, #46517  2 North Cascade Avenue, Suite 320  Colorado Springs, CO 80903  Phone: (719) 475-9300  Fax: (719) 475-9311  E-mail: mcconkie@torbetlaw.com  vanatta@torbetlaw.com</p>	
<p style="text-align: center;"><b>NOTICE OF APPEAL</b></p>	

Appellant, 28 Polo LLC (“28 Polo”), by and through its attorneys, Torbet Tuft & McConkie, LLC, respectfully submit this Notice of Appeal:

CITY CLERK'S OFFICE  
2019 JAN 28 P 4: 49

## 1. Nature of Case

### (a) Nature of the Controversy

This action arises from the Colorado Springs City Planning Commission's denial on January 17, 2019 of (1) an application for approval of a preliminary and final plat for 28 Polo Dr. (AR PFP 18-00678), and (2) the following two variances:

Variance 1 – A nonuse variance to allow 19,230 square foot lots where 20,000 square feet is required in the R (Residential Estate) zone district. This equates to the new lot sizes being 770 square feet less than the required lot size or 3.85% less than the required lot size (AR NV 18-00679); and

Variance 2 – A nonuse variance to allow 67-foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear set back line for Lot 2 where 100 feet of lot width is required at the front and rear setback line. Note that the 100-foot lot width requirement is being met at the front setback abutting the public roadway and that the variance is only required for the rear setback line deficiency (AR NV 18-00680).

City Code § 7.5.802 requires the City Planning Commission to consider three criteria when determining whether or not to grant a nonuse variance. In order for a nonuse variance to be granted, the City Commission must consider whether:

- (1) The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district; and
- (2) That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief; and
- (3) That the granting of the variance will not have an adverse impact upon surrounding properties.

At the City Planning Commission meeting on January 17, 2019, the City Commissioners were presented with ample evidence to support the Commission staff's recommendation that all criteria had been met and that 28 Polo's proposed subdivision should be approved with minor

technical modifications. See Ex. A, *City Planning Commission Staff Report*, January 17, 2019, at p. 7. However, on January 17, 2019, the City Planning Commission failed to apply the required criteria or follow its own staff's recommendation. Rather, the Commissioners relied upon emotional appeals from opposing neighbors in making its decision to deny 28 Polo's application.

Pursuant to § 7.5.906(4) of the City Code, entitled "Criteria For Review Of An Administrative Decision," in an appellant's written Notice of Appeal, the appellant must substantiate the following:

- (a) Identify the explicit ordinance provisions which are in dispute.
- (b) Show that the administrative decision is incorrect because of one or more of the following:
  - 1) It was against the express language of this zoning ordinance, or
  - 2) It was against the express intent of this zoning ordinance, or
  - 3) It is unreasonable, or
  - 4) It is erroneous, or
  - 5) It is clearly contrary to law.
- (c) Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and who that the burdens placed on the appellant outweigh the benefits accrued by the community.

The City Planning Commission's January 17, 2019 denial of 28 Polo's requested variances was incorrect because that decision was unreasonable, erroneous, and clearly contrary to law. Additionally, the burdens placed on 28 Polo by the denial outweigh the benefits accrued by the community through the Commission's decision.

**(b) Ordinance Provision in Dispute**

At issue in this appeal is City Code § 7.5.802 related to Non-Use Variances. Pursuant to § 7.5.802, the City Planning Commission is required to apply the three listed criteria outlined above, as cited in § 7.5.802(B)(1)-(3).

City Code § 7.5.802(E) provides guidelines for review of the criteria to be applied when the City Planning Commission makes decisions on applications for nonuse variances. Pursuant to § 7.5.802(E), "...when applicable, the fact finder may, but is not required to, consider any or all of the following circumstances which have been established by the evidence in determining whether the applicable criteria have been met:

1. Extraordinary or Exceptional Physical Conditions:

- a. The physical conditions of the property shall not be conditions general to the neighborhood or surrounding properties.
- b. The unique physical conditions of the property may be its size, shape, locations, topography, soils; or
- c. The unique physical conditions of the property may be the size or location of existing structures on the property if such structures are not self-imposed conditions; or
- d. The unique physical conditions may be certain on site or off site environmental features which may positively or negatively affect the property in question, including, but not limited to, adjacent land uses, traffic, noise, views and location of significant natural, architectural, or historic features.

2. No Reasonable Use:

- a. The demonstrated extraordinary or exceptional physical conditions of the property must directly relate to the inability to reasonably use the property in conformance with the applicable zoning ordinance regulations.
- b. The concept of less reasonable use may be considered if a neighborhood standard exists and if it is demonstrated that the property in question has a less reasonable use by comparison with proximate and similar properties in the same zoning district.
- c. The purchase price of the property, the desire for greater economic return on investment or mere inconvenience do not constitute, by themselves, evidence of no reasonable use.
- d. Self-imposed conditions such as prior voluntary rezoning, platting, or building in violation of City codes and ordinances do not constitute evidence of no reasonable use.
- e. Knowledge, or lack of knowledge, of zoning restrictions and physical site constraints at the time the property is purchased is immaterial to evidence of no reasonable use of the property.

### 3. No Adverse Impact

- a. The granting of a variance shall not be detrimental to public health, safety, and welfare or injurious to surrounding properties.
- b. The granting of a variance shall not be inconsistent with any plans adopted by the City.
- c. The granting of a variance shall not weaken the general purpose of this Zoning Code or its regulations.
- d. The variance, if granted, shall only be to the extent necessary to afford a reasonable use of the property.

See City Code § 7.5.802(E). Notably, “precedent” is **not** one of the criteria or guidelines upon which the Land Planning Commission is to rely in making its decisions regarding applications for nonuse variances.

#### **(c) The City Planning Commission’s Decision was Unreasonable**

Prior to the January 17, 2019, Planning Commission meeting, the Land Planning Commissions’ staff reviewed 28 Polo’s application, found that it met all the criteria, and recommended that the City Commissioners approve the preliminary and final plat and two associated non-use variances. *Ex. A, City Planning Commission Staff Report, January 17, 2019, at pp. 4-7.* However, the City Planning Commission did not follow the recommendation of its staff and failed to use or apply the required criteria to its analysis. That the City Planning Commission ignored the express findings and recommendations of its professional staff is unreasonable. In fact, no Commissioner even referenced the exhaustive findings and conclusions of its professional staff.

#### *Staff Review of Lot Size Variance Request (AR NV 18-00679)*

Applying the review criteria mandated by City Code § 7.5.802(B), the City Planning Commission’s staff concluded that a nonuse variance was appropriate in reference to the lot size on the Property. *Ex. A, City Planning Commission Staff Report, January 17, 2019, at p. 4.* That

is, the two proposed 19,320 sq. ft. lots, which would be 3.85% smaller than the 20,000 sq. ft. standard, and larger than at least 7 surrounding and proximate properties, was appropriate. *See id.*

The staff directly addressed each of the criteria individually in its summary. The staff found that each of the criteria had been met to grant both of the requested nonuse variances for lot size and rear lot width. Ex. A, *City Planning Commission Staff Report*, January 17, 2019, at p. 4. The staff started by considering whether there was an exceptional or extraordinary condition of the property. *Id.* The staff noted that the property shape is more similar to a pie shape, unlike the rectangular-shaped lots surrounding it, and that the property has a steep slope on the north side of the property. *Id.* The staff found, therefore, that the first criterion had been met regarding the request for a smaller lot size. *Id.*

Next, in considering the second criterion regarding reasonable use of the property, the staff found that due to the exceptional characteristics of the Property, blocking the nonuse variance for the lot size would not be reasonable, particularly in view of the fact that the adjustment was a mere 3.85% variance from the standard, and that the surrounding properties ranged from 14,000 sq. ft. to 31,000 sq. ft. Ex. A, *City Planning Commission Staff Report*, January 17, 2019, at p. 4. Moreover, the extraordinary or exceptional features of the existing lot would not allow for a reasonable use of the lot without an accommodating variance now that a small home, with a footprint less than 2,500 sq. ft. home, has been placed at the eastern edge of a 38,000 sq. ft. property. This is especially so when seven of the nearby properties do not meet the 20,000 sq. ft. requirement for the R-zoned district.

Finally, considering the third criterion that there be no adverse impact to the surrounding property resulting from the nonuse variance for lot size, the staff determined that no competent evidence existed to indicate an adverse impact on the health, safety or welfare of the surrounding



properties, as reflected in the combined opinion of third-party and state-affiliated geologic, drainage and other specialized experts. Ex. A, City Planning Commission Staff Report, January 17, 2019, at p. 4. This element of 28 Polo's application does not appear to be in dispute, since to no evidence of adverse impact upon the welfare and safety of the community was adduced at the hearing on January 17, 2019.

Staff Review of Lot Width Variance Request (AR NV 18-00680)

With regard to the requested nonuse variance for rear lot width, the City Planning Commission's staff again found that all criteria had been met. In considering the first criteria of exceptional or extraordinary conditions, the staff found that due to the pie shape of the property, the lot width at the front setback line of the property can be met, but the lot width at the rear setback line where the lot narrows cannot be met. Ex. A, City Planning Commission Staff Report, January 17, 2019, at pp. 4-5. The staff concluded that the lot shape, along with the steep slopes in the rear of the lot, provide the exceptional or extraordinary condition for the site. *Id.* at p. 5. That made sense under the circumstances. The evidence at the hearing showed that the width of the lot in the front portion of the lot was approximately 252 ft., well in excess of the required 100 ft. width for each proposed lot. That feature makes up for the pinch at the rear portion of the lot due to its unique shape.

In considering the second criteria of no reasonable use, the staff found that a reasonable use would not be possible in the absence of variance relief, because of the unique physical conditions of lot shape and topography; that is, the property owner would not be able to use their property with the same reasonable use as surrounding properties. Ex. A, City Planning Commission Staff Report, January 17, 2019, at p. 5. The staff therefore found that criteria was met. *Id.*

Finally, in considering whether any adverse impact was presented to the surrounding properties by way of the requested nonuse variance for rear lot width, the staff found that the granting of the variance would not adversely impact the health, safety, and welfare of the surrounding properties. Ex. A, *City Planning Commission Staff Report*, January 17, 2019, at p. 5. The staff therefore found and recommended that the third criteria had been met. *Id.* The staff also noted the drainage report, reviewed and approved by Water Resources Engineering, which found no significant increase in drainage flow rates or change to the existing drainage patterns posed by the application, and the geologic hazard study by Entech Engineering which found no groundwater concerns at the site. *Id.* However, no commissioner or opponent even referenced the drainage, geologic, traffic, or engineering studies on file with the City.

The foregoing analysis shows that, notwithstanding the expressed concerns of a minority of surrounding neighbors, all criteria were met by the applicant's proposed land use. Unfortunately, the City Planning Commissioners failed to address or apply those criteria, and chose not to follow the recommendation of its staff to approve 28 Polo's application. That failure to address and apply its own staff's recommendation renders the City Planning Commission's decision unreasonable.

**(d) The City Planning Commission's Decision was Erroneous.**

§ 7.5.802(A) of the City Code authorizes nonuse variances subject to the requirements of § 7.5.802. § 7.5.802(B) lays out the three criteria that must be found to have been met to authorize a nonuse variance (as described in section (a) of this Notice of Appeal). At the City Planning Commission meeting on January 17, 2019, six of the eight voting Commissioners gave explanation for her or his respective decision. However, the Commissioners failed to address or apply the criteria required under City Code § 7.5.802. Rather, the Commissioners applied arbitrary

reasoning to their decisions, denying 28 Polo due process under the City Code. The Commissioner's reasoning was as follows:

COMMISSIONER HENTE: ... “[A]s part of our package, you did give us the history, and the history includes the minutes from the City Council meeting of August 22, 2017, and so I assume that because it’s part of the package, it’s part of the rationale that we can use for making our decision on what to do. And so I have read those minutes. As a matter of fact, I’ve sitting here, been reading them about another ten times while we’ve been sitting here. And I am respectful of the comments of several of the commissioners to particularly include ... I’m particularly persuaded by the comments of Councilmembers Knight and Pico, when they said they did not like the comparison to other smaller lots because those were in fact legally nonconforming and were grandfathered in. And so I’m typically persuaded by those comments, and again, it’s part of our package, so I’m reading that. And so based on that and on the other comments I see from the decisions that were made in the past, I am not in support of this...”

*Ex. B, Transcript of Planning Commission Meeting 28 Polo LLC v. Colorado Springs City Council*, at pp. 63:20-64:14. Absent from Commissioner Hente’s analysis was any mention of the criteria that must be applied by the Planning Commission in making its decision. In fact, despite the advisement by counsel for the City, Commissioner Hente incorrectly assumed that an unidentified submittal for a separate application was the rationale behind 28 Polo’s 2019 application.

Commissioner Raughton likewise founded his dissenting vote on inappropriate grounds.

He noted,

COMMISSIONER RAUGHTON: ... “Well, I – in order to build a second home on this site, we will have to approve multiple variances, and I believe that those variances are a product of some self-imposed conditions. I also believe that the character of the neighborhood is important in the long-term view of the area and all of our neighborhoods, and I’m -- Carl, I have to say that I believe that the decisions, the precedence set by this commission represent a form of policy. We begin to guide the city by those decisions and ultimately they become policy. So I, for one, will not be able to support this proposal.” *Ex. B, Transcript of Planning Commission Meeting 28 Polo LLC v. Colorado Springs City Council*, at p. 66: 8-13.

Commissioner Raughton based his dissenting vote on two grounds: 1) that 28 Polo's variance request was the result of "self-imposed conditions"; and 2) that an approving vote would set a "precedent" would ultimately become city policy. Neither of these grounds proper grounds for review under § 7.5.802. In fact, as to the "self-imposed condition" finding, §7.5.802(E)(2)(d) expressly states that "[s]elf-imposed conditions...do not constitute evidence of no reasonable use." Secondly, the Commissioners' decision should not be based on their personal view of what may or may not become city policy.

Commissioner Eubanks gave as grounds for her dissenting vote the following statement:

COMMISSIONER EUBANKS: ... "But I think the main concern is about setting the precedence in terms of subdividing and what that would mean to the neighborhood. And that's the main thing that I'm taking into consideration as I cast my vote." *Ex. B, Transcript of Planning Commission Meeting 28 Polo LLC v. Colorado Springs City Council*, at p. 67:6-10.

As Commissioner Raughton, Commissioner Eubanks likewise founded her decision on "precedence" and "what that would mean to the neighborhood." Those are not the grounds required by § 7.5.802.

Commissioner Almy gave the following statement:

COMMISSIONER ALMY: ... "When I drove by the property, I was actually a little bit taken aback by what appeared to be the size of the lot versus – visually the size of the lot versus what it shows up on paper. And I tried to visualize the second home on the fairly limited footprint where it can go. And it – that two-building picture that I had in my mind appeared to be farther out of character with the neighborhood than either single house individually. So for that reason, I'm – my view is not to approve." *Ex. B, Transcript of Planning Commission Meeting 28 Polo LLC v. Colorado Springs City Council*, at pp. 68:22-69:5.

Commissioners are not asked under the City Code to visualize in their mind after a visual inspection whether or not a conforming structure, the design of which is unknown, would "fit" on a proposed lot. The applicant does not minimize the effort of Commissioner

Almy, but the “two-building picture [she] had in her mind” is not a discernible or fair basis upon which to hang a dissenting vote.

Commissioner McMurray addressed the required criterion in his decision. However, his interpretation of the second required criterion regarding no reasonable use was overly strict:

COMMISSIONER MCMURRAY: ... “As a commission, our job is to strictly scrutinize the criteria that have been laid out, and as I look at those, I come to the second criteria, which is ‘no reasonable use of property.’ And we have – we have something on site that is tangible evidence that we have reasonable use of this property, which is a single-family home that has been on the property and how recently reconstructed. Reasonable use of the property is present.” Ex. B, *Transcript of Planning Commission Meeting 28 Polo LLC v. Colorado Springs City Council*, at p. 68:6-15.

Commissioner McMurray’s interpretation of the second criterion does not take into account the balancing that is to be a part of that consideration. For example, § 7.5.802(E)(2)(b) provides that “[t]he concept of less reasonable use may be considered if a neighborhood standard exists and if it is demonstrated that the property in question has a less reasonable use by comparison with proximate and similar properties in the same zoning district.” Here, the unrebutted evidence before the Commission showed that seven of the nearby properties do not meet the 20,000 square foot requirement, and that the majority of properties surrounding the lot at issue were rectangular, not pie-shaped. If variance decision were to be based on such a strict interpretation, little to no variances would ever be granted. The City Plan and City Code contemplate a more reasonable, flexible reality which accounts for the uniqueness of each property.

Clearly, the majority of the City Planning Commissioners failed to address or apply the criteria required under City Code § 7.5.802 for nonuse variances.

**(e) The City Planning Commission’s Decision was Clearly Contrary to Law**

The City Planning Commissioners failed to apply the law or lay a sufficient record regarding the criteria in City Code § 7.5.802(B). While strict rules of procedure and evidence need

not be followed in proceedings before a planning commission or board, nevertheless, a record of proceedings must contain details of evidence presented and proper grounds and reasons to support its decision. *Murray v. Board of Adjustment, Larimer County*, 594 P.2d 596, 598 (Colo.App. 1929). Here, the City Council failed to address the proper grounds and reasons to support its decision. City Council also denied 28 Polo's right to due process and a fair hearing by manifestly relying on evidence not in the record, and by giving improper weight to non-germane evidence in its decision. The Commission would have been on safe ground had it adopted the reasoning and recommendations of its professional staff.

Moreover, the City Planning Commission's decision was contrary to the Colorado Springs Comprehensive City Plan, which requires that city decision makers allow for, support, and actively encourage reasonable densification of mature neighborhoods throughout the city. Therefore, because the City Planning Commission failed to apply the criteria required under City Code § 7.5.802(B), and because the Commission's decision was contrary to the City's own Comprehensive Plan, the decision was clearly contrary to law.

**(f) Burden Outweighs the Benefits.**

Finally, there are adverse impacts created by the City Planning Commission's decision to deny 28 Polo's requested variances. 28 Polo had planned to leave a portion of the properties as a preservation area, which would have indefinitely maintained the views of the city and Pikes Peak for the neighborhood. In addition, the driveway for the property in its current condition presents a significant hazard. The driveway exits onto the apex of two trafficked roads, leading to a potential accident location if any driver is approaching that intersection. The proposed subdivision eliminates that safety concern. In addition, the proposed subdivision would benefit the community by allowing for another home to be built by 28 Polo, an experienced and environmentally-

conscious developer who has voluntarily limited his proposed builds to 15% lot coverage and recognized that a portion of the current lot is dedicated for a preservation area.

The only possible impact on the community of 28 Polo's proposed subdivision is the building of an additional new home, the construction of which will be subject to Pikes Peak Regional Building regulations and Colorado law. The expert analyses provided as part of the application showed there would be no drainage or geological hazards presented by the subdivision and no negative impact on traffic or safety. Further, the surrounding lot sizes, 7 of which are in fact smaller than the proposed final lots of 19,320 sq. ft., show that there would not be an adverse impact on the character of the neighborhood.

Therefore, the City Planning Commission's denial of the requested plats and nonuse variances placed a burden on 28 Polo which outweighs any possible benefit accrued by the community.

## **2. Advisory Listing of Issues to be Raised on Appeal**

- (i) Whether the City Planning Commission's decision to deny 28 Polo's request for approval of the preliminary and final plat and associated two nonuse variances was unreasonable.
- (ii) Whether the City Planning Commission's decision to deny 28 Polo's request for two nonuse variances was erroneous because the Commissioners failed to apply the required criteria in making their decision.
- (iii) Whether the City Planning Commission's January 17, 2019 denial of 28 Polo's request for two nonuse variances was clearly contrary to law because the Commissioners failed to use and properly apply the required criteria.

### 3. Transcripts

The Planning Commission meeting at issue was held on January 17, 2019. A copy of the transcript of that meeting is attached hereto as Ex. B.

WHEREFORE, pursuant to §7.5.906(B)(4) of the City Code, Appellant respectfully requests that the City Council hear 28 Polo, LLC's application for approval of the preliminary and final plat map, and the two associated nonuse variances addressed by the Planning Commission, together with a presentation by the staff of the City's Land Planning Commission, with notice and an opportunity to be heard by interested parties, in a *de novo* hearing before the City Council, in conformity with applicable rules and law.

RESPECTFULLY SUBMITTED: January 28, 2019.

TORBET TUFT & MCCONKIE, LLC

*/s/ David G. McConkie*

Original Signature on File per Rules

By: David G. McConkie, #39864

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# Exhibit A

# Staff

CITY PLANNING COMMISSION AGENDA  
January 17, 2019

STAFF: LONNA THELEN

FILE NO(S):  
AR PFP 18-00678 – QUASI-JUDICIAL  
AR NV 18-00679 – QUASI-JUDICIAL  
AR NV 18-00680 – QUASI-JUDICIAL

PROJECT: 28 POLO  
APPLICANT/OWNER: 28 POLO LLC  
CONSULTANT REPRESENTATIVE: 28 POLO LLC

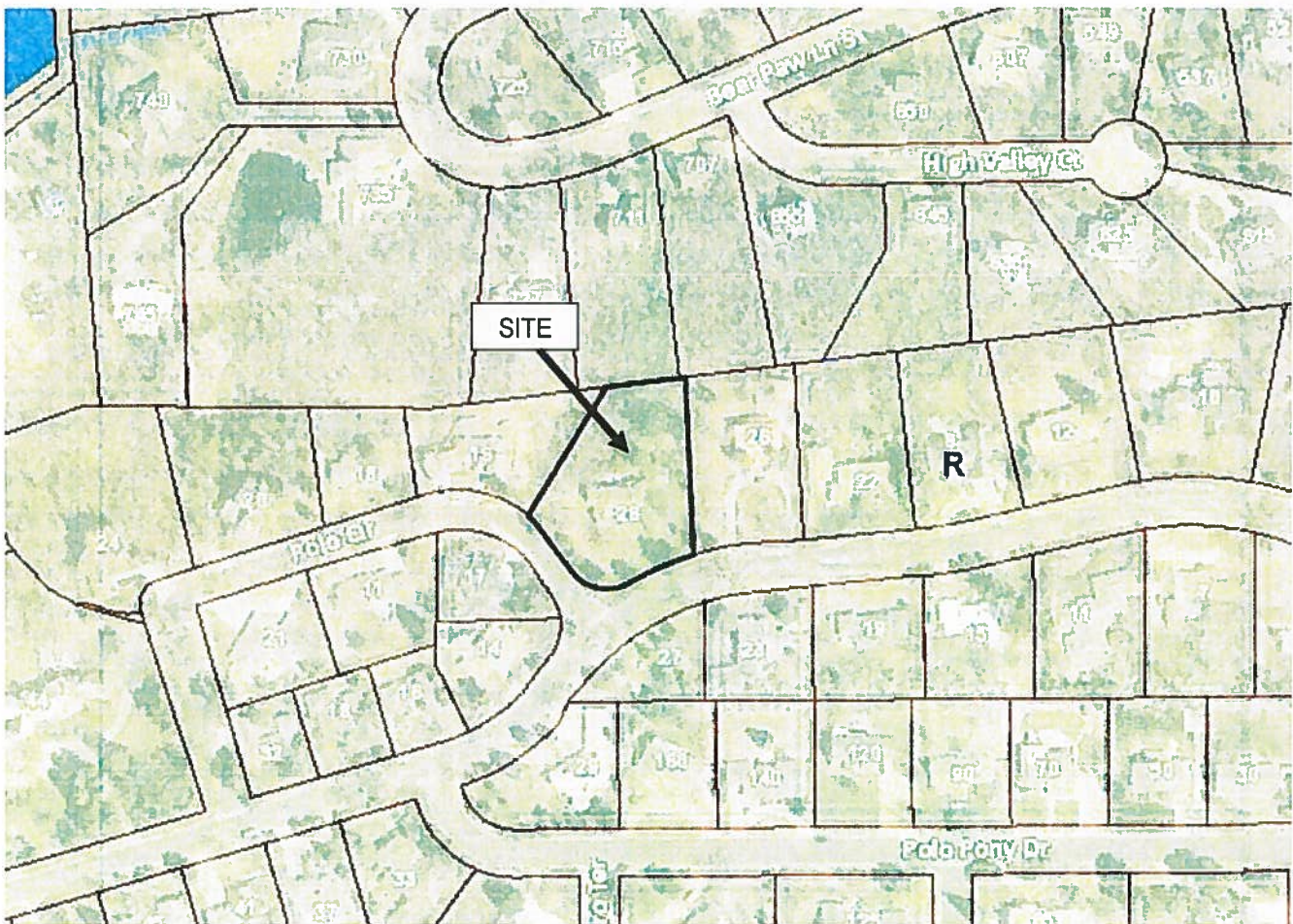


FIGURE 1

## **PROJECT SUMMARY:**

1. **Project Description:** This project consists of a preliminary and final plat and two nonuse variances. The preliminary and final plat application is for a 2 lot single-family residential subdivision that is located at 28 Polo Drive, contains 38,460 square feet, and is zoned R (Estate Single-Family Residential). The lot layout is illustrated on the preliminary plat (**FIGURE 1**) and the final plat (**FIGURE 2**). The nonuse variances are for lot size and lot width. The lot size variance allows two-19,230 square foot lots where 20,000 square foot lots are required in the R zone district. The lot width variance allows a 67 foot lot width at the rear setback line for Lot 1 and a 59 foot lot width at the rear setback line for Lot 2 where 100 foot lot width is required at the front and rear setback line.

Similar applications for preliminary and final plat, nonuse variance for lot size and nonuse variance for lot width were submitted in 2017 and administratively approved on June 5, 2017. (**FIGURE 3**) The applications were then appealed (by opposing neighbor) to City Planning Commission (**FIGURE 4**). The City Planning Commission denied the appeal and upheld the administrative approval on July 20, 2017 with a 6-3 vote (Aye: Fletcher, Graham, McDonald, Markewich, Satchell-Smith, Smith, No: Henninger, Raughton, Walkowski) (**FIGURE 5**). The applications were then appealed (again by opposing neighbor) to City Council. The City Council heard the appeal on August 22, 2017. City Council and voted 9-0 to approve the appeal, thus denying the project (Aye: 9 - Avila, Bennett, Gaebler, Geislinger, Knight, Murray, Pico, Skorman, and Strand) (**FIGURE 6**).

Per City Code 7.5.907, nonuse variances disapproved by City Council or City Planning Commission cannot be resubmitted for consideration until a period of twelve months has passed since the original decision by City Council. The applicant waited twelve months and resubmitted the plans on October 3, 2018.

2. **Applicant's Project Statement:** (**FIGURE 7** and **FIGURE 8** -response to neighborhood concerns from initial review).
3. **Planning and Development Team's Recommendation:** Staff recommends approval of the applications.

## **BACKGROUND:**

1. **Site Address:** 28 Polo Drive
2. **Existing Zoning/Land Use:** R/Single-Family Residential
3. **Surrounding Zoning/Land Use:** North: R/Single-Family Residential  
South: R/Single-Family Residential  
East: R/Single-Family Residential  
West: R/Single-Family Residential
4. **Annexation:** Reannexation of the Southwest Annexation Area, 1980
5. **Master Plan/Designated Master Plan Land Use:** There is no master plan for this site.
6. **Subdivision:** Polo Park Addition to Broadmoor
7. **Zoning Enforcement Action:** There are no current enforcement actions on this site.
8. **Physical Characteristics:** The site is relatively flat toward Polo Drive and Polo Circle. The northwest corner of the lot slopes steeply northward toward Bear Paw Lane.

**STAKEHOLDER PROCESS AND INVOLVEMENT:** The public process involved with the review of these applications included posting the site and sending postcards to 131 property owners within 1000 feet for internal review and a neighborhood meeting held on October 23, 2018. Approximately 40 people attended the meeting. Comments were received during internal review; **FIGURE 9** documents the public comments received from the internal reviews. The site was also posted and postcards sent for the City Planning Commission meeting to 131 property owners within a 1,000 foot buffer of the site.

The major areas of concern documented by the neighborhood are that this item was already heard by City Planning Commission and City Council and ultimately denied by City Council. They also stated that the new applications should also be denied as the previous applications were and reiterated that the major neighborhood concerns raised previously still apply. These concerns include a change to neighborhood character, drainage patterns from the new home, and geologic hazard concerns.

Staff sent plans to the standard internal and external review agencies for comments. All comments received from the review agencies are addressed. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, Police, Enumerations, Floodplain, Real Estate Services, Comcast, School District 12 Colorado Geologic Survey and E-911. This site is not within the Airport Overlay and was not seen by the Airport Advisory Committee and is outside of the buffer for review by USAFA.

### **ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:**

#### **1. Review Criteria / Design & Development Issues:**

##### **Background**

The original home addressed as 28 Polo was constructed in 1951. At the time of the first review of the project, the original home was still on the property. After the denial of the original application, the current owner tore down that structure and built a new single-family home on the east half of the lot. The owner is applying to plat the property into two lots and build a new single-family home on the to-be-created west lot. As was outlined in the project summary section above, the applicant previously submitted and received administrative approval for a preliminary and final plat to subdivide the lot into two lots and two nonuse variances. That administrative approval was appealed to City Planning Commission and the administrative approval of the applications upheld. Upon an appeal of the City Planning Commission decision to City Council, the Council upheld the appeal and denied the applications.

Per City Code 7.5.105, the current application is permitted to be approved or denied administratively; however, given the history of this project, staff has decided to forward this application to City Planning Commission for approval or denial. The rationale for forwarding this application is due to the large response from the neighborhood primarily in opposition to the project and opposing decisions on the appeals by the Planning Commission and City Council.

The justification for the nonuse variances are detailed below:

Variance 1 – A nonuse variance to allow 19,230 square foot lots where 20,000 square feet is required in the R (Residential Estate) zone district. This equates to the new lot sizes being 770 square feet less than the required lot size or 3.85% less than the required lot size.

Per City Code, if the percent of the reduction in a dimensional standard is less than 15%, the request qualifies for an administrative relief (which has a lesser standard of review than a variance). However, the applicant was required to submit a nonuse variance instead of an administrative relief due to the creation of a new lot, which meant that he could not comply with the review criteria for granting administrative relief.

*7.5.1102.D - The granting of the administrative relief will not allow an increase in the number of dwelling units on a parcel. Administrative relief shall not be used to create or modify lots to the extent that they no longer meet the minimum lot size for the zone district in which they are located*

Variance 2 – A nonuse variance to allow 67-foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear setback line for Lot 2 where 100 feet of lot width is required at the front and rear setback line. Note that the 100-foot lot width requirement is being met at the front setback abutting the public roadway and that the variance is only required for the rear setback line deficiency.

The major neighborhood concerns raised in 2017 and with the current review include a change to neighborhood character, drainage patterns from the new homes, and geologic hazard concerns. These concerns are discussed in detail below.

Neighborhood Character (Nonuse variances):

The neighbors opposed to the project claim that the lot size of 20,000 square feet is consistent with existing lots throughout the neighborhood and therefore a nonuse variance request for less than the 20,000 square foot minimum in the R zone district is contrary to the neighborhood character. **FIGURE 10** shows the lot sizes of the surrounding lots and provides context to show the varying sizes of lots. The majority of the properties that access to Polo Drive, Polo Circle and Polo Pony Drive are between 20,000 and 25,000 square feet. Seven of the nearby properties are less than 20,000 square feet. There is a significant grade change between the homes on Polo Drive and Polo Circle to the homes on Bear Paw Lane. The majority of the homes along Bear Paw Lane are over 25,000 square feet. Staff found that a consistent neighborhood character of 20,000 square feet or greater was not present in the neighborhood and therefore a nonuse variance to allow two 19,230 square foot lots was not out-of-character with the neighborhood.

The record of decision for the nonuse variances is attached as **FIGURE 3**. Staff has found that for each of the nonuse variance requests the three nonuse variance criteria have been met.

*Nonuse variance justification for lot size:*

1. 7.5.802 (B.1)                      Exceptional or Extraordinary Conditions                      Met

The property shape is more similar to a pie shape instead of a rectangular shape. The majority of the surrounding properties exhibit a typical rectangular shape lot, with the exception of the properties at 17 Polo Circle, 14, 16, 27 and 32 Polo Drive and 655 High Valley Ct which also do not meet the rear yard lot width of 100 feet (see **FIGURE 10** for locations). In addition, the property has a steep slope on the north side of the property. The applicant has placed a preservation area easement over the steep slope on the property in order to protect the slope. In addition, the applicant has limited the lot coverage for the lots to 15% to help limit the impact on surrounding properties. Therefore, the properties shape and topography provide exceptional or extraordinary physical conditions to the site.

2. 7.5.802 (B.2)                      No Reasonable Use of Property                      Met

The applicant is requesting a 3.85% reduction in lot size for each of the two lots. An analysis of the surrounding properties shows that the properties range in lot size from 14,000 square feet to 31,000 square feet. Seven of the nearby properties do not meet the 20,000 square foot requirement for the R zone district. The neighborhood standard that exists with the lots ranging in size from 14,000 square feet to 31,000 square feet demonstrates a less reasonable use for this property.

3. 7.5.802 (B.3)                      No Adverse Impact to Surrounding Property                      Met

The granting of the variance will not adversely impact the health, safety and welfare of the surrounding properties. A drainage report and geologic hazard report in addition to a preliminary and final plat have been approved for the site. The plans demonstrate there will be no adverse impacts to the neighborhood.

*Nonuse variance justification for rear lot width:*

1. 7.5.802 (B.1)                      Exceptional or Extraordinary Conditions                      Met

Due to the lot configuration that is similar to a pie shape instead of a rectangular shape the lot width at the front setback line of the property can be met, but the lot width at the rear setback line where the lot narrows cannot be met. City Code requires that the lot width be met at both the front and rear setback lines. Both properties exceed the 100' lot width minimum at the front setback line. In addition, the northern portion of the property has a very steep slope. The preliminary and final plat documents required that the steep slope be placed in a preservation easement. The lot

is also limited to a 15% lot coverage that will limit the size of the home. The lot shape and the steep slopes provide the exceptional or extraordinary conditions for the site.

2. 7.5.802 (B.2)                      No Reasonable Use of Property                      Met  
Without the granting of the variance, due to the unique physical conditions of lot shape and topography, the property owner would not be able to use their property with the same reasonable use as surrounding properties. The majority of the surrounding properties have lot shapes that are rectangular allowing the properties to meet the lot with requirement at the front setback and rear setback lines.

3. 7.5.802 (B.3)                      No Adverse Impact to Surrounding Property                      Met  
The granting of the variance will not adversely impact the health, safety and welfare of the surrounding properties. A drainage report and geologic hazard report in addition to a preliminary and final plat have been approved for the site. The plans demonstrate there will be no adverse impacts to the neighborhood.

The property is not zoned with the Hillside Overlay and therefore, is not required to comply with the hillside overlay criteria. The owner has acknowledged that a portion of the property has hillside characteristics and has voluntarily agreed to place that portion of the property in a preservation area. The preservation area cannot be built on or disturbed.

The applicant has also voluntarily agreed to a 15% maximum lot coverage or 2,884 square feet maximum footprint for all structures. The R zone district allows a 20% maximum lot coverage or in this case 3,846 square foot footprint for all structures. The smaller footprint limits the drainage impacts and potential geologic hazard concerns that were raised by the neighborhood.

Drainage:

The drainage report was reviewed and approved by Water Resources Engineering. The drainage report does not show significantly increased drainage flow rates or change the existing drainage patterns. The proposed project will split the 0.88 acre lot into two 0.44 acre lots with a new residential house on each lot (one of the new homes is already built). According to the Final Drainage Report, the proposed development will maintain the current drainage patterns to the northwest, and will not increase the impervious surface. Resulting in developed five year and 100 year runoff rate of 0.9 cfs and 3.0 cfs, which is slightly less than the existing runoff rate of 1.2 cfs and 3.3 cfs. The drainage report recommends the builder install and maintain construction BMP's (Best Management Practice) to control sediment and erosion during and after project excavation.

Geologic Hazard

A geologic hazard study was required for the property, which was prepared by the applicant's geotechnical consultant - Entech Engineering. The study was approved by City Engineering and was reviewed by the Colorado Geologic Survey (CGS); see their comments in **FIGURE 11**. Entech's geologic hazard report identified expansive soils, downslope creep areas, potentially unstable slopes, seasonal shallow groundwater and artificial fill as geologic hazards and or geotechnical constrains on the site. CGS agreed with the hazards identified and the recommended mitigations including avoidance, prevention, and mitigation of the hazards, especially downslope creep, expansive soils, and potentially unstable slopes. The preservation area shown on the plat limits the ability to build in the area with the majority of the geologic hazards identified.

Groundwater concerns were raised by neighbors during the review of the project. Entech completed one test boring drilled down to 20 feet. Groundwater was not encountered in the test borings at the 20 foot depth. Because the ground water was not detected at 20 feet, foundations are not expected to be affected on the site; however, groundwater fluctuation may occur due to variation in rainfall or other factors. As such, the builders should be cognizant of the potential for the occurrence of subsurface water features during construction.

Staff finds that the applications associated with this project have adequately addressed all of the issues raised by the internal review agencies and meet the review criteria as set forth in City Code.

2. Conformance with the City Comprehensive Plan:

PlanCOS that will be adopted by the City Council on January 22, defines this area as an established historic neighborhood with the typology of an established suburban neighborhood. This proposal meets the Comprehensive plan goals as it provides for infill and supports small diversity to the neighborhood housing type. It also increases density in the neighborhood that already has established utilities and roadway systems.

*Goal VN-2: Strive for a diversity of housing types, styles, and price points distributed throughout our city through a combination of supportive development standards, community partnerships, and appropriate zoning and density that is adaptable to market demands and housing needs.*

*Strategy VN-2.A-3: Support land use decisions and projects that provide a variety of housing types and sizes, serving a range of demographic sectors, and meeting the needs of residents and families through various life stages and income levels.*

*Strategy VN-2.A-4: Allow for zoning residential bonuses that result in the provision of additional attainable housing, such as increased heights or densities.*

The site is also supported by the Infill and Redevelopment Action Plan goals of density, fiscal efficiency economic stimulus. The site is built in an existing neighborhood and therefore does not require any extensions of roadways or utilities. In addition, the subdivision creates additional density in an existing neighborhood.

The soon to be superseded 2001 Comprehensive Plan 2020 future Land Use Map calls out this area as "General Residential", which is a designation to be used for the vast majority of existing and future residential areas. Primary uses for this type of residential development are areas with an average gross density of greater than three dwelling units per acre. The density proposed by this development is less than three dwelling units per acre. The development that is proposed is compatible with the surrounding existing large lot residential. The Comprehensive plan encourages infill and use of existing infrastructure for new developments.

*Objective LU 2: Develop A Land Use Pattern That Preserves the City's Natural Environment, Livability, And Sense of Community*

A focused pattern of development makes more efficient use of land and natural and financial resources than scattered, "leap frog" development. In contrast to dispersed patterns of development, a consolidated pattern helps to decrease traffic congestion and facilitates the ability of the City to provide needed services and public facilities, such as street maintenance, public transit, police and fire protection, and emergency services.

*Objective LU 4: Encourage Infill and Redevelopment*

Encourage infill and redevelopment projects that are in character and context with existing, surrounding development. Infill and redevelopment projects in existing neighborhoods make good use of the City's infrastructure. If properly designed, these projects can serve an important role in achieving quality, mixed-use neighborhoods. In some instances, sensitively designed, high quality infill and redevelopment projects can help stabilize and revitalize existing older neighborhoods.

*Objective LU 5: Develop Cohesive Residential Area*

Neighborhoods are the fundamental building block for developing and redeveloping residential areas of the city. Likewise, residential areas provide a structure for bringing together individual neighborhoods to support and benefit from schools, community activity centers, commercial

centers, community parks, recreation centers, employment centers, open space networks, and the city's transportation system. Residential areas also form the basis for broader residential land use designations on the citywide land use map. Those designations distinguish general types of residential areas by their average densities, environmental features, diversity of housing types, and mix of uses. Residential areas of the city should be developed, redeveloped and revitalized as cohesive sets of neighborhoods, sharing an interconnected network of streets, schools, parks, trails, open spaces, activity centers, and public facilities and services.

3. Conformance with the Area's Master Plan:  
No master plan exists for this site.

**STAFF RECOMMENDATION:**

**AR PFP 18-00678 – PRELIMINARY AND FINAL PLAT**

Approve the preliminary and final plat for 28 Polo, based upon the finding that the preliminary and final plat complies with the review criteria in City Code Section 7.7.102, 7.7.204, 7.7.303 subject to the following technical modifications:

Final plat technical modifications:

1. Revise Note 5 (FEMA Floodplain) to the recently approved revision to the effective date and panel number.
2. Add "a Colorado Limited Liability Company" following 28 Polo under Notarial.
3. Include the specific geologic hazards identified in the approved geologic hazard report in the Geologic Hazard Statement.
4. Revise all dates to "2019".

Preliminary plat technical modifications:

1. Revise Note 5 (FEMA Floodplain) to the recently approved revision to the effective date and panel number.
2. Include the specific geologic hazards identified in the approved geologic hazard report in the Geologic Hazard Statement.
3. Include the correct file numbers in the lower right hand corner.
4. Provide all quoted paragraphs from the Fire Department review as notes. See previously disapproved comment and provide all quoted paragraphs as notes on the plans.
5. Switch the file numbers for the nonuse variances, AR NV 18-00679 is for lot width and AR NV 18-00680 is for lot size.

**AR NV 18-00679 – NONUSE VARIANCE**

Approve the nonuse variance to allow a 67 foot rear yard lot width for Lot 1 and a 59 foot rear yard lot width for Lot 2 where 100 feet is required, based upon the finding that the nonuse variance complies with the review criteria in City Code Section 7.7.802.B.

**AR NV 18-00680 – NONUSE VARIANCE**

Approve the nonuse variance to allow two 19,230 square foot lots where 20,000 square feet is required, based upon the finding that the nonuse variance complies with the review criteria in City Code Section 7.7.802.B.



# Exhibit B

# Transcript

DISTRICT COURT, EL PASO COUNTY  
STATE OF COLORADO  
270 South Tejon Street  
P.O. Box 2980  
Colorado Springs, CO 80901

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Plaintiff(s):

28 POLO LLC, a Colorado  
Limited Liability Company; and  
BRUCE FALLHOWE, an individual

v.

Defendant(s):

COLORADO SPRINGS CITY COUNCIL

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COURT USE ONLY

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Case Number:  
2017CV32357

Division 5

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TRANSCRIPT OF  
EXCERPT OF PLANNING COMMISSION MEETING

January 17, 2019

Items 6.G, 6.H and 6.I

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ELLIOTT REPORTING, INC.

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Transcript of Planning Commission Meeting  
28 Polo LLC v. Colorado Springs City Council

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1 Planning Commissioners Present:

2 Chairwoman Rhonda McDonald  
3 Commissioner Carl Smith  
4 Commissioner Reggie Graham  
5 Commissioner Alison Eubanks  
6 Commissioner Jim Raughton  
7 Commissioner Scott Hente  
8 Commissioner James McMurray  
9 Commissioner John Almy

10 The proceedings were video recorded and an excerpt was  
11 later transcribed by Cindy Elliott, RPR, CSR, Notary  
12 Public.  
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P R O C E E D I N G S

\* \* \*

CHAIRWOMAN MCDONALD: Public hearing for January 17, 2019, is back in session, and we are on Item 6.G.

Elena, will you please read this into the record.

CLERK: Sure will.

Item 6.G, AR PFP 18-00678, a preliminary and final plat for 28 Polo to subdivide one 38,450 square foot lot into two single family lots located at 28 Polo Drive, and Item 6.H, AR NV 18-00679, a nonuse variance for 28 Polo to allow a 67-foot lot width at the rear setback line for Lot 1 and a 59-foot lot width at the rear setback line for Lot 2 where 100 feet of lot width is required at the front and rear setback line located at 28 Polo Drive; and Item 6.I, AR NV 18-00680, a nonuse variance for 28 Polo to allow two 19,230-square-foot lots where 20,000 square foot is required in the R zoned district located at 28 Polo Drive.

And our planner today is Lonna Thelen.

CHAIRWOMAN MCDONALD: And Lonna, just before you get started, our city attorney had an announcement he wanted to make.

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28 Polo LLC v. Colorado Springs City Council

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1 CITY ATTORNEY: Well, thank you. I  
2 wanted to interrupt for a second and just say: I just  
3 wanted to remind everyone, this is a new hearing on a  
4 new application. So even if you've been part of the  
5 hearing in the past or you know the results of a hearing  
6 in the past, it was on a similar application. You  
7 should not let those results influence you. We have a  
8 new hearing today. We'll hear evidence today and apply  
9 those to the criteria. Okay. So a new application, new  
10 hearing.

11 CHAIRWOMAN MCDONALD: Thank you very  
12 much.

13 Ms. Thelen.

14 MS. THELEN: Good morning, Commissioners.  
15 Lonna Thelen, City Land Review.

16 This item is 28 Polo. The site is shown  
17 here in bold. It is a little bit west of Alsace and 7th  
18 Street and north of Lake Avenue in the Broadmoor  
19 neighborhood. As you can see, it's at the intersection  
20 of Polo Circle and Polo Drive. The property is zoned R,  
21 estates. And as far as the history on the site, there  
22 was a single-family home on the property. That was torn  
23 down, and there is now a new single-family home on the  
24 property. I will show you where that sits in just a  
25 moment.

Transcript of Planning Commission Meeting  
28 Polo LLC v. Colorado Springs City Council

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1           The applications before you are a  
2 preliminary and final plat to subdivide one lot into two  
3 lots and two nonuse variances. One is for lot size, to  
4 allow 19,230 square feet where 20,000 square feet is  
5 required, and one is for lot width, to allow a 67-foot  
6 rear lot width for Lot 1 and 59-foot rear lot width for  
7 Lot 2. And I'll explain where that variance comes from  
8 in just a moment.

9           In addition, there was a neighborhood  
10 meeting on October 23rd of 2018, where about 40 people  
11 attended that meeting.

12           I do want go through just a little bit of  
13 the history on this project. As has been mentioned,  
14 this is the second time that this application has been  
15 before some of you planning commissioners. The first  
16 application was administratively approved by staff.  
17 That is the preliminary and final plat into nonuse  
18 variances in June of 2017. In, sorry, July 20, 2017, an  
19 appeal of staff's decision was heard by City Planning  
20 Commission.

21           That appeal was denied. And then in  
22 August of 2017, the appeal of Planning Commission's  
23 decision was made to council, and council upheld that  
24 appeal, and therefore the project was denied. Included  
25 in your packets are minutes from both of those meetings,

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1 as well as the decisions and the people voting for those  
2 items.

3 So I do want to clarify that this is  
4 back. It was submitted October 3rd of 2018. And per  
5 city code, which I want to especially mention, there is  
6 a requirement for the applicant to wait one year after a  
7 final decision was made before he could resubmit again.  
8 The applicant did wait that one year timeframe from  
9 August 2017 until October of 2018. Therefore, he can  
10 submit again. Staff is unable to deny any applications  
11 coming into our office, so we did take that application  
12 in, and we are taking it through the process.

13 And now we are here today, January 17th  
14 of 2019, where I have forwarded this application to you  
15 for your decision. And I want to clarify that's  
16 different than when it came in July of 2017. So again,  
17 the first time staff made a decision on the application  
18 and then it was appealed to Planning Commission. Today  
19 staff has not made a decision, although we have a  
20 recommendation on the item, and it is being forwarded,  
21 which is allowed per code, to Planning Commission for a  
22 decision. This is an application that could have been  
23 decided administratively and then brought before you.  
24 So I just wanted to clarify that difference.

25 This is a subdivision plat. Again, I

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28 Polo LLC v. Colorado Springs City Council

Page 7

1 mentioned there was a single-family home, it was torn  
2 down, and now there is a new single-family home on the  
3 east side of the property. As you can see, that  
4 single-family home has been built to still allow a line  
5 to go down the middle of the property to subdivide the  
6 property into two lots.

7 I wanted to mention that the rear portion  
8 of the lot, it does slope downward. That portion of the  
9 lot is now covered by a preservation easement with this  
10 plat. There's a significant steep slope there as well  
11 as some existing vegetation.

12 To clarify how the lot width is  
13 determined, lot width is required to be met at both the  
14 front yard setback and the rear yard setback. So at the  
15 front yard setback, coming off of both Circle Drive --  
16 sorry, Polo Circle and Polo Drive, the 100-foot lot  
17 width is met. So along this front portion here and the  
18 front portion here. Where the variance comes in is at  
19 the rear, the 35-foot setback from the rear property  
20 line, the 100 foot width is not met. So on one it is 67  
21 feet and one it is 59 feet. So that is a requirement  
22 for the variance to come before you. As you can see,  
23 these lots are very long in length and not as much wide.  
24 And so therefore, the width changes from the front to  
25 the rear of the lots.



1           There's also a limitation that was  
2 voluntarily placed on the site by the applicant to limit  
3 the lot's coverage to 15 percent of each lot. And that  
4 is lower than the requirement through the R zoned  
5 district. So as you can see, the new single-family home  
6 would be placed on the west side of the lot.

7           So I'm going to go through some areas of  
8 concern from the neighborhood, but I did want to mention  
9 that the biggest area of concern that I have heard in  
10 this new submittal is the fact that the neighbors are  
11 primarily objecting to the fact that we're coming  
12 through the process again. So you do see a lot of the  
13 emails in the packet that are opposed to the fact that  
14 it's coming through again. And as I mentioned before,  
15 it's not a decision that I've made. It's something that  
16 I'm required through our code to take it back in and go  
17 through the process again.

18           The other areas I wanted to talk about  
19 were neighborhood character, touch on drainage, and then  
20 touch on geologic hazards for the sites. So the primary  
21 opposition for the project is that the proposal is not  
22 in the character of the existing neighborhood. And the  
23 reason that they cite that is primarily because of the  
24 two variances that are granted both for lot size and for  
25 lot width. Therefore I'd like to walk through the three

1 criteria for granting a nonuse variance and how staff  
2 feels that those variances have been met.

3           So each time a variance is granted, we  
4 have to prove that there is an exceptional or  
5 extraordinary physical condition, that there's no  
6 reasonable use of the property without the variance  
7 being granted, and that there's no adverse impact to the  
8 surrounding properties.

9           For the lot size portion limit, as you  
10 can see from the diagram, the lot itself is a bit of a  
11 pie-shaped lot. So it's a unique shape to the lot  
12 itself. And then there are some unique conditions on  
13 the rear portion of the lot where there is a steep slope  
14 on the property and there's some significant vegetation  
15 back there, and therefore we have put that preservation  
16 overlay in that area.

17           In addition, the owner has voluntarily  
18 limited the preservation -- or the lot coverage to 15  
19 percent of the lot to help work with some of those  
20 exceptional conditions that are on the property.

21           Secondly is no reasonable use. The  
22 reduction from 20,000 square feet to 19,230 square feet  
23 is a 3.85 percent reduction in lot size. Now typically  
24 that would go through an administrative relief, because  
25 administrative relief can be granted for anything within

1 15 percent of that requirement. However, you cannot  
2 grant administrative relief if the granting of it  
3 creates new lots. Therefore, we are going through the  
4 nonuse variance process for this item. But I wanted to  
5 mention that because typically this would be at that  
6 very minor level, that administrative relief level.

7 The surrounding properties, they do vary.  
8 They vary from 11,000 square feet all the way to  
9 30,000-plus square feet in size. So not all the lots  
10 surrounding this property are meeting that 20,000 square  
11 foot lot size. In addition, about 20 of those lots --  
12 and I'll show you a diagram in the next slide -- are  
13 less than that 20,000 square foot requirement.

14 And lastly, I do not believe that there  
15 are adverse impacts. I will walk through both the  
16 drainage and geologic hazard reports which have been  
17 approved by the city showing that the adverse impacts  
18 are not -- there aren't any for this property.

19 So this diagram is also in your packet,  
20 but it explains to you the difference between the lots  
21 that are meeting the 20,000 square foot requirement and  
22 those that are not. So anything in the light or dark  
23 red are not meeting 20,000 square feet, and anything in  
24 the shades of blue are meeting the 20,000 square feet.  
25 So you can see the site that's located at the corner of

1 Polo Circle and Polo Drive, that there are the majority  
2 of the lots around are just about that 20,000 square  
3 foot size, 20 to 25,000 square feet. There are multiple  
4 lots in red quite near to the property that are actually  
5 less than that 20,000 square feet, and many of them in  
6 the zero to 15,000 square foot category.

7           The other thing I wanted to mention about  
8 this is there are kind of two separate neighborhoods in  
9 this area, primarily separated by grade. So Polo  
10 Circle, Polo Drive, Polo Pony Drive, that is kind of one  
11 neighborhood in itself. And then as you go to the  
12 north, you do change grade quite significantly down into  
13 the Bear Paw Lane area. So those properties are related  
14 but not as related as the properties primarily to the  
15 south of this area. So per that point, the majority of  
16 these lots are really in that 20,000 square foot range,  
17 that light blue color, and then again there are those  
18 lots that are less than that 20,000 square feet.

19           With this slide I also want to show that  
20 there are some lots in the near vicinity that do not  
21 meet the rear lot width. So the ones that are starred  
22 do not meet that rear lot width requirement as well. So  
23 to walk through the rear lot width criteria for the  
24 nonuse variance, as far as exceptional/extraordinary  
25 conditions, the front lot width is met. It does meet

1 that hundred foot distance. The lot is pie shaped, so  
2 it is irregular, and that is where that requirement for  
3 that variance comes in from the rear, and it does narrow  
4 towards the back.

5 Again, I mentioned previously it is a  
6 long lot, and therefore it is difficult to keep that lot  
7 width from the beginning of the 25-foot setback all the  
8 way to the 35-foot rear lot setback. And as you saw on  
9 the slide before, it is atypical in this neighborhood to  
10 have that shape of a lot. Most of the lots in that  
11 neighborhood are that rectangular shape.

12 The reasonable use, without granting of  
13 this use, he doesn't have that similar use of the  
14 properties next door. So it is a unique condition to  
15 his property and just a few of those surrounding  
16 properties.

17 And no adverse impact. Again, I do not  
18 feel that it is adversely impacting the surrounding  
19 properties.

20 To touch on the drainage report, the  
21 final drainage report has been approved by city  
22 engineering. There was no significant increases to the  
23 flow rate, as well as no significant changes to the  
24 existing drainage patterns on the site. So there isn't  
25 an offsite change to that drainage pending these two

1 houses being built.

2                   And then lastly, the geologic hazard  
3 report. That also has been approved. There were two  
4 concerns noted. Expansive soils, down slope creep  
5 areas, potentially unstable slopes, seasonal shallow  
6 groundwater, and artificial fill. And the majority of  
7 those conditions were found in that area that we are  
8 preserving, the preservation area.

9                   And then lastly, the groundwater was not  
10 encountered at a 20-foot boring depth; therefore, the  
11 foundations are not expected to be affected. And as you  
12 can see, there has been a home built there, so that we  
13 have already gone through that process of ensuring that  
14 those are met.

15                   With that, staff does recommend approval  
16 of the preliminary and final plat and the two nonuse  
17 variances.

18                   Are there any questions?

19                   CHAIRWOMAN MCDONALD: Okay. We have a  
20 couple questions for you.

21                   Commissioner Raughton.

22                   COMMISSIONER RAUGHTON: The issuing of  
23 the permit for the now new house on the site was based  
24 upon the entire lot?

25                   MS. THELEN: Correct.

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1                   COMMISSIONER RAUGHTON: Because you  
2 wouldn't -- the new or proposed lot would be  
3 insufficient in terms of square footage by a few hundred  
4 square feet. Is that a true statement?

5                   MS. THELEN: Yes. So we have approved a  
6 building permit based on the fact that it is  
7 currently --

8                   COMMISSIONER RAUGHTON: One lot.

9                   MS. THELEN: -- a whole platted lot.

10                  COMMISSIONER RAUGHTON: Okay. Thank you.

11                  CHAIRWOMAN MCDONALD: Commissioner  
12 McMurray.

13                  COMMISSIONER MCMURRAY: Yeah, I just want  
14 to confirm that as far as the approval criteria go, it  
15 needs to satisfy all three, not simply just one of the  
16 three or two of the three?

17                  MS. THELEN: Correct. All three must be  
18 met.

19                  COMMISSIONER MCMURRAY: Okay.

20                  CHAIRWOMAN MCDONALD: Commissioner  
21 Eubanks.

22                  COMMISSIONER EUBANKS: Yes. Do you have  
23 the lot square footage with the preservation area taken  
24 out? Do you have that number?

25                  MS. THELEN: I do not have that

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1 calculation, no.

2 COMMISSIONER EUBANKS: Okay. Thank you.

3 CHAIRWOMAN MCDONALD: Commissioner Hente.

4 COMMISSIONER HENTE: Yes, ma'am. If I  
5 can just follow up on Commissioner Raughton's question.

6 If -- when the new house was built, if  
7 you had applied the criteria of the new lot, the 19,000  
8 and whatever square feet, would it have met all the city  
9 standards in terms of setbacks, lot coverage, things  
10 like that?

11 MS. THELEN: So the way that the home is  
12 placed per this proposal on the screen, it does meet all  
13 setback, it does meet lot coverage and heights for the  
14 site. It's just that it is deficient in lot site per  
15 the new proposal.

16 COMMISSIONER HENTE: I understand. But  
17 if the lot was approval -- if it was approved the way  
18 it's drawn here with the two lots, it still would have  
19 met the criteria with regards to the one half the  
20 theoretical lot that would now exist?

21 MS. THELEN: Yes. They have designed it  
22 to meet that criteria.

23 COMMISSIONER HENTE: Thank you.

24 CHAIRWOMAN MCDONALD: Any other questions  
25 for Ms. Thelen?



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1                   Seeing none, thank you very much.

2                   MS. THELEN: Thank you.

3                   CHAIRWOMAN MCDONALD: At this time, if  
4 the applicant would like to make a presentation.

5                   MR. MCCONKIE: Good morning,  
6 Commissioners. My name is David McConkie.

7                   Thank you.

8                   I represent 28 Polo, LLC, who is the  
9 applicant for the subdivision before the commission.  
10 Appreciate certainly the expertise of Ms. Thelen and  
11 rely on and agree with the findings of the city  
12 planners. Hope to add maybe just a bit of color and be  
13 responsive at the end, if we can be, to your concerns  
14 and questions.

15                   Let me see if I can drag this.

16                   How do I advance the slide here?

17                   CLERK: Oh, do you know what? It's  
18 sputtering right now. So --

19                   MS. THELEN: So just that click will  
20 advance it once it's ready.

21                   MR. MCCONKIE: Okay.

22                   This is going back.

23                   Okay.

24                   So again, the staff has recommended  
25 approval of each of the three items before the

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1 commission. I'd like to point out, as you look at the  
2 lot in particular, as to the first criterion, the  
3 exceptional or extraordinary physical circumstances, the  
4 pie shape has been noted, but I want to draw the  
5 commission's attention to the fact that the current  
6 driveway -- and I'll use my mouse if I can -- outlets  
7 into the street right about here, at the intersection of  
8 Polo Drive and Polo Circle, which is a significant  
9 safety concern. We would hate to see outcoming --  
10 someone coming out of the driveway whip shot between the  
11 traffic on the two --

12 UNIDENTIFIED SPEAKER: We're having a  
13 hard time hearing you.

14 MR. MCCONKIE: -- on the two different  
15 streets. Sorry.

16 And so the -- one of the beneficial  
17 results of the proposed subdivision is that you have  
18 ingress here to the one structure right off Polo Drive  
19 and then a separate entrance on the Polo Circle.  
20 Figures to be a much safer situation with traffic coming  
21 on both streets.

22 Note also for the commission that this  
23 picture of the existing structure was a large structure  
24 right in the middle of the lot. If approved -- we  
25 already have a home that's situated about right there on

1 the east lot and on the west, the new one, would be  
2 conforming to the setback requirements about right  
3 there, creating an open lane of additional space and  
4 views between the two homes.

5 One of the concerns raised by some of the  
6 opposition had to do with the geological hazards, and we  
7 appreciate those concerns and admit that there are some.  
8 But they've been addressed and provided for by virtue of  
9 the preservation easement along the back side of the  
10 lot.

11 I want you to know, and I think this is  
12 responsive to Commissioner Eubank's question, the total  
13 size of the preservation area with regard to 12 Polo on  
14 the west is about 8,500 square feet. And then that  
15 portion of 28 Polo on the east that would be dedicated  
16 for the preservation area is about 2,500 square feet, a  
17 significant dedication of land of what will be a  
18 beautiful and green area. If you haven't been to the  
19 property, it might help to just realize that you see  
20 beautiful views as you look out the back side of the  
21 home. And so in terms of greenery and space, the  
22 proposal constitutes an improvement on the status quo.

23 Certainly a large portion of the areas of  
24 concern deal with lot sizing. And as you look at the  
25 sizes of the surrounding properties, you'll note that

1 the proposal of having two 19,320 square feet lots is  
2 well within the ranges. You have lots in there that are  
3 up towards 30,000 and 19 -- 25,000. The city  
4 planning -- the city planners noted that seven of the  
5 homes in the immediate surrounding vicinity are between  
6 20 and -- are less than 20,000 square feet and that the  
7 majority of the homes in the area are between 20 and  
8 25,000 feet in lot size. Really the adjustment is a  
9 reasonable one.

10 I'm going to go back for a minute. This  
11 portion of the rear end of 12 Polo would be about 67  
12 feet, where 100 is required. If I can operate a mouse,  
13 that will be -- and then on the west portion -- or,  
14 sorry, the east portion, it would be about 59 feet. It  
15 might be helpful for you to know and realize that  
16 there's -- that space is well made up for on the front  
17 end. There's a wide span, a fanning shape, where from  
18 this point to the middle of the lot, that's about 131  
19 feet, well in excess of the 100-foot requirement, and  
20 then this -- from this point to the eastern bound -- to  
21 this boundary is 120 feet. So we well make up for the  
22 pinch in the rear by the excess space that's available  
23 on the front portion of the lot.

24 The designed structure is designed to fit  
25 within the setback on this 12 Polo west lot, and again,

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1 this is the picture of the driveway that comes in onto  
2 Polo Drive, and the other driveway will ingress into 12  
3 Polo, the proposed 12 Polo, at this point.

4 As to some of the neighborhood  
5 complaints, one is that this proposal changes the  
6 character of the neighborhood. You're viewing it, right  
7 here, a picture of the home that has been built by  
8 Mr. Fallhowe on 28 Polo. It's a beautiful structure in  
9 new stucco, and there's plenty of space surrounding it.  
10 This is a picture of the lot where the new structure is  
11 proposed to be situated.

12 Just down the street from Polo Drive is  
13 this home at 1280 Mesa Drive, and you can see that the  
14 home commands the majority of the lot size and is close  
15 to the street, similar in character, not too different  
16 from what is proposed by this application.

17 Here again is another home that I'd like  
18 to point out that -- the similarity in the general feel.  
19 The city plan calls for a variety in building  
20 structures, but this is consistent. The one you see at  
21 28 Polo with the stucco build and the nice finishes  
22 agrees in general character with what you see.

23 26 Polo is adjacent to the proposed  
24 sub -- to 28 Polo. You'll notice that there's a large  
25 amount of green space and room, giving an open feel to

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1 the -- so immediately to the left of this slide is where  
2 28 Polo is. And so there will be a good feel for  
3 greenery and space as much as possible.

4 Here again, 17 Polo, consistent in its  
5 make and the facade finishes with the structure that is  
6 on 28 Polo and that which will be built on 12. Again,  
7 for comparison's sake, you can judge the similarities.

8 Change itself can be sometimes a concern.  
9 This is a picture of the structure that existed prior to  
10 the acquisition of the land by 28 Polo. This structure  
11 did straddle the proposed boundary line. There was a  
12 decent and good man that lived there, but due to  
13 circumstances, the home fell into disrepair. Sometimes  
14 change is a good thing. There was significant leakage  
15 problems, as you can see by the tarps. The overgrowth  
16 of the trees was an issue, and unfortunately the home  
17 was crowded with fecal matter and things. It was vacant  
18 for a good period of time. It was built on a septic  
19 system. And so true to the change proposed has a  
20 cleansing effect on the neighborhood. There had to be a  
21 significant asbestos mitigation that was done, and so  
22 there's an improvement in the quality of the property  
23 that's a nice byproduct of the proposal.

24 Now the other essential concern of our  
25 neighbors is that this will set a precedent, and there's

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1 really two ways to view that argument. One, as a  
2 technical matter, precedent isn't one of the criteria  
3 that the commission is asked to utilize in arriving at  
4 its decision. As a reminder, the factors, I won't  
5 rehash them, but Ms. Thelen has articulately and  
6 intelligently guided us through why each of those three  
7 criteria are met. But the other way of looking at the  
8 precedent argument is to realize in reality, as a matter  
9 of fact, we are simply trying to conform to the  
10 precedent that's really been set. It's too late really  
11 to argue about precedent, because the surrounding  
12 reality is very much in line with what has been proposed  
13 in terms of lot size and lot coverage.

14           And by way of conclusion -- and I -- we  
15 can talk technicalities on the drainage report and the  
16 geological hazard concerns, which were also raised by  
17 our neighbors, if you'd like. But for interest of time,  
18 I want to conclude noting that the planning guidelines  
19 that the city has given us encourage us to consider  
20 variety. And they encourage us in view of increasing  
21 population and housing demands to reasonably and  
22 appropriately provide for the kinds of densification  
23 that will meet housing demands, without altering the  
24 history and the beauty of an area.

25           Look forward to any questions or

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1 concerns, but I rely in large part on the presentation  
2 of Ms. Thelen and would encourage the commission to  
3 approve the subdivision application for these reasons.

4 Are there any questions?

5 CHAIRWOMAN MCDONALD: Commissioner Hente?

6 COMMISSIONER HENTE: Yes, sir. That  
7 overhead you showed earlier in the presentation, you  
8 came back to it, twice you said "existing." Just to  
9 clarify, that's not the existing home now, that was the  
10 previous home that was there, correct?

11 MR. MCCONKIE: That's right. The one  
12 with the tarps on it?

13 COMMISSIONER HENTE: Right, right.

14 MR. MCCONKIE: Overgrowth?

15 COMMISSIONER HENTE: That overhead  
16 picture, that again was the previous home --

17 MR. MCCONKIE: Yes.

18 COMMISSIONER HENTE: -- not the one  
19 that's there?

20 MR. MCCONKIE: That's correct.

21 COMMISSIONER HENTE: And so when you  
22 address the fact that the driveway from that previous  
23 home kind of met at the intersection of Polo Circle and  
24 Polo Drive that was a problem, and I would agree with  
25 you on that, that problem has since been alleviated with



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1 the construction of the new house; is that correct?

2 MR. MCCONKIE: That's correct.

3 COMMISSIONER HENTE: Okay.

4 MR. MCCONKIE: We viewed it as a  
5 significant improvement to the safety.

6 COMMISSIONER HENTE: I just wanted to --  
7 I didn't want to beat you over the head about that. I  
8 just wanted to clarify where we are now versus where we  
9 were then.

10 MR. MCCONKIE: That's correct.

11 COMMISSIONER HENTE: Thank you.

12 CHAIRWOMAN MCDONALD: Commissioner  
13 Eubanks.

14 COMMISSIONER EUBANKS: Sir, I want to say  
15 thank you for giving me the lot sizes for the  
16 preservation areas, and I did some quick calculations.  
17 So essentially the west lot then has around 10,700  
18 square feet that would essentially be buildable space  
19 and the east lot would have around 16,700 that would be  
20 buildable space, presuming that the preservation area is  
21 on such a steep slope that it's not considered to be  
22 buildable, essentially.

23 MR. MCCONKIE: That's correct.

24 COMMISSIONER EUBANKS: Correct. So the  
25 10,000 on the west lot, the 10,700 square foot lot,

1 would be one of the smallest lots essentially in the  
2 area, not quite the smallest, but the second smallest at  
3 that point.

4 MR. MCCONKIE: If I could respond.

5 COMMISSIONER EUBANKS: You can.

6 MR. MCCONKIE: You raise an interesting  
7 issue. It's well to note that the lot size is not  
8 changed by virtue of the -- you don't subtract the  
9 preservation area. That area is gifted to and adds to  
10 the quality of the whole lot because it's green space.  
11 It's beautiful space. And it doesn't -- so I wouldn't  
12 minimize the buildable space overall.

13 But maybe the more important point for  
14 your information, and this is a mathematical point, the  
15 current structure, the footprint of it is about 20 -- is  
16 just under 2,500 feet. So it's pretty small in terms of  
17 its footprint. And something very similar is proposed.  
18 The home that's been designed for 12 Polo is also around  
19 that 2,500 square foot footprint size. And again, we're  
20 going to play by the rules. We'll go for a certificate  
21 of occupancy and meet -- and build within setbacks and  
22 so forth.

23 COMMISSIONER EUBANKS: I was actually  
24 going to ask if the proposed -- you already have plans  
25 for the house that would go on the other lot, and it

1 would be similar to the current house that's on the  
2 other lot?

3 MR. MCCONKIE: Yes, in fact, the  
4 structure that was built on 28 Polo could have been  
5 built on the neighboring parcel, the 12 Polo.

6 COMMISSIONER EUBANKS: But that is the  
7 intent?

8 MR. MCCONKIE: The intent would be, yes,  
9 to build a similarly sized structure on that lot.

10 COMMISSIONER EUBANKS: And just to  
11 clarify -- I'm sorry, there's just one more thing. Just  
12 to clarify, when you mentioned the house next door at 26  
13 Polo Drive, you're counting their extra green space as  
14 your green space essentially.

15 MR. MCCONKIE: As a technical matter, no.  
16 I just note that there's a beauty there and a space that  
17 ought to appease some of the concerns that the neighbors  
18 may have.

19 COMMISSIONER EUBANKS: So taking away the  
20 green space on your current property, the property next  
21 door will kind of compensate for that?

22 MR. MCCONKIE: Well, there's -- speaking  
23 of green space, if you want to look at the area, the  
24 proposal, in terms of what this lot or these two lots  
25 will propose for green space excels in many ways what

1 the neighbors will provide in that vein. It's a  
2 significant dedication of green space in the  
3 preservation easement. And then we're opening up a lane  
4 in the middle for a little more space where there was  
5 none previously.

6 CHAIRWOMAN MCDONALD: So Mr. McConkie,  
7 just for clarification, all of the lot sizes that we  
8 looked at, I'm sure that there are several of those that  
9 include preservation areas or non-buildable area  
10 included in those totals, yes?

11 MR. MCCONKIE: I am not aware of that. I  
12 don't have reliable --

13 CHAIRWOMAN MCDONALD: So is this the only  
14 lot in there that's going to have a preservation area?

15 MR. MCCONKIE: It's the only one of which  
16 I am aware. And if I can get back to that -- I  
17 apologize this is a bit tedious.

18 But really if you look at the amount of  
19 open space on this lot as it exists, it's significant.  
20 A lot of these lots don't have that kind of space. And  
21 so certainly I don't think it's out of character to  
22 build a small structure here and a small structure here  
23 and really gifting to the area that open space.

24 CHAIRWOMAN MCDONALD: You're not really  
25 gifting that though. It's part of the -- part of

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1 the lot.

2 MR. MCCONKIE: It's part of the lot. I  
3 mean in terms of what it contributes to the feel of the  
4 neighborhood.

5 CHAIRWOMAN MCDONALD: Right. Yeah, I get  
6 that. But it's still considered part of the lot.

7 MR. MCCONKIE: I appreciate the  
8 correction.

9 CHAIRWOMAN MCDONALD: Right?

10 MR. MCCONKIE: Yeah.

11 CHAIRWOMAN MCDONALD: Yeah. Okay.

12 MR. MCCONKIE: Uh-huh.

13 CHAIRWOMAN MCDONALD: Does anyone else  
14 have any questions for Mr. McConkie?

15 I guess not. Thank you very much.

16 MR. MCCONKIE: Thank you.

17 CHAIRWOMAN MCDONALD: At this time, we're  
18 going to open this item for the public hearing, and we  
19 do ask that the speakers sign in and state your names  
20 for the record. First the supporters of the request  
21 will be heard and opponents will be heard after that,  
22 and they will each have a four-minute time limit. So if  
23 there are any supporters that would like to speak on  
24 this subject.

25 Ma'am? Come on up.

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1 JOAN O'NEIL: Hello.

2 CHAIRWOMAN MCDONALD: Hi.

3 MS. O'NEIL: My name is Joan O'Neil. I  
4 live a few blocks over from this property on Oak Avenue.  
5 So thank you for letting me speak today. I guess my  
6 comments are on that I support this. If you look at the  
7 pictures of the previous home that was there, it was  
8 requiring significant investment to either be brought up  
9 to livable standards and/or it was a property that was  
10 going to more than likely be bought to be developed. So  
11 I support Bruce in his conscious way of doing that. I  
12 think the home that he has already built there is in  
13 fitting with the neighborhood. It is stucco. It's a  
14 beautiful home, done at a higher level than average.  
15 And I think the fact that he is self-imposing a 15  
16 percent limit on the size that he can build helps point  
17 out his consciousness and thoughts of how it will affect  
18 the neighborhood to build another building on that  
19 property. Thank you.

20 CHAIRWOMAN MCDONALD: Thank you, ma'am.

21 Are there any other citizens that would  
22 like to speak in support? Sir?

23 Race to the podium. Whoever gets there  
24 first.

25 MR. BROWN: Hi there.

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1 CHAIRWOMAN MCDONALD: Hi.

2 MR. BROWN: My name is Scott Brown, and  
3 I'm -- I've known Bruce Fallhowe for about ten years,  
4 and I don't know a whole lot about the project that he's  
5 work on. I had seen the property before he started it,  
6 when he first bought it, and the previous home that was  
7 on it and the condition of that property at that time.  
8 And the house he's put on it so far is a very nice  
9 addition to that community. It's really a nice house.  
10 Very -- a huge improvement over what the property was.  
11 I have -- I'm a little familiar with some other projects  
12 Bruce has worked on, and he does some amazing  
13 transformations. He's a person that takes things from  
14 start to finish. He has the means to do that, and he  
15 does a very good job. He's a very good designer and  
16 architect. That's part of his skills, I would say.

17 But I've known some -- been familiar with  
18 some other people that have had projects, and you know  
19 how they can start a project but they can't seem to  
20 finish it, or they have too much going where they start  
21 too many projects and it takes too long to finish it,  
22 and that's not how Bruce does things. He knows all  
23 phases of the projects as far as the construction. He's  
24 very aware of the code departments and the proper  
25 engineering to put into these projects, and he has a lot

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1 of sources and people that are in the construction  
2 industry that he works with. He's -- he knows a lot of  
3 people that help get the job done correctly and quickly.  
4 And that's what I can tell you about that.

5 CHAIRWOMAN MCDONALD: Thank you,  
6 Mr. Brown.

7 MR. BROWN: Okay.

8 CHAIRWOMAN MCDONALD: Sir, come on up.

9 MR. HERBSTER: Thank you. I'm Chris  
10 Herbster. I live in the area. I'm about a half hour --  
11 I mean a half mile away from the property. You know,  
12 I'm excited about the property. I think that the one  
13 that Bruce built looks beautiful. I think it will  
14 improve the property values in the area and it improves  
15 the infrastructure with the sewers and all of that  
16 stuff. And, you know, there's a preservation area. I  
17 think that would be great if we had more preservation  
18 areas in the area. I think that's a positive  
19 contribution to that site.

20 And when I see other things that Bruce  
21 has done, he's got a property that he built on the  
22 corner of Polo and 7th Street. It's just -- I think  
23 it's one of the best properties in the area. And I  
24 think that, you know, property values will go up. I  
25 think taxes will go up. I think that with the



1 preservation area, there will be more animal life and  
2 more beauty there. And I'm really, you know, positive  
3 about it, and I hope that more people, you know, take on  
4 the responsibilities of tearing down old houses and  
5 improving the area with new houses.

6 I don't know why everyone is so afraid of  
7 changing the area with these new houses, because I drove  
8 by and saw that house. It's amazing. It's got, you  
9 know, where you can go up to the third floor and have a  
10 view of the whole area, where there's this spiral  
11 staircase that goes up there. It's just really  
12 outstanding architecture. So --

13 And when you look at the other, you know,  
14 the smaller houses in the area, the older houses, I  
15 think this will bring up property values in the area. I  
16 think the variance is pretty small, really, just, I  
17 don't know, 700 square feet. And when you think that  
18 property is maybe a little bit closer to that back area  
19 that's not developed, I don't know if it's less than 100  
20 feet or something like that, I think those are very  
21 minimal and is not something that would prevent that  
22 property from being built. So I'm really excited and  
23 positive about it. I'm a little bit nervous, but I hope  
24 it goes through. I think it will be a great  
25 contribution to the area. Thank you.

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1 CHAIRWOMAN MCDONALD: Thank you,  
2 Mr. Herbster.

3 Are there any other citizens that would  
4 like to speak in support of this item?

5 Seeing none, we will move to opponents of  
6 this request, if there is anyone who would like to speak  
7 in opposition.

8 MS. MATTHEW: Hi. My name is Audrey  
9 Matthew, and I've lived in the Broadmoor neighborhood  
10 for five years, and I'm a homeowner on Polo Pony, which  
11 is a street away from Polo, where 28 Polo is.

12 I am not in support of subdividing the  
13 lot. There -- there's three criteria that are supposed  
14 to be met and two are not being met. The lot is very  
15 awkward in size. It looks really small, and adding an  
16 additional house would make the lot look even more  
17 awkward. Historically, the neighborhood has been larger  
18 homes and larger lots, and that's what kind of brought  
19 us to the neighborhood. That's why we loved the  
20 neighborhood. And if we start dividing lots and making  
21 variances and approving variances, it will change the  
22 nature and character of our neighborhood.

23 I just feel like it's been previously  
24 disapproved. Nothing's changed from the last time it's  
25 been brought to this group. I already mentioned the

1 precedent and it's been brought up, but there are other  
2 lots that are large and that they could be divided. But  
3 we don't want that to happen in our neighborhood because  
4 it would change the character of the neighborhood.

5 Polo is a pretty busy street, and  
6 actually it's very busy, and people will kind of speed  
7 up and down that. If you add an additional house, I'm  
8 concerned about the additional traffic and it becomes  
9 unsafe as more people come -- would come through.

10 You're looking at me like maybe -- so if  
11 you have a second house -- yeah, well, so we have  
12 another house that they have maybe five cars, and if you  
13 have a large home with children, then you don't know how  
14 many cars are going to end up being added into that  
15 home. So I'm concerned about that.

16 And in my opinion, the home that Bruce  
17 built is not attractive. It is not in keeping with our  
18 neighborhood. So I just don't think it's adding value.  
19 The old house that was there, yes, it was in disrepair,  
20 but it was beautiful. It was an estate. It was a nice  
21 area, a nice home at one time. It could have been  
22 improved upon. A lot of people come in and they put  
23 money in and improve the estate-like homes in the area,  
24 and they're beautiful.

25 So I just ask that you not approve this

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1 as a person who lives in the neighborhood, and I just  
2 don't want to see it happen. Thank you.

3 CHAIRWOMAN MCDONALD: Thank you very  
4 much, ma'am.

5 Sir, did you want to speak in opposition?

6 MR. DRAPER: Yes.

7 CHAIRWOMAN MCDONALD: Okay.

8 MR. DRAPER: I'm just curious. Have any  
9 of you driven by the property?

10 Wow, very nice. Then I won't speak that  
11 long, so thankfully for you all.

12 I think Ms. Eubanks brought up a very  
13 good point.

14 CLERK: Sir, could you state your name  
15 for the record?

16 MR. DRAPER: Steve Draper. I'm 16 Polo  
17 Circle, right next door.

18 CLERK: Thank you.

19 MR. DRAPER: I think Ms. Eubanks brought  
20 up a very pertinent point. So that lot size, the second  
21 one to the west, is now going to be one of the smallest  
22 lots; is that not correct? So what's -- since you all  
23 have been by the property with the new house, basically  
24 it's going to be the same house right next to it on a  
25 small lot, pushed up towards the street, right? That's

1 the reality.

2 And, you know, it's interesting showing  
3 those other houses, those were spread out, wider. My  
4 house was a rancher and had one half-story built. But  
5 it's still not going to be like what Bruce is planning,  
6 house, house, right next -- to me, in my opinion, it  
7 will look like an apartment complex. And you all have  
8 seen it. If you can imagine a mirror right next to it.  
9 That's all I'm saying. Thanks.

10 CHAIRWOMAN MCDONALD: Thank you, sir.

11 Is there anyone else that would like to  
12 speak in opposition?

13 MS. GARVENS: Hi, my name is Marlo  
14 Garvens, and I'm a mom. And this is very nerve wracking  
15 for me, so I'm just going to be honest. But I'm going  
16 to read a letter that I wrote. I live at 17 Polo  
17 Circle, which is right across from 28 Polo. My family  
18 purchased the house in November of 2017. We had not yet  
19 purchased the home when the neighborhood went through  
20 this process before with 28 Polo back in 2017. But I am  
21 confused as to why the proposal has advanced all the way  
22 to the Planning Commission public hearing again. It is  
23 my understanding it was clearly adjudicated last year  
24 when the City Council soundly denied the application and  
25 requested variance for 28 Polo with a 6 against 3 for

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1 vote. It is my understanding there are no significant  
2 changes to the new application aside from the fact that  
3 Bruce has now built a house clearly on the east side of  
4 the property.

5 I understand Bruce has a right to submit  
6 the application as it stands annually, but the  
7 neighborhood members also have the right to have relief  
8 from the annual process of this harassment. This  
9 application sets a very dangerous precedence of  
10 individuals purchasing properties, subdividing it for  
11 the profit at the cost of the neighborhood aesthetics  
12 and the traffic flow.

13 My husband and I have worked very hard at  
14 saving money, and we have had a dream for many, many  
15 years to live in this area. We have drove by almost  
16 daily sometimes dreaming of the house that we wanted.  
17 And we finally, finally saved enough money to put a down  
18 payment and buy our dream home. And it happens to be  
19 across from Bruce. And now all of a sudden this  
20 beautiful -- the reason I love the neighborhood is the  
21 historic nature of it, all of these beautiful homes that  
22 are older, well built, beautiful homes, unique. And now  
23 all of a sudden this home that was at 28 property gets  
24 bulldozed. Yeah, it could have -- it was in need of  
25 repair, but our house was too, and guess what. Someone

1 came in and completely redid it, and it's absolutely  
2 beautiful now.

3 And it's just really disheartening,  
4 really upsetting that we've lived -- we've dreamed about  
5 this and saved for so many years to be in this, and now  
6 all of a sudden knowing that we can just divide  
7 properties and bulldoze and add houses, it's just really  
8 upsetting and really -- after all that we've been  
9 through. So that's all I have to say. I am not in  
10 support of it, and I thank you for hearing me today.

11 CHAIRWOMAN MCDONALD: Thank you very  
12 much. Is there anyone else that would like to speak in  
13 opposition?

14 MR. GARVENS: Hi, I'm Jay Garvens. Thank  
15 you guys for your time. I know you do this on a daily  
16 basis.

17 Three different points from me. First of  
18 all, what my wife Marlo stated about it. I came here in  
19 '96 as a pilot at Fort Carson, and I was excited to get  
20 an 1,100 square foot house built by Jeff Smith down in  
21 Cheyenne Meadows. And then we saved and then we moved  
22 up and bought a house on Pine Avenue. And then we fixed  
23 up that house and then we saved up more money and we've  
24 now moved to Polo. And that's a 15-year process to get  
25 to this area. And the historic neighborhood is very

1 important and I think the precedent is important as  
2 well.

3                   Number two, I'm going to address the  
4 property itself. 28 Polo is not a high-end  
5 construction. I own a real estate company. I'm in  
6 mortgage. I've consulted with an appraiser. And Bruce  
7 himself told me on the property line that he did not use  
8 high-end materials because he had received adverse  
9 effect in the downturn of the Great Recession. So these  
10 are Home Depot doors. These are not the same quality of  
11 construction, and if it proceeds forward before this  
12 City Council -- (interruption in video) -- the  
13 aesthetics. The quality of the property is not of the  
14 surrounding neighborhood.

15                   And number two, with the property itself,  
16 there is a gate off of Polo Drive, which is padlocked  
17 right now, and the dangerous corner that was in  
18 discussion is how he comes in and out every single day,  
19 and it's technically on Polo Circle. There's also an  
20 entire line of historic trees, more than 75 years old,  
21 cypress, all of this, that as soon as you pop a  
22 foundation, it's going to totally ruin their root  
23 structure; so you can take those trees out. But that's  
24 just the property itself.

25                   But the third thing I wanted to state is



1 the precedent. This does set a precedent. Less than  
2 two blocks away, 44 Polo, on three acres, a mansion  
3 built in 1925, owned by Mr. Stone, is the next one on  
4 your docket. These houses that are on the market a long  
5 time that can't sell then become open to the eyes of  
6 developers. And if we think there's not going to be a  
7 precedent set, try saying no to the gentleman or the  
8 lady or the group or the corporation that wants to come  
9 in and bulldoze that property next, cut it into a  
10 cul-de-sac and put nine high, skinny, tall condos, like  
11 they have in Cherry Creek or Brentwood, Tennessee. It's  
12 happening everywhere.

13 So the historic neighborhood of the  
14 Broadmoor is no different than the historic neighborhood  
15 of the North End, probably not a lot different from the  
16 house directly across from your streets. This just  
17 happens to be across from our street. And we will not  
18 stop. We're just as passionate as he is.

19 Thank you for your time.

20 CHAIRWOMAN MCDONALD: Thank you, sir.

21 Is there anyone else who would like to  
22 speak in opposition of this project?

23 MR. PERKINS: Hello. Thank you. My name  
24 is Tom Perkins. I live in the neighborhood. I'm not  
25 immediately adjacent, but down the hill from -- on Bear

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1 Paw Lane, down below this place.

2 Real quick, before we start, the three  
3 requirements that keep being cited, City Council looked  
4 as those exact same three requirements, said that it did  
5 not meet those requirements. The -- just looking at  
6 those, obviously open for interpretation, but there's  
7 another group of people that will see this again,  
8 because regardless of what your decision, and this is  
9 going right back to City Council. Last time we paid the  
10 fee to make that happen. If you vote in favor of the  
11 variance, we'll have to pay the fee again. It's going  
12 straight back to City Council. The same people I assume  
13 are going to give you the same result, which was stated  
14 as a 6-3 denial of the variance.

15 The houses that keep being cited as  
16 examples of house sizes in this area are existing  
17 nonconforming sizes. They didn't achieve that size by  
18 variance. My assumption is they were built before the  
19 new requirements were put in effect, and requirements  
20 are put in effect for some reason. And if you make them  
21 and then start changing them to fit the situation, it  
22 makes -- the basis of the requirement doesn't make much  
23 sense.

24 We keep seeing this nice overhead shot of  
25 this open space behind that house. That space is

1 absolutely unbuildable. I don't know what the grade is,  
2 but it's not a wonderful -- you know, it's not a view.  
3 You can't see it from the street. You can't see it from  
4 anywhere. It's unusable land. So that it's not like  
5 you took a big lot and made a nice park behind it. It's  
6 just unusable dirt, and what's left is the flat spot on  
7 top.

8           Precedent always makes a difference. Law  
9 is based on precedent. So to say precedent doesn't make  
10 a difference, it does make a difference.

11           And real quick, so where are we from last  
12 year? What has happened in the last 12 months? The  
13 neighborhood is more solidified against the concept of  
14 dividing and splitting up these lots. It was evidenced  
15 by the extreme opposition at the neighborhood meeting.  
16 The -- excuse me here. Because of the -- during the  
17 meeting, extreme opposition was cited. Since that time,  
18 Mr. Fallhowe has built a house exactly like he proposed  
19 last time, with the stated reasoning being that he would  
20 be able to manipulate this group and City Council to get  
21 done what he wants done, regardless of what the  
22 neighborhood wants and regardless of what the zoning  
23 requirements are. That's why he built the house on a  
24 half of the lot, with the idea that he's going to go  
25 ahead and build it anyway on the other half.

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1                   At the neighborhood meeting, when the  
2 neighbors asked why would you want to proceed with  
3 this with all of this opposition from the neighbors and  
4 the surrounding area, his answer was "Because" -- he  
5 says, "Because I can." And what we would like as a  
6 neighborhood, that you would uphold the council's  
7 decision and -- which is very logical, and we would like  
8 you to say, "No, you can't."

9                   Thank you very much.

10                  CHAIRWOMAN MCDONALD: Thank you, sir.

11                  Is there anyone else that would like to  
12 speak in opposition to this item?

13                  MR. O'BRIEN: Good morning. I'm Paul  
14 O'Brien. I live at 26 Polo Drive, which is the property  
15 just to the east of the current proposal. My family's  
16 lived in that house since 1972, so we definitely have  
17 been around the neighborhood a little bit.

18                  A couple of quick points. In terms of  
19 there being no exceptional/extraordinary condition that  
20 exists that would make the nonuse variance of lot size a  
21 requirement for use, the property has been in use for 61  
22 years as a single family lot; so that seems like a  
23 reasonable use to me. There's continual reasonable use.

24                  And then the adverse impact to the  
25 surrounding properties, I think definitely precedent has

1 been set, and you've heard a lot about the potential for  
2 other properties like this in terms of tear down  
3 house -- the old historic houses and building new  
4 houses.

5 In regards to a couple of points on the  
6 presentation from the applicant. The driveway you heard  
7 about in terms of safety and that being a concern, the  
8 driveway that is so dangerous has been used for the  
9 last -- since the new house has been built. The other  
10 one is -- the other access is actually chained off and  
11 gated.

12 The views between the homes was cited.  
13 The concept was there would be views between two houses  
14 versus one. What was failed to be pointed out was that  
15 was a single-story house, and what he's proposing are  
16 two two-story houses.

17 Lot size, all the lots that have been  
18 cited being smaller have all been grandfathered in  
19 through the annexation in I believe 1980. So they've  
20 already been existent. No one's petitioned to have that  
21 happen.

22 The character of the neighborhood is  
23 really interesting, because the examples that he cited  
24 of on Mesa were houses that were added on. Those were  
25 additions to an existing house. They weren't teardowns

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1 and rebuilds. So the character of those houses still  
2 comes through in them.

3 And then in terms of precedent set,  
4 again, all of the examples cited were Zone R. So with  
5 that, I respectfully request that you deny the  
6 application. Thank you very much.

7 CHAIRWOMAN MCDONALD: Thank you, sir.

8 Is there anyone else that would like to  
9 speak in opposition of this item?

10 MR. JOHNSON: Good afternoon now. Ladies  
11 and gentlemen, thank you for your time. We -- I don't  
12 really have too many new points to make. I'm Aaron  
13 Johnson. I live -- my wife and I live right across the  
14 street at 23 Polo. We bought our house ten years ago,  
15 and it was in a little bit of disrepair. Rather than  
16 tear that house down and try to build something new, we  
17 felt like the house had beautiful character, the  
18 neighborhood had beautiful character. We spent a lot of  
19 money maintaining the character of that house rather  
20 than just -- it never dawned on us to just tear a house  
21 down that had been there since 1950. We worked with  
22 what we had and we think we did a good job.

23 We -- we are opposed to this. We've been  
24 down this road before, as you know. And I would again  
25 like to touch on the point about the driveway again.

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1 Polo Circle, the driveway there is still there at Polo  
2 Circle and Polo, and it was noted by the other gentleman  
3 that that is not being used. That's not true. Bruce  
4 uses that every single time he comes to the house. He  
5 goes right in that driveway. The one on Polo, which in  
6 my opinion is more dangerous, because it opens right  
7 onto Polo, a much more busy street, is not being used.

8 So with that being said, we appreciate  
9 your time. I am opposed to this. The community meeting  
10 that we had in October at the Broadmoor Church, Lonna  
11 noted there were 40 people there. If I'm not mistaken,  
12 one person wanted to do this; the other 39 didn't. The  
13 other 39 people who were there were opposed to this. In  
14 a democratic society, the wishes of one should not  
15 outweigh the wishes of the many. Thank you very much.

16 CHAIRWOMAN MCDONALD: Thank you, sir.

17 Is there anyone else that would like to  
18 speak in opposition of this project?

19 MR. MCLAUGHLIN: Good afternoon,  
20 everybody. I'm Gary McLaughlin. I live at 27 Polo  
21 Drive, across the street from 28. My house is the  
22 smallest lot on the list. So -- I have lived here  
23 since -- well, I've lived here 72 years. Anybody else  
24 lived in Colorado Springs 72 years? I don't know if  
25 that means anything, but I've been here a long time.

1 And I love what you all do. I love the fact that we can  
2 bring these issues to you, and we have people in our  
3 community that are willing to put their time into this  
4 and make decisions. And that's great. I love that.

5           You know, a community can be the United  
6 States or a community can be Colorado or a community can  
7 be Colorado Springs or a community can be the Broadmoor  
8 area. And our community and our neighborhood, we don't  
9 want this. Last year I took a survey. We had 50, 60  
10 names on the petition to not do this. And I'm coming  
11 back to you again and asking you to look at this and  
12 say, you know, this is something that, you know, it's  
13 not going to -- it's not going to hurt anybody, but this  
14 isn't what the neighbors want.

15           I was in Los Angeles yesterday, and you  
16 talk about density, talk about housing density. If you  
17 ever want to know what that is, go to Los Angeles and  
18 drive through some of those neighborhoods. That's  
19 dense.

20           We don't want that. People live here.  
21 We didn't come here because we want density. We came  
22 here because we like our neighborhoods, whether it's  
23 Stratton Meadows or Stratmoor or any of the others, we  
24 like our neighborhoods the way they are. And what he's  
25 trying to do is come in and change the neighborhood,



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1 come in and add density to the neighborhood for his  
2 personal gain.

3 He won't be there three years from now.  
4 He'll be gone. He built the house on Polo and 7th, and  
5 just to make money. And that's what he saw here, an  
6 opportunity to make money. We're not in our homes to  
7 make money. We're in our homes because that's where we  
8 want to raise our families. That's where we want to  
9 have our kids. The house I'm in has been in my family  
10 since 1972. The smallest house in the list, but we  
11 enjoy the neighborhood. We enjoy Colorado Springs. And  
12 we appreciate you all and all your work. I am opposed  
13 to this subdivision. Thank you.

14 CHAIRWOMAN MCDONALD: Thank you, sir.

15 Is there anyone else that would like to  
16 speak in opposition?

17 Seeing none, does staff have any  
18 additional clarifications?

19 MS. THELEN: Thank you. Yes, I had a  
20 couple of points I wanted to make.

21 The question about preservation areas and  
22 whether or not it's on other lots in this area, that's a  
23 good question. The majority -- well, this entire area  
24 was annexed in the city in 1980. So it was somewhat of  
25 a recent annexation, and they were primarily lots that

1 were platted prior to being annexed. And so at that  
2 time there weren't any preservation areas placed on  
3 those lots when they were platted. However, if you were  
4 to look at this property or the surrounding properties,  
5 there could be the ability if they were replatted or if  
6 they were platted today that we would look to put some  
7 preservation areas on those properties.

8 I mentioned the difference between that  
9 upper Polo Circle/Polo Drive area and then going down  
10 below to the Bear Paw. And there are a few of those  
11 properties along there that could also benefit from a  
12 preservation area. And again, preservation areas are  
13 meant to preserve parts of properties that may need  
14 preservation. They're not meant to be taken out of the  
15 entire lot size of those lots. So they are still  
16 counted towards that lot size, and that happens all  
17 across town. It's not anything unusual that we do.  
18 It's very common in that Broadmoor area, dealing with  
19 either significant grade, underlying geohazard concerns,  
20 or vegetation that's on the properties. So those are  
21 kind of the points that I wanted to touch on.

22 CHAIRWOMAN MCDONALD: So I'm just going  
23 to clarify that a little bit further. When you  
24 calculate the lot square footage and the percentage of  
25 coverage, the entire lot is taken into consideration?

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1 MS. THELEN: Correct. Yes. 19,230  
2 square feet is the lot size, and there is a preservation  
3 area on that lot, but that does not deduct from the  
4 total lot size of the lot.

5 CHAIRWOMAN MCDONALD: And that is  
6 standard across the city?

7 MS. THELEN: Exactly.

8 CHAIRWOMAN MCDONALD: Commissioner  
9 Graham, did you have a question?

10 COMMISSIONER GRAHAM: Yeah, well, I just  
11 wanted to clarify. So this process could have been  
12 administratively done without coming to the Planning  
13 Commission; is that correct?

14 MS. THELEN: Yes, within the city code,  
15 preliminary and final plats and nonuse variances are  
16 applications that staff can act on administratively.

17 COMMISSIONER GRAHAM: And the appeal  
18 process would still be the same?

19 MR. MCCONKIE: Correct. They could have  
20 appealed those actions of staff to Planning Commission.

21 COMMISSIONER GRAHAM: Okay. Thank you.

22 CHAIRWOMAN MCDONALD: Are there any other  
23 questions for Ms. Thelen?

24 Seeing none, does the applicant have any  
25 additional comments they'd like to make?

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1 UNIDENTIFIED SPEAKER: Could the person  
2 identify himself? He's never identified himself.

3 CHAIRWOMAN MCDONALD: Yeah, he did. He  
4 gave his name. Yeah. It's on the record. Thank you.

5 MR. MCCONKIE: I'd be happy to do that.  
6 Again, my name is David McConkie.

7 CHAIRWOMAN MCDONALD: Thank you.

8 MR. MCCONKIE: And I will endeavor to be  
9 concise in responding to some of the areas of concern.

10 The first, and I apologize for not  
11 grabbing the name correctly, asked what has changed?  
12 Well, what has changed is there's now a much improved  
13 property that's beautiful and has removed a septic  
14 system and has removed the overgrowth and has removed a  
15 leaky vacant structure. So the evidence in the  
16 preceding year is only positive. There's more beauty  
17 and I think that is what has changed.

18 Mr. Draper argued, as -- and I think this  
19 is an idea that Ms. Thelen just touched upon which  
20 needs -- which is critical. The lot size of each  
21 proposed lot is 19,230 square feet. That's the lot  
22 size. The preservation easement doesn't reduce that lot  
23 size. And in fairness to the way this is conducted  
24 across the city, that full area is what should be used  
25 as the number that the commission works with as it

1 judges, you know, what's an appropriate footprint for a  
2 structure on the properties. That has been, I think,  
3 laid to rest.

4 Ms. Garvens talked about harassment. And  
5 since this is a quasi-judicial body, I want to kind of  
6 recall that familiar trial lawyer argument, that when we  
7 make decisions, we're supposed to do that on the basis  
8 of evidence. There has been no evidence of harassment.  
9 None. This body is not in possession of any such fact.

10 What this body is in possession of is an  
11 accumulation of professional studies that have cost 28  
12 Polo, LLC, more than \$20,000. Do we want to talk about  
13 geologic concerns? Well, then let's consult the experts  
14 who put their professions and their reputations on the  
15 line to verify that there is no groundwater 20 feet down  
16 below, that we're maintaining flows and the proposed use  
17 doesn't increase drainage flows.

18 If we want to talk about traffic  
19 concerns, as some of the neighbors did, well, then let's  
20 hire professionals that have already been run through  
21 the city process and who have concluded there is no  
22 additional impact on traffic flow based on the  
23 construction of a small home on 12 Polo. We can use the  
24 neighbor concern, and it's something that's entitled to  
25 consideration, but I think the more weighty

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1 consideration is what the professionals have opined  
2 about.

3                 Several references have been made to the  
4 fact that ultimately after two approvals, the City  
5 Council ended up voting against the process. This is,  
6 as counsel reminded the council, is a new hearing, and  
7 overlooked in the opposition's voices is the fact that  
8 based again on professional criteria and legal criteria  
9 that are supposed to apply equally to all people, this  
10 commission previously approved. And if this commission  
11 previously approved the application, which is  
12 substantially identical today, this -- I'm seeing a  
13 quizzical look on --

14                 COMMISSIONER EUBANKS: What was that --  
15 oh, I'm sorry.

16                 CHAIRWOMAN MCDONALD: Just hold off just  
17 a second.

18                 MR. MCCONKIE: And what I want to -- and  
19 the questions will be welcome. Last year the Planning  
20 Commission did approve, the staff again approved -- my  
21 understanding is the staff approved the subdivision  
22 application and the Land Planning Commission approved  
23 it, and then it was appealed to the City Council and  
24 that's where the project was denied. Okay? So that's  
25 my understanding of the record. And I would invite

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1 questions if that's not accurate. I believe it is. I  
2 think the record will show that that's correct.

3 Just a few more points. Mr. McLaughlin  
4 admitted that his lot is substantially smaller than the  
5 proposed lots. Admitted also that there is no hurt to  
6 the neighborhood really. That's in his own words, and  
7 he admitted thankfully that we're not in Los Angeles,  
8 that we enjoy relatively spacious accommodations in the  
9 Broadmoor area. This doesn't drastically affect that.  
10 And it's just interesting to note that Mr. McLaughlin's  
11 lot came to be such as it is through the variance  
12 process. So that same process from which he benefits is  
13 now used as an argument against the current proposal.  
14 In other words, in all fairness, if Mr. McLaughlin can  
15 benefit from the variance process and receive  
16 consideration from a body such as this, then in  
17 fairness, 28 Polo should receive that consideration as  
18 well.

19 MR. MCLAUGHLIN: Can I respond to that?

20 CHAIRWOMAN MCDONALD: No, sir. I'm  
21 sorry.

22 This is the process. He gets a chance as  
23 the applicant to come up and do a rebuttal to the  
24 comments.

25 MR. MCCONKIE: Just a few more points.

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1 It was noted by Commissioner Graham that it isn't  
2 technically necessary to be having a full hearing.  
3 We're inviting a public airing of viewpoints and  
4 opposing concerns. But 28 Polo has been happy to go  
5 through that process and to pay for and outline the  
6 professional studies that undergird the staff's  
7 recommendation that the proposal be approved. We're  
8 open. We're here. It's transparent, and we've been  
9 compliant with the process. It's relatively easy to  
10 spend \$176 and complain in opposition, and it's not as  
11 easy to engage professionals at significant cost to  
12 create the proposal that has again passed professional  
13 muster.

14 It's one thing to be a neighbor and it's  
15 another thing to be neighborly. And there's been no  
16 evidence of out of order conduct on the part of  
17 Mr. Fallhowe, and I would suggest that all of these  
18 neighbors can get along. In fact, they have gotten  
19 along without any major incident for the last year. And  
20 so I bring that note to your attention and really again  
21 emphasize that the weight of the professional studies  
22 that have been done ought to bear significant sway in  
23 the commissioners' minds. And we thank you for your  
24 attention. If there are additional questions, I'll do  
25 my best.



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1 CHAIRWOMAN MCDONALD: Yes. Commissioner  
2 Smith, did you have a question?

3 COMMISSIONER SMITH: Yeah, I've got a  
4 couple of -- one question and an observation. So  
5 there's been something -- several comments made about  
6 Mr. Fallhowe not using the driveway, using the driveway  
7 that's going to be abandoned. So I'd like some  
8 clarification as to why the existing driveway is not --  
9 locked up, not used, and he uses the one that supposedly  
10 is going to be used. And to clarify, you can clarify  
11 that you stated that there would be another driveway for  
12 this new other home. I've got that correct, is that  
13 right?

14 MR. MCCONKIE: That's correct. My  
15 understanding is that there's currently one driveway  
16 that is at the apex of that pie --

17 COMMISSIONER SMITH: Correct.

18 MR. MCCONKIE: -- the fan part of that  
19 shape.

20 COMMISSIONER SMITH: That was the  
21 driveway for the old house that was there.

22 MR. MCCONKIE: That's correct. That's  
23 currently being used still because the subdivision  
24 application has been approved -- has not yet been  
25 approved and the new driveway has not yet been

1 constructed. So that's a significant, I think,  
2 distinction. The future, if this subdivision is  
3 approved, will no question make a safer situation, with  
4 one point of ingress on an open road, where there's no  
5 blind spots, and the other on Polo Circle, where there  
6 is again no blind spots.

7 Now, it's been mentioned be one of the  
8 neighbors that we've been fine. The sky isn't falling.  
9 All of these years it's been just fine and thank heavens  
10 there hasn't been, that I know of anyway, significant  
11 accidents. Well, it only takes one. And why wouldn't  
12 we improve the safety situation? That seems to be  
13 prudent and rational.

14 Another comment that I heard from a  
15 neighbor was that Mr. Fallhowe won't be here in two  
16 years. Well, there's no evidence to support that. He  
17 talked about Mr. Fallhowe's residence at 7 Polo.  
18 Mr. Fallhowe lived at 7 Polo for 13 years. And so I  
19 think as we weigh evidence, we assign a proper value to  
20 the criterion and the arguments that are aired, and I  
21 think on balance 28 Polo, as the staff recommendation  
22 indicates, does well.

23 CHAIRWOMAN MCDONALD: Commissioner Smith,  
24 do you have additional questions?

25 COMMISSIONER SMITH: Yes.

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1 CHAIRWOMAN MCDONALD: Okay.

2 COMMISSIONER SMITH: But just to be sure,  
3 if this is approved, that existing driveway is going to  
4 be closed off, correct?

5 MR. MCCONKIE: That's my understanding.

6 COMMISSIONER SMITH: Okay. The other  
7 thing I'd like to mention is that you made the comment  
8 that Mr. McLaughlin had benefited from a variance.

9 MR. MCCONKIE: Yes.

10 COMMISSIONER SMITH: And I think that the  
11 correct way to describe it is that the annexation of  
12 Broadmoor was around 1980, somewhere in there, and at  
13 that time, whatever existed, was Mr. McLaughlin's or  
14 anybody else in the neighborhood, that those were  
15 grandfathered in. He did not get a variance for his  
16 small lot is the way I understand it.

17 MR. MCCONKIE: Commissioner Smith, you  
18 may be right. I'll just fill in what I know and stay  
19 out of what I don't know.

20 COMMISSIONER SMITH: Well, it's not  
21 really a big deal, but I noticed that he wanted that  
22 correction made --

23 MR. MCCONKIE: Okay.

24 COMMISSIONER SMITH: -- and I'm trying to  
25 push this thing along so he doesn't have to come back up

1 here and talk about it.

2 MR. MCCONKIE: Okay. That may very well  
3 be a fair point. I was only -- and I'm only presently  
4 aware of the fact that he noted in his prior argument to  
5 the commission that he had benefited from the variance  
6 process. That's fair.

7 CHAIRWOMAN MCDONALD: Okay. Commissioner  
8 Eubanks.

9 COMMISSIONER EUBANKS: With  
10 Mr. McLaughlin, I don't think -- I think that was a  
11 misunderstanding. I think he was just stating that he  
12 had a smaller property and that that property was  
13 grandfathered in. He did not receive a variance. That  
14 was my understanding.

15 But my comment was for I believe the city  
16 attorney stated at the very beginning that we should not  
17 take into consideration the previous hearing that was  
18 had last year for the commission, and you keep bringing  
19 up the result of that. I wasn't here for that. I know  
20 other commissioners up here weren't. So this is our  
21 first hearing of this particular item.

22 MR. MCCONKIE: Yeah.

23 COMMISSIONER EUBANKS: So we are not  
24 considering the previous case and what unfolded.

25 MR. MCCONKIE: That's very fair.

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1 COMMISSIONER EUBANKS: Okay.

2 CHAIRWOMAN MCDONALD: Thank you.

3 Commissioner Hente?

4 COMMISSIONER HENTE: I'm sorry to belabor  
5 this point, but I want to follow up on Commissioner  
6 Smith's questions, and that's regards to the driveway.  
7 When the homeowner submitted a set of building plans to  
8 obviously get the new home approved, he had to submit a  
9 site plan.

10 MR. MCCONKIE: Yes.

11 COMMISSIONER HENTE: And I assume -- and  
12 obviously that had to be approved too. And can I assume  
13 that that site plan that was approved as part of the  
14 construction showed a driveway similar to what we're  
15 seeing here, where it would not use the old one but  
16 would use the new one? Can I assume that that was the  
17 approved site plan showed that?

18 MR. MCCONKIE: Yes.

19 COMMISSIONER HENTE: So what you're  
20 telling me now is he's using -- he's using a driveway  
21 that's not part of the approved site plan that was  
22 approved when he got the building permit; is that  
23 correct?

24 MR. MCCONKIE: No, I believe it was --  
25 maybe I misunderstood your question.

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1                   COMMISSIONER HENTE: Is this a fair -- my  
2 question is: Is this a fair represent- -- and I'm sorry  
3 for not having it --

4                   MR. MCCONKIE: May I approach or --

5                   COMMISSIONER HENTE: Sure. Is that a  
6 fair representation of what was on the approved site  
7 plan that the city approved when he built that house?

8                   MR. MCCONKIE: I believe so, yes.

9                   COMMISSIONER HENTE: So what you're  
10 telling me is he's not in adherence with what the city  
11 approved for his site plan, if he's using the old  
12 driveway; is that correct?

13                   MR. MCCONKIE: No. What I see is that --  
14 what's depicted on that site plan is the reality. And  
15 I -- maybe Mr. Fallhowe can help me out here. I think  
16 there's something that I don't know.

17                   COMMISSIONER HENTE: I'm just -- I'm not  
18 being a stickler. I just want to make sure if we  
19 followed the rules or not.

20                   MR. FALLHOWE: We did. I asked the city  
21 for permission to use the existing driveway. The  
22 driveway that's padlocked on the right-hand side that  
23 ingress and egress onto Polo Drive is where the  
24 utilities went through for the new sewer, water, and gas  
25 lines, and currently that asphalt has been removed, so

1 it's not suitable for driving on and maintaining a clean  
2 driveway area, okay?

3           Once we bring this to closure, then that  
4 driveway may or may not stay. We could either repave it  
5 or put the asphalt back in so it's suitable for driving.  
6 The one on the corner of Polo Circle and Polo is a  
7 hazard, okay, and that's the one when you see the new  
8 site plan, once we have a determination on what's going  
9 to happen here, then we'll move the one on Polo Circle  
10 and Polo Drive down Polo Circle for ingress/egress where  
11 it's far enough away from the corner. And I asked the  
12 city for permission to do that, and Cindy, who runs the  
13 city part for the driveway permits, gave me permission  
14 to use the driveway temporarily until the application  
15 process was completed.

16           COMMISSIONER HENTE: So that's what I'm  
17 asking. So what you're doing right now is you have  
18 already got concurrence from the city to do that --

19           MR. FALLHOWE: Yes.

20           COMMISSIONER HENTE: -- on what I'd call  
21 a temporary basis.

22           MR. FALLHOWE: Yes, that's correct.

23           COMMISSIONER HENTE: Okay. I just wanted  
24 to make sure.

25           MR. FALLHOWE: Yes. Yes.

1 COMMISSIONER HENTE: Thank you.

2 CHAIRWOMAN MCDONALD: Thank you very  
3 much.

4 Are there any other commissioners that  
5 have any questions for Mr. McConkie?

6 Seeing none, thank you, sir.

7 MR. MCCONKIE: Thank you.

8 CHAIRWOMAN MCDONALD: Now we'll bring it  
9 back up to the dais, and are there any commissioners  
10 that have any comments?

11 Commissioner Hente?

12 COMMISSIONER HENTE: I am mindful and  
13 respectful of the guidance that we got from the city  
14 attorney's office at the very beginning that this is a  
15 new hearing and we're supposed to consider this as new  
16 and echo Commissioner Eubanks' comments. I was not on  
17 city planning commission when this came through the  
18 first time, so I'm not prejudiced one way or the other,  
19 because I have no pride of ownership.

20 But as part of our package, you did give  
21 us the history, and the history includes the minutes  
22 from the City Council meeting of August 22, 2017, and so  
23 I assume that because it's part of the package, it's  
24 part of the rationale that we can use for making our  
25 decision on what to do. And so I have read those



1 minutes. As a matter of fact, I've, sitting here, been  
2 reading them about another ten times while we've been  
3 sitting here. And I am respectful of the comments of  
4 several of the commissioners to particularly include --  
5 I'm sorry, of the council members. I'm particularly  
6 persuaded by the comments of Councilmembers Knight and  
7 Pico, when they said they did not like the comparison to  
8 other smaller lots because those were in fact legally  
9 nonconforming and were grandfathered in. And so I'm  
10 typically persuaded by those comments, and again, it's  
11 part of our package, so I'm reading that. And so based  
12 on that and based on the other comments I see from the  
13 decisions that were made in the past, I am not in  
14 support of this and will not be voting in favor of it.

15 CHAIRWOMAN MCDONALD: Commissioner Smith?

16 COMMISSIONER SMITH: Well, I spent quite  
17 a bit of time driving around that neighborhood, and you  
18 talk about precedence. That's been mentioned a lot. I  
19 don't know. The homes in that neighborhood are so  
20 diverse. There's some of the -- you've got the  
21 50-year-old homes. You've got homes that have been  
22 re- -- it's apparent that they've been remodeled.  
23 There's all kind of sizes and all kinds of shapes. And  
24 frankly, that really doesn't make any difference.

25 20 years ago I built a new home in my

1 neighborhood, and we had a house warming party. And I  
2 was pretty proud of the house. And this little old  
3 lady, she's so nice, and she said, "Carl, it just looks  
4 like you put a bunch of boxes together." And I said --  
5 you know, it really kind of ticked me off, but as I  
6 thought about it, I thought, you know, she's right.  
7 They did look like boxes. But I like those boxes 20  
8 years later.

9                   So I'm just using that as a personal  
10 example of what neighborhoods can look like and what  
11 people can think, and some people can love everything  
12 and some people can hate everything. So I just don't  
13 really -- I don't think we're creating a precedent here  
14 if we approve this project. There was one comment that  
15 kind of -- here today, and I don't know who said it now,  
16 but something about being manipulated, that we would be  
17 manipulated, both the commission and the council. And I  
18 can assure you, this commission does not get  
19 manipulated. So that's just kind of a personal problem  
20 I've got with that particular comment.

21                   Frankly, I think that it does meet the  
22 criteria that the city -- that the planning staff has  
23 quoted and in our -- excuse me, in our packet. So I am  
24 going to be in support of the proj- -- the application.

25                   CHAIRWOMAN MCDONALD: Thank you.

1 Commissioner Raughton?

2 COMMISSIONER RAUGHTON: Well, I -- in  
3 order to build a second home on this site, we will have  
4 to approve multiple variances, and I believe that those  
5 variances are a product of some self-imposed conditions.  
6 I also believe that the character of the neighborhood is  
7 important in the long-term view of the area and all of  
8 our neighborhoods, and I'm -- Carl, I have to say that I  
9 believe that the decisions, the precedence set by this  
10 commission represent a form of policy. We begin to  
11 guide the city by those decisions and ultimately they  
12 become policy. So I, for one, will not be able to  
13 support this proposal.

14 CHAIRWOMAN MCDONALD: Commissioner  
15 Eubanks.

16 COMMISSIONER EUBANKS: I want to thank  
17 all of the residents who took the time to come out and  
18 share their thoughts and experiences with us. What I've  
19 heard a lot of is we don't want this, and we -- we've  
20 been here a while. Some -- a lot of people bought their  
21 houses specifically for that neighborhood, and I  
22 understand the value in that. The property owner is --  
23 he is legally able to do what he wants with his property  
24 in terms of how it is now. He can tear down the old  
25 house and build the new house that's currently there.

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1 And he has that ability. And I know it's not to  
2 everyone's taste, as was mentioned. Some people have  
3 different ideas of what beauty is in a home.

4 And I live in a really diverse area in  
5 terms of homes, so, yeah, there's definitely houses that  
6 I think look nicer than others. But I think the main  
7 concern is about setting the precedence in terms of  
8 subdividing and what that would mean to the  
9 neighborhood. And that's the main thing that I'm taking  
10 into consideration as I cast my vote.

11 CHAIRWOMAN MCDONALD: Thank you.

12 Commissioner McMurray?

13 COMMISSIONER MCMURRAY: Yeah, so the -- I  
14 think there are a lot of fascinating secondary and  
15 tertiary things that have been brought up in the course  
16 of the discussion and the presentation, but I want to  
17 cut to just a couple that I think are particularly key  
18 in terms of my thinking on how I'll vote on this. This  
19 proposal from a conceptual, philosophical standpoint to  
20 me is not troubling. A single additional -- one  
21 additional single-family house in this neighborhood is  
22 not going to tip the neighborhood in any significant  
23 way. That -- that notion frankly doesn't hold water for  
24 me. And I would even go so far as to say based on the  
25 goals of the city, that were a limited multi-family

1 property proposed at this location, I would be in  
2 support to accommodate parents, children, or heaven  
3 forbid, teachers, grocery clerks, and others who service  
4 the neighborhood and the residents in this area.

5           However, I'm not here to make a decision  
6 based on my philosophical thoughts. As a commission,  
7 our job is to strictly scrutinize the criteria that have  
8 been laid out, and as I look at those, I come to the  
9 second criteria, which is "no reasonable use of  
10 property." And we have -- we have something on site  
11 that is tangible evidence that we have reasonable use of  
12 this property, which is a single-family home that has  
13 been on the property for decades and now recently  
14 reconstructed. Reasonable use of the property is  
15 present. And so unfortunately, it's just a big lot.  
16 And so for that -- from based strictly on that criteria,  
17 I'm afraid that I'm going to have to vote no on the  
18 application.

19           CHAIRWOMAN MCDONALD: Commissioner Almy?

20           COMMISSIONER ALMY: Yes, I'm more or less  
21 supporting some of the other dissenting opinions on  
22 this. When I drove by the property, I was actually a  
23 little bit taken aback by what appeared to be the size  
24 of the lot versus -- visually the size of the lot versus  
25 what it shows up on paper. And I tried to visualize the

1 second home on the fairly limited footprint where it can  
2 go. And it -- that two-building picture that I had in  
3 my mind appeared to be farther out of character with the  
4 neighborhood than either single house individually. So  
5 for that reason, I'm -- my view is not to approve.

6 CHAIRWOMAN MCDONALD: I have a couple of  
7 comments that I would like to make before we have a  
8 vote. And my comments are that I feel that this  
9 application has met all the criteria for a nonuse  
10 variance for this property. I feel that there are going  
11 to be other homes in there that are going to be torn  
12 down and replaced. There are a lot of communities that  
13 deal with this as the product ages and as the population  
14 changes and as the market changes based on what the  
15 population wants.

16 If you look at some of the projects -- or  
17 some of the areas in Denver, old areas, Wash Park, this  
18 kind of thing is happening right and left. I think it's  
19 great to preserve those large lots and I think that this  
20 application still does preserve the large lot area. I  
21 will be voting in favor of this, and I -- I can totally  
22 see why this makes sense and adds value to the  
23 neighborhood.

24 At this time I'd like to ask for a  
25 motion.

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1 Commissioner Smith?

2 COMMISSIONER SMITH: Okay. I move to  
3 approve the -- regarding AR PFP 18-00678, I move to  
4 approve the preliminary and final plat for 28 Polo based  
5 upon the finding that the preliminary and final plat  
6 complies with the review criteria in City Section  
7 7.7.102, 7.7.204 and 7.7.303, subject to the following  
8 technical modifications. The final plat -- the final  
9 plat technical modifications are, number one, revised  
10 Note 5, FEMA flood plain to the recently approved  
11 revision to the effective date and parcel number --

12 UNIDENTIFIED SPEAKER: Madam Chair, can  
13 we just state "as indicated in staff report" so we don't  
14 have to read all the --

15 CHAIRWOMAN MCDONALD: Or items 1 through  
16 5?

17 UNIDENTIFIED SPEAKER: Items 1 through  
18 5 --

19 COMMISSIONER SMITH: That would be just  
20 fantastic. I'm kind of getting tired of talking.

21 So the final plat modifications numbers 1  
22 through 5 -- well, we've got 1 through 4 and then 1  
23 through 2 are additional modifications, okay?

24 CHAIRWOMAN MCDONALD: Okay. Is it 1  
25 through 10? 1 through --

1 UNIDENTIFIED SPEAKER: It looks like  
2 there are final plat technical modifications 1 through 4  
3 and preliminary plat technical modifications 1 through  
4 5.

5 CHAIRWOMAN MCDONALD: Yes. Correct.

6 COMMISSIONER SMITH: That's what it is,  
7 and that's what I mean.

8 CHAIRWOMAN MCDONALD: Thank you. Thank  
9 you.

10 Is there a second?

11 COMMISSIONER EUBANKS: Seconded.

12 CHAIRWOMAN MCDONALD: Please vote.

13 And the motion failed, 2 in favor, 6  
14 against.

15 At this time, I'm going to read the  
16 appeal instructions.

17 COMMISSIONER SMITH: Don't we have --

18 CHAIRWOMAN MCDONALD: Oh, I'm sorry.

19 COMMISSIONER SMITH: Don't we have two  
20 more?

21 CHAIRWOMAN MCDONALD: We have two more.

22 Okay. Commissioner Smith, are you going  
23 to make a motion on this?

24 COMMISSIONER SMITH: Yes, yes, I'll make  
25 a motion. Regarding AR NV 18-00679, I move to approve



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1 the nonuse variance to allow a 67-foot rear yard lot  
2 width for Lot 1 and a 59-foot rear yard lot width for  
3 Lot Number 2 where 100 feet is required based upon the  
4 finding that the nonuse variance complies with the  
5 criteria developed in City Code Section 7.5.802.B.

6 CHAIRWOMAN MCDONALD: Thank you.

7 Is there a second?

8 UNIDENTIFIED SPEAKER: I second.

9 CHAIRWOMAN MCDONALD: Thank you. Please  
10 vote.

11 And the motion fails.

12 COMMISSIONER SMITH: Okay.

13 CHAIRWOMAN MCDONALD: Commissioner Smith?

14 COMMISSIONER SMITH: Okay. The last  
15 motion, AR NV 18-00680, I move to approve the nonuse  
16 variance to allow two 19,230 square foot lots where  
17 20,000 square feet is required based upon the finding  
18 that the nonuse variance complies with the review  
19 criteria in City Code Section 7.5.802.B.

20 CHAIRWOMAN MCDONALD: Thank you.

21 Is there a second?

22 Thank you. Thank you, Commissioner  
23 Graham. Please vote.

24 And the motion fails 6 to 2.

25 Now I'm going to read the appeal

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1 instructions. In accordance with Chapter 7, Article 5  
2 of the City Code, any person may appeal to the City  
3 Council any action of the City Planning Commission in  
4 relation to the City Code where the action was adverse  
5 to that person. The notice of the appeal and a \$176 fee  
6 shall be filed with the City Clerk no later than ten  
7 days after the action from which the appeal is taken,  
8 which is Monday, January 28, 2019. The appeal letter  
9 should address specific zoning code requirements that  
10 were not adequately addressed by the City Planning  
11 Commission. City Council may elect to limit discussion  
12 at the appeal hearing to the specific matters set forth  
13 in the appeal letter.

14 Thank you very much. This meeting is  
15 adjourned.

16 (End of video recording.)  
17  
18  
19  
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25

REPORTER'S CERTIFICATE

I, CINDY ELLIOTT, RPR, CSR, and Notary Public within Colorado, appointed to transcribe the above proceedings, do certify that the proceedings were video recorded, a portion of said proceedings were listened to and reduced to typewritten form consisting of 74 pages herein, and that the foregoing is a true and correct transcript of said portion of the video recording.

I further certify that I am not related to any party herein or their counsel.

In witness hereof I have hereunto set my hand this  
January 23, 2019.

My commission expires April 8, 2019.



Cindy Elliott, CSR, RPR  
and Notary Public  
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